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Iryna LYCHENKO,
Orest KRASIVSKYY,
Natalia LESKO,
Nataliia PAYLIUK,
Lidiia MARUSIAK

THE PHILOSOPHY OF THE EUROPEAN UNION LEGISLATION FORMATION IN THE FIELD OF LOCAL GOVERNANCE CONSTRUCTION

Abstract

The article is devoted to substantiating the philosophical and legal approach to the law within the framework of the formation of a legal framework in the field of creating a qualitatively new system of local self-government. The article examines the problems of jurisprudence from the standpoint of the philosophy of law within the framework of local government. In the article, the author also examines the historical and methodological aspects of the development of the philosophical foundations of the formation of the system of local self-government as the most important moment in the formation of European liberalism due to its genesis. The purpose of the article is to describe the direct influence of the philosophy of law on the formation and development of the legal worldview of building a system of local self-government. Throughout its history, the European Union has developed a set of standards on which local self-government systems of EU member states and applicants for this status are built. The complexity and simultaneous importance of legislative regulation of the functioning of this system are evidenced by the fact that the legislation and principles of international law used by the EU in the field of local self-government are among the "youngest" ones.

Keywords: the philosophy of law, legislation standards, local government, the legislative framework, government, political system.

Introduction

One of the fundamentals in the philosophy of law, as you know, is the question about it itself, namely about its disciplinary status. This issue has various solutions - from the recognition of the philosophy of law as an integral part of the theory of law to its interpretation as a section of philosophical knowledge proper. Obviously, the philosophy of law does not fit into the framework of exclusively the system of legal sciences since it deals with the comprehension of objects that are beyond the limits of legal science but nevertheless have the most direct relation to the law as a cognizable reality. At the same time, the philosophy of law cannot be a space of thought, completely absorbed by philosophy, given the need to understand the specific objective reality and special knowledge about it, based on the analysis of which not just philosophical, but philosophical and legal ideas about law are formed.

Let us pay attention to the fact that in the process of discussing the subject, disciplinary status and functions of philosophy of law, it should be considered not only as a special form of theoretical knowledge about the law but also as a worldview. It combines the features of science and worldview that create the basis for understanding certain conventionality of its interpretation as an interdisciplinary direction. At the same time, the

philosophy of law is a direct act of philosophizing, without and outside of which it is a kind of knowledge and cognition, only disguised as philosophy. Of course, in the philosophy of law, it is not the result that prevails (as in the theory of law) but the process. This understanding is an argument in favour of its opposition to the general theory of law, which sees something inanimate and dogmatized. However, such opposition can go extremely far - right up to the perception in the philosophy of law of the unique art of thinking the law and in the general theory of law - the process of dry scientific reasoning. It is well known that the philosophy of law, understood as a living, in many ways an intuitive act of philosophizing, is a spiritual and intellectual sociocultural value. Nevertheless, the reduction of the philosophy of law only to philosophizing has its own costs. Obviously, a philosopher of law cannot invent his own object, although such an object as "correct law" is often perceived as artificial objectivity.

However, even if philosophizing about the law in the focus of his attention is considered an object of the general theory of law, he can easily succumb to the temptation, as S. S. Alekseev noted, of speculative and dogmatic philosophizing on legal issues with an ideological load. Another negative result was that the scientist pointed out the philosophical and terminological "dressing up" of long-known concepts and facts and research results.

If the philosophy of law is replaced by philosophizing about law, which is undefined, that is, a completely free, creative act, neither the idea of the theoretical nature of such an act nor the question of its connection with the theory of law arise. Often, the philosophy of law seeks to identify itself with the theoretical form of knowledge, to build itself as a disciplinary organized theoretical knowledge and knowledge. At the same time, there is a need to comprehend what is not only possible, but actually there is another level of theoretical knowledge within the framework of the general theory of law. Note that the interaction of the theory of law and philosophy of law does not mean that they represent the same levels of knowledge of legal reality.

Therefore, as a clarification, we note that we should talk about their equal relation as different levels of the study of law. To clarify what has been said, let us turn to the three levels of knowledge of law identified in the scientific literature: practical jurisprudence, which studies current law, its spirit, essence and, of course, the scope; general theory of law, usually considering law as a whole as a set of norms emanating from the state; philosophy of law, which works to understand the meaning and origins of law, its value dimensions.

