

THE LOCAL SELF-GOVERNMENT SYSTEM IN EUROPE

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Abstract: local self-government is one of the main institutions of democratic organization. Taking into account the fact that local self-government is a new institution for independent Azerbaijan, the great importance attached to studying international experience in this field is an inescapable fact. In most modern states, the management of all affairs on the ground is carried out by special local self-government bodies, formed on the basis of universal, equal and direct suffrage by secret ballot, as well as by specially appointed local government bodies. Local or municipal government is such a system for managing local affairs, which is carried out by special elected bodies directly representing the population of a given administrative-territorial unit of the country.

Keywords: public authorities, local self-government bodies, international law, national legislation, separation of powers, decentralization policy, Council of Europe, local population, principle of subsidiarity, administrative control, human rights.

СИСТЕМА МЕСТНОГО САМОУПРАВЛЕНИЯ В ЕВРОПЕ

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Аннотация: местное самоуправление является одним из основных институтов демократического устройства. Учитывая то, что местное самоуправления является новым институтом для независимого Азербайджана, большое значение, придаваемое изучению международного опыта в этой области, является неизбежным фактом. В большинстве современных государств управление всеми делами на местах осуществляется специальными органами местного самоуправления, формируемыми на основе всеобщего, равного и прямого избирательного права при тайном голосовании, а также специально назначенными из центра органами местного управления. Местное или муниципальное самоуправление – это такая система управления местными делами, которая осуществляется специальными выборными органами, непосредственно представляющими население той или иной административно-территориальной единицы данной страны.

Ключевые слова: органы государственной власти, органы местного самоуправления, международное право, национальное законодательство, разделение властей, политика децентрализации, Совет Европы, местное население, принцип субсидиарности, административный контроль, права человека.

Local self-government is an essential attribute of any modern democratic society. Foreign municipal experience knows an enormous amount of different models and types of local self-government. Differences in the construction of systems of local self-government depends on many factors: the political regime that dominates the country's idea of organizing power and control in the field of government and administrative-territorial division of the state, national traditions, etc.

In most modern states administration of all local matters are carried out by special bodies of local self-government, formed on the basis of universal, equal and direct election right by secret ballot, as well as by the local self-government bodies specially designated from the center of. Local or municipal self-government is a system management of local affairs, which is performed by special elected bodies, directly representing the people of any political subdivision of the country. The European Charter [1] of Local Self-Government, adopted by the Council of Europe on 15 October 1985 is an important legal basis for self-government in all European countries and gives a general definition of local self-government, which became universal and accepted by all democratic states. The Charter sees local self-government as the “right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population”.

Local self-government is one of the basic institutions of democratic system. Years of experience of countries with developed democracies shows that the existence of only the government is not enough for the full and efficient use of natural and socio-economic capacity of each region and area and improve the material welfare of the population. The government in its scope and characteristics of the implementation is divided into state and local governance. Between these two categories there are also regional administrations, but this kind of control

in rare cases has a specialized organizational form. This is due to the fact that the basic management functions are not carried out at regional, but at central and local levels. local governance connecting to the actions integrated on international level, and to the urban commune diplomacy [2] is being involved to the implementation of regional (international) projects.

Given the fact that local self-government is a new institution for the independent Azerbaijan great importance is attached to the study of international experience in this field.

The concept of local self-government comes primarily from the fact that local communities are one of the key elements of any democratic regime and the right of citizens to participate in public affairs is an integral part of the democratic principles of construction of most modern states.

In addition, the principle of local self-government comes from the fact that the participation of citizens in public affairs most directly can be realized exactly at local level. It is obvious that the existence of local communities, invested with real powers, makes it possible to provide such control, which would be the most effective and as close as possible to the needs of the population.

Currently, in the scientific literature one can frequently meet most common classification of world-known models of local authorities, which is based on the relationship between local and central government authorities. In line with this approach, there are four basic models of local government: the Anglo-Saxon, Continental, mixed and Soviet.

Local self-government bodies include the elected municipal councils or commissions, and executive bodies formed by them. General procedure for the formation of municipal councils and executive bodies is governed by special electoral laws and laws on the municipalities. In federal states the enactment of laws on elections to local self-government bodies is within the competence of the Federation. In most democratic countries, elections to local self-government bodies are carried out on the basis of universal and equal and direct election right by secret ballot. Passive election right (right to be elected) is usually installed within 18-25 years. At the same time set and a number of enfranchised requirements - residency requirement, the incompatibility of other classes in the civil service or elected bodies, courts, etc.

Most of the powers of local self-government bodies are defined by national legislation and can vary even within one country. The general rule concerning the powers of local communities, is that these powers must be holistic and comprehensive in all that concerns local affairs. In fact, they have the authority to decide only the local matter. For example, the Constitution of Bavaria relates to issues of local importance, and within the competence of the community, to the following: property management community and municipal enterprises, local public transport, local road construction, water, gas, electricity and food supply, local planning, housing and oversight of its operation, local police, fire protection, cultural development and maintenance of cultural institutions, healthcare, family counseling and protection of maternity, school health and care of young people, public pools, the burial, preservation of local monuments and buildings.

