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IMPROVING THE FORMS OF POPULATION PARTICIPATION IN SOLVING ISSUES OF LOCAL IMPORTANCE

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Annotation. The article discusses the question of the form of the exercise of democracy in Russia. Particular attention is devoted to the need to reform the legislation on public hearings. The author touches upon the issues of the significance of this institution, identifies key problems and proposes a set of interrelated measures to improve the institution of public hearings. The urgency of this problem is dictated by the growing importance of the institution of public hearings in Russia.

Keywords: public hearings and discussions, democracy, the right to citizens' participation in the implementation of local self-government, popular initiative, the procedure for holding public hearings, local government, civil society, legislative regulation of the institution of public hearings, a democratic state, advisory institutions of municipal democracy.

Civic participation in modern science is seen as one of the significant principles of governance in a democratic society.

The problem of developing and improving the institutions of direct democracy is actualized by changes in legislation and the role of these institutions in a dynamically developing democratic society. More and more, it is not the nominal participation of the people in governing the state that is gaining importance, but real participation along with the competent authorities.

Professor S.A. Avakyan defines direct democracy as a set of constitutional and legal institutions through which the people express their will, they themselves exercise state power and the power of local self-government [1, c. 462].

Currently, all the institutions of direct democracy listed in the Federal Law of October 6, 2003 No. 131-FZ «On the General Principles of Organization of Local Self-Government in the Russian Federation» are represented by two types: imperative and advisory. The criterion for dividing is the obligatory acceptance of the people's will by the relevant state body or local self-government body.

The essence of the imperative form is expressed in the mandatory implementation of the power will of the people of a particular municipality, while the consultative form of democracy is carried out on the basis of taking into account the opinion of the population, which can be used as the basis for decisions taken by state bodies or local self-government bodies [2, c. 7].

The law identifies such forms of civic participation as a referendum, elections, recall of deputies and elected officials, polls (consultative referendum), popular discussions, public hearings, people's legislative initiative, meetings, gatherings of citizens at the place of residence.

Speaking about the consultative institutions of municipal democracy, it is worth dwelling in detail on such an institution as public hearings. This institution of direct democracy is a kind of dialogue between a public authority and the population. Its application allows local authorities to reveal the opinion of the population on key issues, such as the draft charter of the municipality, the draft local budget and draft plans and programs for the development of the municipality, etc. [3, c. 47].

Emphasizing the importance of the institution of public hearings for the formation of a full-fledged civil society, it should be noted that the significant practice of using this institution has identified a significant number of problems for theorists today that require detailed study and analysis and, as a result, require the development of recommendations aimed at solving them.

The institution of public hearings in the Russian Federation is regulated by Art. 28 of the Law «On General Principles of Organization of Local Self-Government», which defines the list of mandatory public hearings. Local governments are empowered to mandate public hearings on certain issues.

The legislator also empowered the population of the municipality to initiate public hearings. Public hearings and discussions are also mentioned in Art. 5.1 of the Urban Development Code. The Law «On the Foundations of Public Control» also contains provisions on public hearings and discussions.

Having studied the legal regulation of these issues, it should be stated that the procedures for public hearings and discussions are described in an extremely framework. This contributes to a noticeable dispersion of the rules established for these procedures in different municipalities, and as a result, a large number of unresolved disputes over local territories [4, C. 95].

The Council for the Development of Civil Society and Human Rights under the President of the Russian Federation analyzed the complaints of citizens and municipal deputies on frequent widespread procedural violations. Such violations were recorded, such as the provision of documentation in an incomplete volume; lack of verification of the required documents by the participants; the filling of most of the seats in the hearing

room by unknown people or local officials; denial of admission to hearings of critical active residents; inconsistency of the final conclusion with the real content of the speeches, etc. These violations contribute to the generation of a fair distrust of the authorities on the part of the population, which only increases social tension. Practice knows many such examples of civil confrontation: in 2018–2019 these are Yekaterinburg, Vologda, Sevastopol, Tyumen, Shies, protests against renovation in Moscow.

Systematic disregard for the opinions of local residents, especially on issues related to negative impact on the environment, generates fair mistrust and increases social tension.

In our opinion, the institution of public hearings needs to be reformed, since there are many gaps in the legislation that make it possible to interpret the procedure for holding public hearings in different ways.

