

Legal analysis of the European charter of the local self-government in the light of the principle of publicity

Denis Stepanovich Mikheev

Mari State University, Lenin Square, 1, Yoshkar-Ola city, 424000, Mari El, Russia

Abstract. The article analyzes the norms of the European Charter of the Local self - government from the position of securing the core principle of the local government – publicity. Although, this principle, is not directly covered by the European Charter, but some of its elements are found in numerous articles. The author presents comparative characteristics of the basic rules of the European legal act with the basic federal law on local government. The obvious advantages of the European Charter of local government are marked, in particular, the consistent legal regulation of the interests of the population in the work of local government.

[Mikheev D.S. **Legal analysis of the European charter of the local self-government in the light of the principle of publicity.** *Life Sci J* 2014;11(6):619-622] (ISSN:1097-8135). <http://www.lifesciencesite.com>. 96

Keywords: local self-government, the European Charter, population, local authorities, principles, publicity, elements of principle, account of opinion, access to information

Introduction

Under modern conditions in the system of organization principles of local government in the Russian Federation the principle of publicity, ensuring transparency of local government, citizens' access to information about these activities, public control of the population over decision of local items occupies the central position. Features listed above concerning the principle of transparency of local government are its main elements.

Legal regulation of this principle is carried out not only by domestic legislation, but also by international one which directly derives from Paragraph 4 of Article 15 of the Russian Federation Constitution which stipulated that the generally accepted principles and standards of the international law and international treaties of the Russian Federation are an integral part of its legal system [1]. According to A.A. Sergeev the doctrine of local authorities body, elected in Russia at the present stage of historical development, was formed under the influence of international law. [2]

Among the most important international legal instruments concerning local government it is necessary to mention the European Charter of Local Self-Government, approved by the Council of Europe on December 15, 1985 [3] and ratified by the Russian Federal Law made on April 11, 1998 # 55-FZ [4]. The European Charter of the Local Government is an example of the fairly successful attempt to formulate the principles of local self-government. Another thing is that an adequate incorporation of these principles into the Russian legal system should be made [5].

According to I.I. Ovchinnikov the European Charter of Local Self-Government is the subject of many Russian scientists [6]. In our early works we expressed a similar view [7], but for today its

comprehensive analysis from the perspective of securing the principle of publicity is missing.

As a methodological basis of the research the most appropriate seems the comparative legal method of cognition that allows to identify and compare general laws and differences in the manifestation of these principles, as well as systematic and structural method by which it is possible to identify the individual elements of the principle of transparency in the European Charter of Local Self-Government.

Accordingly, the purpose of the analysis of this international legal instrument is the study of rules for fixing the Charter principle of publicity of local government in general and its elements, in particular.

The Charter has no special rule that would absorbed the entire set of principles, but the analysis shows that the vast majority of the principles of local self-government are concentrated in the preamble and in the first part of the European legal act. The investigated principle of transparency is not mentioned in the literal sense in the preamble, however, the Charter states there, that the right of citizens to participate in administration of the affairs can be implemented at the local level in the best possible and direct way. Thus, according to A.N. Dementiev, the Charter emphasizes that local government is connected with the activities of local governments, which is subordinated to the interests of the population. Therefore, the work of democratically elected local authorities as exercising power at the municipal level should be based on the principles of transparency and openness [8]. It obliges local authorities to interact most closely with the citizens of the municipality, that is achieved by the openness of local authority for a municipal community, their accountability, public awareness.

Article 3 which defines the concept of local self-government takes the central place in the first part of the European Charter of Local Self-Government. This concept differs significantly from the corresponding definition in the Federal Law "On General Principles of Local Self-Government in the Russian Federation", but we find no fundamental differences from the perspective of searching the implementation of the principle of publicity.

Thus, according to the European legal act the local self-government denotes the right and the ability of local authorities to regulate a significant part of public affairs and operate them by acting within the law, under their own responsibility and in the interests of the local population. This right is exercised by councils or conventions composed of members freely elected by secret, equal, direct and universal suffrage. Councils or conventions can have executive bodies accountable to them. This provision does not exclude an appeal to conventions of citizens, referendums or any other form of direct citizen participation where it is permitted by law [9].