After the World War II, Europe painfully deviated from fascist nightmare. The Europeans tried to convince themselves that the war would be ended for the continent. The dictatorship in Germany once again convinced the world community of the importance of democratic principles: humanity in practice felt that the rejection of the unconditional respect for human rights, freedom of speech, political pluralism is fraught with violence. In order to strengthen democratic institutions in several European countries, it was decided to establish an intergovernmental political organization, whose objectives were to protect and strengthen democratic principles and human rights. And such an organization, the Council of Europe, appeared in May 1949. Currently, it comprises almost all European countries, including 47 states with the democratic form of government. The headquarters of the Council is located in Strasbourg (France).

The European Charter of Local Self-Government is the culmination of a series of initiatives and many years of deliberation within the Council of Europe.

The notion of extending the scope of the European Charter of Local Self-government can be given three different meanings. The first is the capacity of the Charter, like other treaties, to extend (or amend) its own coverage by the addition of supplementary agreements or Protocols entered into by some or all of the parties. One such Protocol – an additional Protocol on the right to Participate in the Affairs of a Local Authority – has, perhaps rather anomalously in the context of the Charter's overall purposes, recently (in 2009) been adopted. Two other draft Protocols had earlier been proposed by the Congress but were not progressed by the Council of Ministers. They had been designed to strengthen and make more explicit the Charter's terms in various ways [3].

Secondly, there has been a Congress project to create, at the regional level, a sister Charter of Regional Self-government. That initiative was not, in the event, acceptable to the Council of Ministers. Instead a non treaty-based instrument – the Reference Framework for Regional Democracy - was adopted in 2009.

Thirdly, another form that Charter extension has taken has been in the adoption of Charter ideas at the global level or in relation to other continents. Replacing an earlier version from 1985, a Worldwide Declaration of Local Self-Government was adopted by the International Union of Local Authorities ('IULA') [4]. In its preamble, this declaration inter alia welcomed the success of the European Charter and proclaimed a series of 'principles of local selfgovernment to serve as a standard to which all nations should aspire in their efforts to

achieve a more effective democratic process, thereby improving the social and economic well-being of their populations'. The structure of the European Charter is evident in the structure of the Declaration, as indeed is much of the text. Subsequently the Congress itself became directly involved in a process instigated, once again, by IULA as a part of work undertaken by the United Nations Commission on Human Settlements (UNCHS Habitat) in the direction of a World Charter of Local Selfgovernment [5].

The Congress first offered an opinion on an initial draft Charter in 1999 and then on a second draft in 2001. The draft was closely modelled on the European Charter and the Worldwide Declaration and was constructed in the form of a treaty inviting signature and ratification by states world-wide, including the possibility of subscribing to a minimum of 30 of its paragraphs including twelve from a specified core. Authentic versions of the text were to be in Arabic, Chinese, English, French, Russian and Spanish [6].

The protection and strengthening of local autonomy in Europe by means of a document expounding the principles subscribed to by all the democratic states of Europe is a longstanding ambition in local government circles. Moreover, it was recognized at an early stage that such a text should aim at securing the adherence of those whose actions are primarily at issue in any defense of local autonomy, namely governments.

The Council of Europe, as the custodian of human rights and the upholder of the principles of democratic government, was the obvious framework within which to draft and adopt such an instrument; all the more so because, as long ago as 1957, it showed its appreciation of the importance of local authorities by establishing for them a representative body at European level known as the Standing Conference of Local and Regional Authorities of Europe, and later the Congress of Local and Regional Authorities of Europe.

The Committee of Ministers adopted the European Charter of Local Self-Government in the form of a convention in June 1985.

The purpose of the European Charter of Local Self-Government is to make good the lack of common European standards for measuring and safeguarding the rights of local authorities, which are closest to the citizen and give him the opportunity of participating effectively in the making of decisions affecting his everyday environment.

The Charter commits the parties to applying basic rules guaranteeing the political, administrative and financial independence of local authorities. It is thus a demonstration, at European level, of the political will to give substance at all levels of territorial administration to the principles defense since its foundation by the Council of Europe, which considers its function to be the keeping of Europe's democratic conscience and the defense of human rights in the widest sense. Indeed, it embodies the conviction that the degree of self-government enjoyed by local authorities may be regarded as a touchstone of genuine democracy.

The Charter contains the substantive provisions setting out the principles of local self-government. It specifies the need for a constitutional and legal foundation for local self-government, defines the concept and establishes principles governing the nature and scope of local authorities' powers.

The European Charter of Local Self-Government is the first multilateral legal instrument to define and safeguard the principles of local autonomy, one of the pillars of democracy which it is the Council of Europe's function to defend and develop. It may be hoped that it will thus make a substantial contribution to the protection and enhancement of common European values.

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6. An organization which, in 2004, joined with the World Federation of United Towns and Cities to become (the World Organization of) United Cities and Local Governments.
7. The story is told in appendix 1 to Opinion 17(2002) on the second draft World Charter of Local SelfGovernment (CPL(9)3(2002). See also 'Towards a World Charter of Local Self-Government': Joint consultation document UNCHS (1998).
8. See UNCHS Paper HS/C/PC.1/CRP.7 (2000) appended to Opinion 17.