It seems necessary to highlight the main and typical problems of public hearings and discussions. Basically, these are issues related to the absence of legal grounds for refusing to appoint public hearings initiated by citizens and criteria for the legality of such a refusal; related to the composition and number of participants in public hearings, which is not regulated by law; lack of wide coverage of the audience interested in solving a specific issue in the media, including on digital platforms; procedural violations.

However, the most important issue, in our opinion, is the non-binding nature of the decisions that were made as a result of public hearings and the issue of transparency in summing up the results of public hearings, since public hearings are not forms of exercising power by the population, but only provide an opportunity for citizens to participate in the discussion of draft decisions. ... The result of citizen participation is the determination of the results of public hearings in the form of recommendations that represent the opinion of the majority of participants in public hearings.

This method of summing up the results of the public hearings that took place seems to be controversial, since in this case the opinions of a certain part of the participants in the public hearings are not taken into account. In addition, the revealed significant violations of the very procedure of public hearings and discussions are not grounds for invalidating them. Hence, there is no responsibility for ignoring the views of the public expressed at hearings and discussions, which makes them an obvious formality.

Taking into account the above problems, it would be advisable to implement a set of the following interrelated measures:

1. Detailed consolidation in the legislation of the procedure for organizing and holding public hearings, which will avoid different interpretations of the implementation of the procedure for these events.

- 2. It is necessary to improve the rules for scheduling public hearings and filing applications, as well as determining the composition of participants in the hearings.
- 3. Legislatively consolidate the results of public hearings when local self-government bodies adopt municipal normative legal acts on issues of local importance.
- 4. To regulate the use of video recording and webcasting devices from the moment of the opening of the hall of public hearings, which will ensure the transparency of the procedure.

The complex of the above measures will improve the status and improve the procedure for holding public hearings. This will give public hearings and discussions not a formal character, but will allow the population to fully exercise their right to participate in solving key issues within their municipality.

Thus, many significant issues that directly determine the effectiveness of public hearings require improvements in the legal regulation of this institution and close attention of the organizers of public hearings. This will make it possible to turn public hearings into an effective mechanism for dialogue between local self-government bodies and the population.

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ЖЕРГІЛІКТІ МАҢЫЗДЫ МӘСЕЛЕЛЕРДІ ШЕШУГЕ ХАЛЫҚТЫҢ ҚАТЫСУ НЫСАНДАРЫН ЖЕТІЛДІРУ

Түйін. Мақалада Ресейде демократияны жүзеге асыру нысаны туралы мәселе қарастырылады. Қоғамдық тыңдаулар туралы заңнаманы реформалау қажеттілігіне ерекше назар аударылады. Автор бұл институттың маңыздылығы туралы сұрақтар қойып, негізгі проблемаларды анықтайды және қоғамдық тыңдаулар институтын жетілдіру бойынша өзара байланысты шаралар кешенін ұсынады. Бұл мәселенің өзектілігі Ресейдегі қоғамдық тыңдаулар институтының маңыздылығының артуымен байланысты.

Кілт сөздер: қоғамдық тыңдаулар мен талқылаулар, демократия, азаматтардың жергілікті өзін-өзі басқаруды жүзеге асыруға қатысу құқығы, халықтық бастама, қоғамдық тыңдауларды өткізу тәртібі, жергілікті мемлекеттік басқару, азаматтық қоғам, қоғамдық тыңдау институтын заңнамалық реттеу, демократиялық мемлекет, муниципалдық демократияның кеңесші институттары.

СОВЕРШЕНСТВОВАНИЕ ФОРМ УЧАСТИЯ НАСЕЛЕНИЯ В РЕШЕНИИ ВОПРОСОВ МЕСТНОГО ЗНАЧЕНИЯ

Аннотация. В статье рассматривается вопрос о форме осуществления демократии в России. Особое внимание уделяется необходимости реформирования законодательства о публичных слушаниях. Автор затрагивает вопросы значимости этого института, выявляет ключевые проблемы и предлагает комплекс взаимосвязанных мер по совершенствованию института общественных слушаний. Актуальность этой проблемы продиктована растущим значением института общественных слушаний в России.