These levels have their own subjects of knowledge, pursue specific goals and solve special problems. In addition, they are characterized by a transition from the empirical, purely applied level to the supra-empirical level, which indirectly has a practical effect.

Today, the leading charter, which is the standard for democratic local governance in Europe, is the European Charter of Local Self-Government (ECHC). The process of its creation began on the initiative of the Council of Europe back in 1968, for signing by the member states of the Council of Europe, this document was opened on October 15, 1985, and gained force on September 1, 1988. Today all members of the Council of Europe ratified this document, but this process was completed only in 2013 when the procedure was completed by Monaco and San Marino. Although, for example, Switzerland and France ratified the document only in 2005. And 2007, respectively. The history of the formation of the state, the type of political culture taking shape in society, the form of government in a historical retrospective affects the formation of a model of local self-government and the directions of modern development. The medieval feudal fragmentation of certain states leads to the choice of a unitary form of the territorial structure today with the corresponding elements of centralized local government. However, the democratization trend

that characterizes the XX-XXI centuries has been occupying a leading position in line with centrifugal trends in political systems. Therefore, the chosen model in each state is a compromise between historical tradition and modern decentralization. This is confirmed by the fact that the very process of adopting a single legislative document on local government and its activities lasted so long that it appeared as such only at the end of the 20th century.

Literature Review

The process of primary formation and further improvement of the legislative framework in the field of local self-government in the European Union has been studied by many scientists for more than a year.

The basic principles and issues of legislative support for the process of implementation, maintenance and development of local self-government were studied by such scientists as Lockard (2010), Moreno (2012) and Saltman (2008).

Goldsmith and Page (1987) were among the first to start exploring existing legislative documents and form paradigms to form new ones. In addition, their work examined the problems of forming relations between the government and local authorities in Western European unitary states.

Actual issues of legislative support of local self-government are highlighted by McCormick (2011), who in his work studied and systematized in detail the basic legislative aspects of this issue.

Gellén (2012), in his work, investigated the current problems of decentralization. In particular, one of the topical issues was the study of the problems of forming an optimal and effective legal framework for developing local self-government.

In turn, Khriplyvets (2020) explored the existing paradigms and laws and regulations that have been in force in the European Union for many years. The purpose of his work was not only to search for and systematize the existing regulations but also to highlight their key features. Subsequently, this issue was continued by Solovov (2019), who, after a thorough study of the legal framework of the European Union and highlighting their key features, formed the fundamental positive and negative trends in the formation of regional and local legislation.

In order to more clearly reflect the legislative framework of the European Union in the field of introducing principles and ensuring local self-government, it will be essential to reflect the main provisions and peculiarities of regulatory documents in this matter.

Research Background

So, the Charter, which takes the form of a convention, obliges countries to guarantee political, administrative and financial independence to local authorities. It defines the fundamental principles of the organization and functioning of local governments, namely (Saltman, 2008):

- the need for constitutional regulation of the autonomy of local self-government, as well as the obligation to consolidate in domestic law and put into practice a set of legal norms guaranteeing the political, administrative and financial autonomy of local authorities;
- vesting local authorities in the country's legislation with the right to regulate and organize significant volumes of local affairs under their own responsibility and in the interests of the local population. Elected bodies must exercise this authority;
- management of local affairs should be implemented at the level closest to the population and can be transferred to a higher administrative level only if the solution of such tasks by the local authorities is inefficient or impossible (the principle of subsidiarity)
- any changes in borders at the local level by state or regional authorities should be carried out in consultation with local authorities, preferably after a referendum with the partici

pation of local voters;

- local authorities should be able to adapt their internal administrative structures to local needs and ensure effective management;
- administrative interference and regulation of local authorities by state or regional authorities should be limited to cases where local authorities violate the Constitution or laws of the country;
- local authorities have the right to possess sufficient financial resources of their own, which they can freely dispose of in exercising their powers.

An essential aspect of the Charter is the principle of budget equalization, enshrined in Part 5 of Art. 9, which provides for the introduction of this procedure in order to overcome the consequences of the uneven distribution of possible sources of financing and the financial burden that they must bear.