In the domestic understanding the local government is a form of exercising the power by people, within the limits established by the Constitution of the Russian Federation, federal laws, but in the cases stipulated by federal laws - the laws of the constituent entities of the Russian Federation, independent decision of the population or the decisions made under its own responsibility directly and (or) through local government concerning local matters based on the interests of the population, taking into account historical and other local traditions. [10]

In a deeper analysis of both legal provisions it becomes obvious that the Russian definition of local self-government is more specific, it is adapted to domestic realities, while the the definition in the European Charter, designed for the States with various municipal systems, it appears to be more general.

Nevertheless, the texts of both regulations distinctly manifest the categories uniting them - local activity undertaken by the public or the bodies created by them, which takes into account the interests of the population. From the standpoint of the analyzed principle of publicity interests of the population play the main role in the definition of local government. But in order to take into account the opinion of citizens, as a minimum, municipal bodies need to communicate with the representatives of local community who carry this view. This implies that both of the legal acts on local government, by defining it, proceed from the need for creating a transparent environment for local activities, close interaction of municipal authorities

with the population of municipalities, making the decisions on local issues, taking into account the interests of citizens. The listed conditions are the elements of the principle of publicity. Consequently, modern states as a basic fundamental principle in the legal regulation of local government put the publicity at the forefront, as a tool linking the local authorities with the residents of municipalities.

The article 3 of the European Charter of Local Self-Government is consonant with the Article 5, which contains unambiguous wording that the change of territorial borders in which local authorities exercise their power shall not be made without the opinion of the population, also, through the referendum where it is required by law. The principle of publicity as a necessary factor to identify public opinion is also the basis for legal provision on the protection of the territorial boundaries of the local government. Unlike similar provisions of the Federal Law on Local Self-Government, which provides "the consent of the people" and "considering the views of the population expressed by the representative body," European legal act appeals only to the population, emphasizes the importance of protecting the territorial bases of local government, targeting only the voices of the residents living in municipalities.

One of the advantages of the European Charter of Local Self Government is a consistent observance of the legal regulation of public concerns in the implementation of local government, that we have associated with the implementation of the principle of publicity of local government. Modern European civilization suffered mechanism for coordinating the interests of society in the form of a modern model of local government, fixed in European Charter of Local Self-Government [11].

The continuation of expressed judgments is seen in the Article 6 of the European Charter regulating the issues of compliance structures and administrative resources for the tasks of local authorities. It establishes the right of local authorities to determine their own internal administrative structures, that they intend to create in order to respond to local needs and ensure effective management [12]. Noteworthy in this design is not the independence of local authorities in determining their structure, which is similar to the Russian constitutional standard [13], but the condition for the creation of internal structures – conformity to local needs. Russian equivalent is different by the fact that the structure of the local government is determined by the population independently, i.e. there are obvious differences, which strike the eye at the first approach. However, the domestic norm imposes no legal constraints when designing the structure of local government.

In this sense, Article 6 § 1 of the European Charter of Local Self-Government seems not only more progressive and modern (although the Charter was adopted 8 years before the Constitution of the Russian Federation), but it also corresponds to the general spirit of the European legal act. Consideration of the local needs imposes an obligation on municipalities of European countries in developing their own organizational structures to match their needs to the interests of the population, for the satisfaction of which those bodies are formed. It is necessary to note that the voices of the population and the ability of citizens to influence the municipal decisions of local governments are defining features of the principle of publicity for the local government.

Even the most controversial Article 8 of the European Charter regulating the limits of State control over the activities of local authorities, does not distract from the general direction and follows a predetermined algorithm. So, Part 3 of this Article stipulates that the administrative supervision of local authorities' activities should be carried out in compliance with the proportionality of the intervention of the supervisory body and the importance of the interests it intends to protect. It is the limitation of state control at the local level, but the interests of the local community define its admissibility criteria. The general meaning of Article 8 is that state control over local authorities is allowed only on grounds specially stipulated by law. At the same time, if local interests are violated (residents of the local community at large), the State has the right to intervene, identify these violations by control measures and facilitate their prevention.