Ключевые слова: общественные слушания и дискуссии, демократия, право на участие граждан в реализации местного самоуправления, народная инициатива, порядок проведения общественных слушаний, местное самоуправление, гражданское общество, законодательное регулирование института общественных слушаний, демократическое государство, консультативные институты муниципальной демократии.

THE CONSTITUTION OF THE RUSSIAN FEDERATION AND INTERNATIONAL LAW: POLITICAL AND LEGAL ASPECTS OF THE INTERACTION

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Abstract. The article is devoted to solving the urgent problem of the negative impact of international norms and institutions on the political and legal system of Russia. The article analyzes a complex of problems related to the mutual existence of the Constitution of the Russian Federation and the norms of modern international law. Special meaning is given to research in this area by the amendments made to the text of the Basic law, which largely shifted the emphasis in the previously existing model of interaction between international and domestic law.

Keywords: Constitution, international law, generally recognized principles and norms of international law, international treaties, foreign policy of the state.

In the new millennium, state-organized human communities have faced several problems and challenges that pose a direct threat to the stability of their political and legal systems and, in fact, call into question the very idea of a national sovereign State and an international interstate system as a set of equal political and legal systems. These threats and challenges include, among other things, the active, not always positive, and often very aggressive influence on the political and legal systems of states, including the Russian Federation, from various international structures, and sometimes individual countries. At the same time, modern international law, which has been experiencing an obvious systemic crisis in recent decades, often becomes the main instrument of this influence.

Humanity lacks an international system capable of solving vital problems and effectively countering the challenges of the era of global peace. Global challenges and threats against the background of the collapse of the bipolar world and the destruction of the former system of international relations have called into question the institutional and conceptual foundations of the world order based on international law created by the UN and actualized the problems of the correlation of international and domestic law. It would not be an exaggeration to say that modern humanity is faced with the urgent need to form a new world order that meets modern conditions. As a result, the role of such important instruments of social regulation as the state and law increases qualitatively.

In these conditions, it is necessary to form fundamentally new mechanisms for managing social processes, both at the national and international level. The problem of improving the system of international governance is becoming one of the most important global problems. Of relevance is the development of such algorithms for international communication and the formation of the state's foreign policy, which will ensure the steady progressive development of its political, social, and legal systems without negative external influence.

The legal system of the Russian Federation is undergoing qualitative changes under the influence of powerful integration processes and the growing interdependence of states. These processes make the interaction between Russian and international law much more intense.

Intensive processes of interaction between domestic and international law dictate the need to define its principles and forms that would ensure a reasonable combination of national and international interests, while considering the need of the State to preserve its own identity, including the foundations of the constitutional system, the specifics of the implementation of state sovereignty, the organization of the state structure and the construction of the legal system.

At the same time, the cooperation of States based on the norms of international law presupposes the existence of a solid domestic legal framework for interaction. For this reason, the most attention is paid to the provisions of the Basic Law of the State. And this is understandable, since it is in the Constitution that the state's approaches to international cooperation are concentrated, it is the Constitution that is the element of the rule of law that can effectively regulate the activities of the authorities in international relations.

In this regard, a new version of article 79 of the Constitution seems very relevant and timely, according to which "Decisions of interstate bodies adopted on the basis of the provisions of international treaties of the Russian Federation in their interpretation contrary to the Constitution of the Russian Federation are not subject to execution in the Russian Federation." This formulation puts new emphasis on the question of the relationship between international law and the national law of the Russian Federation, which undoubtedly requires a detailed scientific analysis of this problem.

It is impossible to ignore the new article 791, which establishes that "the Russian Federation takes measures to maintain and strengthen international peace and security, ensure peaceful coexistence of States and peoples, and prevent interference in the internal affairs of the State." The above constitutional formula establishes at the political level the commitment of the Russian Federation to the policy of peace and cooperation, its respect for the universally recognized principles and norms of international law. It would not be an exaggeration to say that this article in a concentrated form contains the basic principles of the foreign policy of the Russian state.

At the same time, it should be noted that the amendments made to the Constitution did not affect the provisions of part 4 of Article 15. Thus, the general principle of the primacy of international law, contrary to popular opinion, remained unchanged.