In general, these provisions fix the need for the implementation of such standards: constitutional or legislative regulation, democratization, subsidiarity, ensuring fundamental human rights, budget equalization, approximation of power to the people, transparency in decision-making, completeness and exclusiveness of authority, legal protection.

In general, cross-border cooperation affects the improvement of the quality of local self-government, whose representatives are allowed to solve the problems of local development on their own with the involvement of trans-regional ties. The standards common in the EU countries determine that this activity is carried out within the competence of the territorial communities, is regulated by the internal legislation of the state, is based on compliance with the basic principles of the European regional policy (Rosamond, 2000):

- subsidiarity, which can be interpreted in two versions: firstly, the state performs only those functions whose implementation is beyond the power of citizens, associations of citizens and territorial collectives; secondly, the competence of self-governing bodies of the highest level includes only those tasks that cannot be better performed at a low level;
- decentralization - dispersion or distribution of functions and powers - delegation of authority from the central government to regional and local authorities;
- partnership - cooperation of political entities of various levels in the direction of developing a unified position on certain issues to achieve a mutually beneficial goal;
- programming, which involves the development of specific tactics for achieving a mutually beneficial goal defined at the stage of partnership cooperation;
- concentration and aridionalism - the financial resources that the EU provides to individual member states or subjects of territorial, regional development should be supplemented and expanded at the expense of local sources (Reutov, 2020).

Materials

In addition to the EHMS, which contains general requirements for organizing the activities of local authorities, EU members are guided by several highly specialized acts and, together, create a unique environment for the functioning of local government.

So, an important document that reveals the possibilities for interaction between local authorities of different member states of the Council of Europe is the European Framework Convention on Cross-Border Cooperation between Territorial Communities and Authorities (1980). The states that have ratified the convention (including Poland and Ukraine in 1993, Hungary in 1994, the Czech Republic in 1998, Slovakia in 2000), aim to encourage any initiatives of territorial communities and authorities based on the framework developed by the Council of Europe arrangements between territorial communities and authorities. The Convention forms a conceptual and categorical apparatus, defining such

terms as "cross-border cooperation", "territorial communities and authorities"; lays the institutional foundations for implementing cross-border cooperation; offers a list of model agreements that territorial authorities may conclude.

Actual and important is the provision of Art. 3 of the Convention, which is determined that the participating States will develop cross-border cooperation by encouraging the initiative of territorial communities and authorities, based on the basic principles of cooperation between local authorities developed within the framework of the Council of Europe; such cooperation is bilateral or multilateral in nature, can be carried out both on the basis of personal agreements and based on model interstate bilateral and multilateral agreements developed within the framework of the Council of Europe in order to facilitate cooperation between territorial communities and authorities; agreements are reached, and agreements can be based, in particular, on typical transactions, as well as on transactions, charters and agreements on the basic principles of cooperation contained in the Appendix to this Convention, by appropriate adaptation to the specific situation of each of the parties (Bodrova, 2019).

Also, the increasing role of territorial communities is evidenced by the fact that of the types of interstate agreements listed in Appendix 1 to the Convention, the exclusive competence of states includes only two typical interstate agreements (on the development of cross-border cooperation and regional cross-border relations). Other interstate agreements (on local cross-border relations, on cross-border cooperation on a contractual basis between local authorities, on cross-border cooperation between local authorities) only establish legal boundaries that allow territorial communities or authorities to implement agreements or treaties. So, the priority in developing cross-border cooperation is explicitly given to local authorities, increasing their political subjectivity, political responsibility for the built system of cooperation, political openness and the like.

Today, according to EU statistics, 184 regions in Europe develop cross-border ties, of which 122 are cross-border, and 58 are not bordering on EU member states. Thus, applying the combination of fundamental principles of the ECMC and the Convention under consideration leads to a positive synergistic effect, enhances the political responsibility of local authorities and activates their activities.

During 1992, the Council of Europe adopted two more important acts, which were intended, inter alia, to promote the democratization of local self-government: the European Charter for Regional or Minority Languages and the Convention on the Participation of Foreigners in Public Life at the Local Level.