Consideration of the interests of the local community in the case of State intervention into the affairs of municipalities is the only justificatory argument. This norm is unique of its kind, since it contains a protective function of State control. As it is known, the control in most cases is repressive, i.e. the authority detected in the process of the State monitoring bears a certain responsibility for violations. However, the debated norm establishes barriers over the activities of local governments for State control; only one legal condition limits overcoming barriers – protection the interests of the local community; proportionality of the interference should correspond to the importance of protected interests under the State control.

Russian scientists note on this subject: "Administrative tasks should be trusted to local communities as much as possible, and government intervention is required only where they actually need it"[14].

We emphasize that the identification, registration and protection of the interests of municipalities are based on the principle of publicity on the part of the local government. The instrumental basis of this principle, as no other principle from a wide variety of principles of the local government, establishes the legal basis for transparency, access to information about ongoing processes in the municipalities, the decisions made at the local level and affecting the interests of the local community. Transparent, accessible environment allows to identify violations of the rights of the subjects of municipal legal relations and to create conditions for their further protection.

The analysis of key articles of the European Charter of Local Self-Government proves that the principle of publicity of the local government is one of the essential components of its structure. By adapting a famous judgment of S.S. Alekseev that legal principles are through ideas [15], we note that the principle of publicity of the local government permeates European legal act.

Conclusion

Scientific evaluation of the European Charter of Local Self-Government, as the most important international legal instrument, that defines the legal guidelines for the development of local government, proves that the potential of the Charter for the domestic legal regulation of the principle of publicity of the local government remains largely unrealized. This thesis leads to conclusion about the need to give up the failed approach in the Russian municipal construction, according to which the local population in practice is a secondary participant in the implementation of the local issues, and the dominant role is assigned to the local governments. The legal principle of publicity of local government in its proper legal regulation can become the basis for consolidation of these two entities of local government.

Corresponding Author:

Dr. Mikheev Denis Stepanovich
Mari State University
Lenin Square, 1, Yoshkar-Ola city, 424000, Mari El, Russia

References

1. The Constitution of the Russian Federation of 12.12.1993. Rossiyskaya Gazeta. 25.12.1993.
2. Sergeev, A.A., 2006. Local Self-Government in the Russian Federation: Problems of Legal Regulation. Moscow: Prospekt, pp: 225-226.
3. Charter of Strasbourg "European Charter of Local Self-Government" of 15.10.1985.

4. Laws of the Russian Federation "About ratification of local government" of 19.04.1998. # 55-FZ.
5. Dementiev, A.N., 2006. Principles of Local Self-Government. Law and Education, 5: 132.
6. Ovchinnikov, I.I., 2010. Municipal Law of the Russian Federation. Moscow: RAPS.
7. Mikheev, D.S., 2009. Constitutional and Legal Regulation of the Local Government in the Subject of the Russian Federation (the example of Republic of Mari El.).Yoshkar-Ola.
8. Dementiev, A.N., 2006. Principles of Local Self-Government. Law and Education, 5: 149.
9. Charter of Strasbourg "European Charter of Local Self-Government" of 15.10.1985.#3
10. Law of the Russian Federation "On General Principles of Local Self-Government in the Russian Federation" of 06.10.2003. #40-FZ.
11. Lapin, V.A., A.V. Krestianinov and I.N. Konovalova, 2006. Basis of the Local Government. Moscow: Business, pp: 41.
12. Charter of Strasbourg "European Charter of Local Self-Government" of 15.10.1985. #6.
13. The Constitution of the Russian Federation of 12.12.1993 #131(1).
14. Kovesnikov, E.M., 2001. State and Local Government in Russia: Theoretical and Legal Basis for Interaction. Moscow: Norma, pp:158.
15. Alekseev, S.S., 1972. Problems of the Theory of Law. Sverdlovsk: Sverdlovsk legal institute, pp: 105.

5/15/2014