However, the question of the correlation between the norms of international law and the provisions of the Constitution itself cannot be solved as unambiguously. It seems that the problem arises here because of the different interpretation of the rule established by part 4 of article 15: "If an international treaty of the Russian Federation establishes rules other than those provided for by law, then the rules of the international treaty apply."

At the same time, there can be only two solutions to this problem, which are diametrically opposed to each other: either we recognize the primacy of the Constitution, which an international treaty must comply with, or we agree that the norms of international law are legally superior to constitutional provisions and the Constitution must obey the treaty.

In accordance with the point of view established in the domestic scientific literature, modern foreign constitutional practice does not know cases of the assertion of the primacy of international law over constitutional law [1. p. 40; 7. p. 35]. According to I. I. Lukashuk, the judicial practice of foreign states gives grounds for the conclusion that in case of a conflict of constitutional and international norms, preference is given to the former [3. p. 239].

M. A. Pshenichnov notes that "Recognition of the priority of international law over the Constitution means nothing more than a restriction of the operation of the Constitution, and hence the restriction of the right of the state to exercise legislative, executive, administrative and judicial power within its own territory. In other words, there is a restriction of state sovereignty, interference in domestic affairs" [8. p. 55]. We should note right away that the given point of view seems to us too straightforward and does not consider a few factors. First, let us recall that there are two types of international legal obligations: obligations arising from treaties and obligations based on jus cogens norms.

Let us consider the question of the relationship between the Constitution and the first type of international legal obligations. In accordance with the provisions of part 2 of Article 125, the Constitutional Court resolves cases on compliance with the Constitution of the Russian Federation only international treaties of the Russian Federation that have not entered into force. In other words, a treaty that contradicts the Constitution simply cannot enter into force. Consequently, it can be concluded that the provisions of the Constitution take precedence over international obligations arising from treaties. However, does this conclusion mean that the Constitution takes precedence over all norms of international law?

O. I. Tiunov rightly notes that the Constitution of the Russian Federation speaks only about the supremacy of the application of the rules of international treaties. However, there is reason to believe that the universally recognized principles and norms of international law have the same supremacy in the event of a conflict with the rule of law [9. p. 273].

Frequent mention of the term "universally recognized principles and norms of international law" on the pages of this article requires clarification of its normative and doctrinal content. At the same time, no international legal or domestic normative act of this concept is disclosed [2. pp. 89-90]. The doctrine also does not give a clear answer to the question of what should be understood by "universally recognized principles and norms of international law".

Thus, S. V. Chernichenko reveals the concept of "principles of international law" through the category of "generally recognized norms of international law". In his opinion, "the principles of international law are generally recognized norms of international law of the most general nature." Considering the term "generally recognized norms of international law", he emphasizes that "generally recognized norms are considered such because almost all members of the interstate community, directly or indirectly, have agreed to consider them binding for themselves. They (norms) form a kind of framework of international law. Generally recognized is, for example, a norm providing for the inviolability of the person of a diplomatic representative, or a norm that enshrines freedom of navigation on the high seas. Such norms can be reproduced, confirmed and specified in bilateral and multilateral international treaties, but this does not detract from their importance as universally recognized" [10. pp. 9-13].

I. I. Lukashuk, reveals the concept of "universally recognized principles and norms of international law", through the term "universal norms". In his opinion, such norms should be understood as "norms of general international law binding on all its subjects. The existence of such norms, as well as their importance, are emphasized in universal international acts. In such acts and in national legislation, they are usually referred to as generally recognized norms of international law" [4. p. 136].

A similar point of view is shared by the team of authors of the textbook "International Law" edited by Y. M. Kolosov and E. S. Krivchikova, who does not use the term "universally recognized principles and norms of international law", but speak of "universal norms" that "regulate the relations of all subjects of international law and constitute general international law", as well as "basic principles of international law", which are understood as "concentrated and generalized universally recognized norms of behavior of subjects of international relations on the most important issues of international life" [6. pp. 41-48].

G. V. Ignatenko and O. I. Tiunov in their reflections also start from the "universal norm of international law", which is understood as a norm "regulating relations whose object is of universal interest and recognized by the overwhelming majority or all States". They endow the principles of international law with the following characteristics: principles are the most important, fundamental norms of international law, which are the normative basis of the entire international legal system; principles of international law are the most general norms; principles are universally recognized norms binding on all States; principles are imperative norms with the highest legal force; principles have a

universal scope, determine the content and methods of cooperation between states in various fields; principles of international law are mutually dependent, have a complex character [5. pp. 93-95].