This Charter declares a number of rules aimed at protecting regional or minority languages and is determined by a unique component of the cultural heritage of Europe. It became a logical continuation and detailing the principle of "non-discrimination based on language" proclaimed in the 1948 Universal Declaration of Human Rights. The European Charter for Regional or Minority Languages has made it possible to bring linguistic interests to a higher level, obliging the countries they have accepted not only not to discriminate against people based on language, but also to promote in every possible way the use of regional languages at the local government level. The third part of the Charter consistently reveals the expansion of the scope of application of regional languages in the education system (Article 8), the courts (Article 9), the media (Article 11), cultural activities (Article 12), economic and social life (Article 13), cross-border exchanges (Article 14). For the purposes of this study, Art. 10 "Administrative bodies and public services", in which countries ratified the Charter (ratification took place in Ukraine in 2003 and entered into force in 2006), assume such obligations (it is separately stated that their implementation is possible as far as reasonably possible) support the development of regional languages and facilitate their use.

Compliance with these requirements will make it possible to qualitatively democratize the system of local self-government by coordinating the positions of regional and national elites and increase the consensus nature of democracy in general.

The Convention on the participation of foreigners in public life at the local level, despite the fact that it was adopted more than 23 years ago, as of 10/06/2015, was signed by only 13 member states of the Council of Europe, and nine were ratified (from each of the countries analyzed The Czech Republic signed this Convention in 2000 and ratified it in 2015). The main idea of this document, based on the indisputable fact of the broad and permanent residence of foreign citizens on the territory of European countries, is to provide them with the opportunity to exercise civil and political rights, including the opportunity to participate in the electoral process, consultative councils under local authorities (which advocate peculiar mechanism of political communication), the right to receive information about their rights, to promote their integration, etc. (Meny, 2015).

This Convention is quite controversial: on the one hand, it is called upon to guarantee political rights to foreigners (which logically follows from the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966), which do not want to undergo the naturalization procedure and lose their "native" citizenship, however, for a long time they live and work on the territory of European states; on the other hand, it creates the risks of internal erosion of a homogeneous political culture and violation of the general consensus of a certain society by introducing the values of other cultures and the requirements that they stipulate, which can lead to the destabilization of the political system and to manifestations of separatism. That is why, in our opinion, the venture nature of this normative act has led to a low level of its implementation.

The next document affecting the exercise of powers by local authorities is the European Charter of Cities, adopted by the Council of Europe in 1992. In Strasbourg, and has the status of a convention. Based on the title, the document focuses on the rights of citizens constituting today the majority among residents of European countries (according to the UN as of 2010, the number of the urban population in European countries averaged 72.7%, while this indicator varies among EU member states from 97.3% in Belgium to 50% in Slovenia). In particular, among the leading rights that residents of European cities should be provided with are the following: security, employment, an unpolluted environment, mobility, healthcare, the possibility of using the cultural heritage, multicultural integration, political participation, economic and sustainable development, equality, the ability to count on financial security and the like (Armstrong, 2013).

Paragraph 3.3 is devoted to the problems of local democracy, and it recognizes the fact that representatives of the public were not always able to participate in the process of political decision-making at the local level. In cities where there is non-compliance with the requirements of the democratic process, the removal of the public from participation in the political decision-making process leads to an increase in authoritarian tendencies. Moreover, accordingly, the opposite: a high level of public participation forms a democratic political system, starting with the level of cities. Thus, a modern democratic city should provide an opportunity for direct political participation of citizens and complete fiscal independence. An essential aspect of this Charter is the emphasis on the need to involve young people in the political process. Moreover, local authorities are committed to ensuring the participation of youth in local government. The mechanism should be an effective local youth policy based on equal opportunities and consistent sectoral policies, focused on the specific requirements of young people - employment, affordable housing, the environment, culture, recreation, education, training and health (Armstrong,

2013).

By adopting the Charter in 1992, it became a definite "revolutionary project" because, for the first time in Europe, cities were recognized as relevant "collective players", capable of accepting modern social challenges and adequately addressing the challenges facing society.

Discussions

The further rapid development of the world, characterized by the intensification of globalization trends, formulated new challenges of a technological, environmental, economic and social nature, to which European cities should adapt. Therefore, in 2008. It adopted the European Charter of Cities - II (Manifesto of New Urbanism), designed to adapt the activities of local authorities to the new conditions of the modern world. The text of the Charter is a set of principles and concepts of urban planning and management, offers an integrated approach and a general model of a new culture of urban life.

