

Law

The Elements of Centralization in Municipal Systems of Foreign Countries. Comparative Legal Analysis

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ABSTRACT. The article discusses the features of the formation of a decentralized model of local self-government with elements of the centralization in the modern world. There are examples of state control in various municipal systems. It refers to the difference between various models of local self-government. Author analyzes practice of the law application in different countries of the world. Specific attention is paid to dualism (heterogeneity). The author points out that dualism (heterogeneity) in a given municipal system manifests itself not only and not so much in the presence of representatives, appointed by the government or local authorities, exclusively elected by the population of the municipal authorities. In the countries with continental model of local government and local self-government an important role in the implementation of the administrative supervision of local authorities is played by the representatives of state administration in the field. Author draws the conclusion that within the framework of administrative decentralization the judicial control over the local government plays an important but secondary role in the system of governance. If the central authority in the face of executive-regulatory and representative bodies say that the local government does not perform its duties properly, then they can appeal to the court for an appropriate decision. © 2016 Bull. Georg. Natl. Acad. Sci.

Key words: administrative custody, administrative control, administrative decentralization, local self-government

In the last twenty years of the twentieth century in the most democratic countries the administrative custody, entail entry into force of the municipal authorities after their approval by the relevant government regulatory authorities, actually gave way to “administrative control”, in which the decisions of the local (municipal, communal) authorities on their own competence may be challenged only in court, but the elements of the administrative custody are saved in the mandatory and delegated powers.

A new approach to control was enshrined in the “European Charter of Local Self-Government” in 1985, where paragraph two of Article 8 states that “any administrative control over the activities of local authorities should, as a rule, comply with the law and with constitutional principles».

Administrative control is the necessary element of centralization for efficient functioning of local self-government. It is therefore not surprising that it is saved in the national legislation and at the level of

international law. Elements of the centralized model of local government can be found both in countries with a continental (French) and the Anglo-Saxon model of local self-government. Although there are government, public administration, and the entire state mechanism as a whole, “based on the fundamentals and the principles of decentralization” [1:126-127]. Decentralization is manifested in the fact that all European States have local self-governments, chosen by population. The existence of such is an evidence of a decentralized management model. To identify features of the municipal system of modern states, it is advisable to use the term “administrative decentralization”. This term shows the heterogeneity of modern municipal models. Thus, we can talk about the centralized-decentralized system of local self-government.

Purely, the centralized Soviet model today operates in such countries as China, North Korea, Cuba, and in some CIS countries Belarus, Kazakhstan acts quasi Soviet model (like Soviet). Such model is characterized by rigid centralization of public authority and functioning of the local authorities in the government. Here - in essence –acts the state management of local affairs.

The basis of the concept of administrative decentralization is the leading executive’s role in establishing the optimal allocation of power management functions and powers [1].

In countries with a continental model of local government and local self-government an important role in the implementation of the administrative supervision of local authorities play representatives of state administration in the field. For example, in France, before the reforms of the early 80s of 20th century, tight control (pre- and post), bordered by the administrative tutelage of the activities of municipal and departmental authorities, was carried out by the prefect of the department. If the prefect, considering that a decision of the local council is illegitimate, he was given the right to declare such decision null and void. However, a commune, in the person of its mayor, could appeal to the

Administrative Court for annulment of the decision of the prefect. The Law from March 2, 1982, No. 82-813 “On the rights and freedoms of the communes, departments and regions”, traditionally referred as the law on decentralization changed the system of control over local authorities. So, since 1982, decisions, resolutions and other acts of local authorities “are executed at the full rights of their publication or notification” [2:15].

Traditionally, it is believed that a decentralized model is mainly formed in the countries with Anglo-Saxon model (UK, US). There are only elected bodies of local self-government, in other words at the local level there are no representatives of the government, but even in this model the elements of administrative decentralization can be found for example, the ministries make the inevitable control of local authorities. Besides the “classic” bodies of local self-governments, on the level of local industry operates a significant number of governments and officials, who are appointed by the higher organizations. It can be both government departments (ministries) and autonomous central public administration authorities.

If we compare the Anglo-Saxon and Continental models of local self-government, it can be concluded that in most democratic states the distinction between these formerly fundamentally different municipal systems is erased, indicating the fact of formation of a unified, decentralized, offset (hybrid) model. For example, the local government in the Republic of Austria and the Kingdom of Belgium shows some structural similarities to the system of local government of the Federal Republic of Germany. However, the organization of local government in Austria is more centralized, which provides a direct intervention of the federal government in the regulation of local government. By contrast, in Belgium the board of communities is selected by the population, similar institutions in Germany and Austria formed on a proportional basis. In each of these States, the Council form the government, which is a collegial executive body of the territorial community. In Germany, this is the executive body of the

city council, chaired by the burgomaster, in Austria - government, as well as in Germany, led by the burgomaster, and in Belgium, the council elects the board of burgomasters and echevin as a collegial executive body. As self-governing bodies, the council, the board and the burgomaster of the community at the same time exercise the functions of government in the presence of their own powers.

It should be noted that the dualism (heterogeneity) in a given municipal system manifests itself not only and not so much in the presence of representatives, appointed by the government or local authorities, exclusively elected by the population of the municipal authorities. Sometimes public administration can be carried out in the framework of mandatory and delegated state powers to the local bodies [3].

All above mentioned testifies the convergence of legal systems within the European Community, and suggests the formation of the European dual system of local self-government and local government. In such system dominate inter system regulations, issued by corresponding organizations. For example in Europe, integrating role plays European Charter of Local Self-Government, adopted by the Council of Europe from October 15, 1985 and opened for ratification by members of the Council of

Europe.

Extensive development in European countries and the CIS countries has received the Institute of financial and budgetary control over local self-government. The presence of this institute in the system of European administrative law once again confirms the existence of an administrative decentralization.

Within the framework of administrative decentralization, judicial control over the local government plays an important but secondary role in the system of governance. If the central authority in the face of executive-regulatory and representative bodies said that the local government does not perform its duties properly, then for an appropriate decision, it can appeal to the court. The courts, when considering specific cases have the right to give explanations. Thus, for the normal functioning of the unified system of public authorities, consisting of state and municipal authorities, it is important to develop not only the legal mechanism of their interaction, but the influence of the state on the local self-government. Implementation of information systems [4:64] and communication systems in Russia for strengthening information security [] and municipal control is also a question of high importance and should be researched further.

სამართალი

ცენტრალიზაციის ელემენტები საზღვარგარეთის ქვეყნების მუნიციპალურ სისტემებში. შედარებით-სამართლებრივი ანალიზი

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სტატიაში განიხილება ადგილობრივი თვითმმართველობის დეცენტრალიზებული მოდელების თანამედროვე სამყაროში ცენტრალიზაციის ელემენტებთან ფორმირების თავისებურებები. მოყვანილია სახელმწიფო კონტროლის მაგალითები სხვადასხვა მუნიციპალური სისტემებიდან. აღინიშნება სხვაობა ადგილობრივი თვითმმართველობის სხვადასხვა მოდელებს შორის.

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