Thus, it is possible to distinguish two main characteristics of generally recognized principles and norms of international law - their universal character and general obligation, i.e., in fact, the highest legal force in relation to other norms of international law. Consequently, it is possible to say with a high degree of argumentation that the concept of "generally recognized principles and norms of international law" should be understood as imperative norms of jus cogens.

As is known, the norms of jus cogens directly affect the content of the basic laws of states, determine it [2. p. 91]. In the modern conditions of democratization and humanization of international and domestic public relations, it is impossible to imagine a constitution that would ignore or trample on universally recognized principles and norms of international law. For example, it would proclaim an aggressive foreign policy, or disrespect for the rights and freedoms of the individual.

In accordance with part 1 of Article 17 of the Constitution, "Human and civil rights and freedoms are recognized and guaranteed in the Russian Federation in accordance with the generally recognized principles and norms of international law and in accordance with this Constitution." The above provision of the Basic Law of the Russian Federation, firstly, establishes the priority of universally recognized principles and norms, and, secondly, enshrines one of such principles – the principle of universal respect for human rights and freedoms.

Thus, it seems possible to conclude that the international obligations of the Russian Federation arising from the generally recognized principles and norms of international law have priority over the Constitution, the norms of which, in turn, are priority over the obligations arising from international treaties. At the same time, it is important to note that international treaties themselves can be considered valid only if they do not contradict generally recognized principles and norms.

It seems that such a hierarchical scheme fully reflects the political and legal realities of the modern world.

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РЕСЕЙ ФЕДЕРАЦИЯСЫНЫҢ КОНСТИТУЦИЯСЫ ЖӘНЕ ХАЛЫҚАРАЛЫҚ ҚҰҚЫҚ: ӨЗАРА ЫҚПАЛДАСУДЫҢ САЯСИ-ҚҰҚЫҚТЫҚ АСПЕКТІЛЕРІ

Түйін. Мақалада халықаралық нормалар мен институттардың Ресейдің саяси-құқықтық жүйесіне теріс әсер етуінің өзекті мәселесі қарастырылған. Мақалада Ресей Федерациясының Конституциясы мен қазіргі халықаралық құқық нормаларының өзара ықпалдасуының өзекті мәселелер кешені талданады. Негізгі заң мәтініне енгізілген түзетулер халықаралық және ішкі құқықтың бұрын қолданылып келген өзара іс-қимыл моделіндегі екпінді айтарлықтай өзгерткені зерттелген. Сонымен қатар, осы саладағы зерттеулер талданған.

Кілт сөздер: Конституция, халықаралық құқық, халықаралық құқықтың жалпы танылған қағидалары мен нормалары, халықаралық шарттар, мемлекеттің сыртқы саясаты.

КОНСТИТУЦИЯ РОССИЙСКОЙ ФЕДЕРАЦИИ И МЕЖДУНАРОДНОЕ ПРАВО: ПОЛИТИКО-ПРАВОВЫЕ АСПЕКТЫ ВЗАИМОДЕЙСТВИЯ

Аннотация. Статья посвящена решению актуальной проблемы негативного влияния международных норм и институтов на политико-правовую систему России. В статье анализируется комплекс проблем, связанных с взаимным бытием Конституции Российской Федерации и норм современного международного права. Особый смысл исследованиям в указанной сфере придают поправки, внесенные в текст Основного закона, которые во многом сместили акценты в существовавшей ранее модели взаимодействия международного и внутригосударственного права.

Ключевые слова: Конституция, международное право, общепризнанные принципы и нормы международного права, международные договоры, внешняя политика государства.

ОСНОВНЫЕ НАПРАВЛЕНИЯ И ПРОБЛЕМЫ ВЗАИМОДЕЙСТВИЯ ОРГАНОВ ГОСУДАРСТВЕННОЙ ВЛАСТИ И ОРГАНОВ МЕСТНОГО САМОУПРАВЛЕНИЯ В РОССИЙСКОЙ ФЕДЕРАЦИИ

Отузян Д.А.