According to the Manifesto, urban planning, development and management should lead to the creation of a city for which the interests and needs of citizens will have central priority; concepts of sustainable urban development, taking into account local and global environmental changes; cohesive cities seeking to develop the greatest possible social cohesion within and among themselves; modern cities as centres of science and culture, education and innovation, creative diversity (Peters, Dahlström, & Pierre, 2011).

The complexity of the problems facing modern cities led to the adoption in 1994 in Aalborg (Denmark) of the European Program for the Sustainable Development of Big and Small Cities (Olborzka Charter "Cities of Europe on the Road to Sustainable Development"). This was the first European conference that addressed the issues of sustainable urban development and emphasized that local governments were responsible for the political, social, environmental and economic development of cities, which should be held under the brand of sustainable development. This charter was signed by 80 European representatives of local authorities and 253 representatives of international organizations, national governments, research institutes, and consultants.

After 20 years in 2004, taking into account the positive dynamics and the importance of the problems to be solved, the conference in Aalborg was repeated and was marked by the approval of 10 Olborz commitments: activation of the society to participate in decision-making; determining the priorities of society in addressing sustainable development issues; protection and ensuring equal access of citizens to natural goods; promotion of environmental management; supporting the strategic role of urban development planning and design; increasing mobility of the population and optimizing the choice of vehicles; local health care; developing a local economy without harming the environment; social equality and justice; Community responsibility to ensure sustainable development of the global community.

Today, more than 700 representatives (mayors) of European cities have joined the signing of this charter, and their number is constantly growing.

An influential concept that is being implemented today in the functioning of political systems in general and the activities of local authorities, in particular, has become the concept of "Good Local Governance". This idea was first voiced in 1996 at the II Habitat Conference in Istanbul. Specialists from the United Nations Human Settlements Program (UN-Habitat) proposed the use of this concept, which was defined as the sum of the direct relationships of citizens, the public and private sectors, and the planning and management of general city affairs. This is a process that is constantly ongoing, and through which contradictions or various interests should be taken into account, joint actions are organized. These relations include both formal institutions and informal arrangements and the social capital of citizens (Fitzgerald, 2018).

This idea within Europe was actively considered at the European conferences of ministers responsible for local and regional development issues, the purpose of which is to formulate standards for modern local self-government. As a result of the meetings, three important declarations were adopted that laid the foundation for the conceptualization of "good local governance": the Budapest Declaration on Good Governance at the Local and Regional Levels and the Action Plan for Good Governance at the Local and Regional Levels adopted at the 14th session of the European Conference Ministers (Budapest, 2005.) The Valencia Declaration "Good Local and Regional Governance - The European Challenge" adopted at the 15th session of the European Ministerial Conference (Valencia, 2007) Utrecht Declaration "Good Local and Regional Governance in unstable times: the key to change", adopted at the 16th session of the European Ministerial Conference (Utrecht, 2009), which approved the European Plan of Action for Good Local and Regional Governance, and agreed on an additional protocol to the European Charter local government provides that states should both to grant every citizen the right to participate in the affairs of the local authority.

Conclusion

Thus, it can be noted that EU legislation does not have specific requirements for building a local government system. EU constituent documents guarantee support to local authorities when their activities are related to the functioning of the EU. However, the Council of Europe documents contain a complete system of standards for the activity of local authorities, the purpose of which is to protect human rights, traditional European values of democracy and the rule of law. As a rule, all Council of Europe conventions are ratified by European countries and all EU members and are accepted as a basis in their field. As a result of the analysis, it was revealed that the legislation of the EU itself does not put forward certain requirements for the construction of a local government system but only guarantees support to local authorities when their activities are related to the functioning of the EU. Among them are the following: European Charter of Local Self-Government, European Framework Convention on Cross-Border Cooperation between Territorial Communities and Authorities, European Charter for Regional and Minority Languages, Convention on the Participation of Foreigners in Public Life at Local Level, European Charter of Cities, European Charter of Cities - AI (New Urban Manifesto), Olborzka Charter "Cities of Europe on the Road to Sustainable Development", declarations on the introduction of the concept of "good local governance".

EU countries have compiled a fairly comprehensive list of principles, standards and legal norms on which the activities of local authorities are based. They aim to create a balanced system of maximum democratic representation, endowed with a wide range of powers and the ability to bear political and social responsibility for their decisions.

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