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REGIONAL DEMOCRACY: FROM PRINCIPLES TO STANDARDS

**Саханенко С.Є., Колісніченко Н.М. Регіональна демократія: від
теорії до стандартів**

Анотація. Досліджуються основні принципи регіонального самоврядування, що закріплені у проекті Європейської Хартії регіональної демократії, зокрема демократичного управління, належного врядування, субсидіарності, об'єднання зусиль, громадянської участі тощо. Робляться висновки про можливість їх стандартизації та впровадження у систему регіонального врядування. Розкриваються основні моделі організації регіонального самоврядування в державах Європи, а також еволюція європейського регіоналізму.

Ключові слова: регіональне самоврядування, Європейська Хартія регіональної демократії, демократичне управління, субсидіарність, громадянська участь, моделі організації регіонального самоврядування.

**Саханенко С.Е., Колісниченко Н.Н. Региональная демократия: от
теории до стандартов**

Аннотация. Исследуются основные принципы регионального самоуправления, которые закреплены в проекте Европейской Хартии региональной демократии, в том числе демократического управления, надлежащего управления, субсидиарности, объединения усилий, гражданского участия и др. Делаются выводы про возможность их стандартизации и внедрения в систему регионального управления. Раскрываются основные модели организации регионального самоуправления в государствах Европы, а также эволюция европейского регионализма.

Ключевые слова: региональное самоуправление, Европейская Хартия региональной демократии, демократическое управление, субсидиарность, гражданское участие, модели организации регионального самоуправления.

**Sakhanenko S., Kolisnichenko N. Regional democracy: from
principles to standards**

Annotation. The main principles of regional self-government which are fixed in the Draft of the European Charter of Regional Democracy, including democratic governance, good governance, subsidiarity, cohesion, citizen participation etc. are analysed. Conclusions

on the possibility of their standardization and introduction into various public systems, including the Post-Soviet states are developed. Basic models for the organisation of regional self-government in the states of Europe, and also evolution of the European regionalism are reviewed.

Key words: *regional self-government, European Charter of Regional Democracy, democratic governance, subsidiarity, citizen participation, models for the organisation of regional self-government.*

General problem. The development of the leading states of Europe has been accompanied by an increasing process of decentralisation in policy-making combined with a widening of the rights of regions. Thus, as some researchers have suggested, along with national and local governments, a new form of the public authority – a regional one – is emerging. [1] This process has involved even those states which traditionally have been considered, and sometimes are still considered, to be strongholds of the centralised State system.

Analysis of the latest researches. The increasing role of a regional factor in the domestic policy and, in some cases, even the foreign policy of a state can be seen in two interconnected phenomena – regionalism and regionalization. Regionalism is a wide-spread phenomenon which has several meanings. In its widest meaning, it is: a political movement with system of ideological orientation corresponding to it, which aims to strengthen the role of regions as centres of political and administrative relations. In its narrow meaning; it reflects the reality of the expansion of responsibility of regional authorities.

Parts of the general problems that haven't been solved. Regionalization, on the other hand, is a process of delegation of essential responsibility in the sphere of public administration to regions, as territorial units of the subnational level. It also involves an increasing of the status of regions by means of the reforming of the territorial arrangement.

Formulating of the aims. The main principles of regional self-government which are fixed in the Draft of the European Charter of Regional Democracy.

Main material of investigation. Regionalism and regionalization both are based on an objectification of a region. As a rule, regionalism precedes regionalization, though there are cases when “artificially” created regions, which have been created by central authority, gradually have acquired the features of “natural” region. Thereupon, it is symptomatic that, if in the Conference Resolution On Regionalization in Europe dated from 18.11.1988 [2] a region is treated as a geographically determined territory or as a set of homogeneous territories in geographical sense, then, in contrast, in the Declaration On Regionalism in Europe [3] accepted in 1996 by the Assembly of the European Regions, the focus in determining a region, is mainly on the socio-political factors of region’s formation. Most recently, in Recommendation № 1811 (2007) On Regionalization in Europe [4] of the Parliamentary Assembly of the Council of Europe regions are defined not just as territories, but also in terms of people and communities. They are *collectivités territoriales* which, without having their own statehood status, nevertheless have essential differences from other communities which gives them the right to aspire to some level of self-government.

The aspiration to fix regionalism principles theoretically have been found to be reflected in a variety of documents of the Council of Europe and especially in the Draft of the European Charter of Regional Democracy (ECRD Draft) which, upon its acceptance, will become an essential step in the acknowledgement of the regional level as one of the main forms of public authority.

Activity on the development of general principles of a European model of regional self-government has been underway for over 40 years. Beginning in the late 1960-s while developing the draft of the European Charter of Local Government, the Conference of Local Authorities of the Council of Europe (renamed in 1979 the Conference of Local and Regional Authorities) has paid attention to the fact, that the regional level is an essential element of public

authority. Though, at that time, it was not accepted by the majority of European states as a needed level of government. However, on the basis of such understanding, Resolution № 67 (1970) On the Problems of Regionalization in Europe [5] has been accepted and thus, for the first time, at the level of the all-European structure it was recognised that European integration will be an artificial and ephemeral phenomenon as long as regions will not be involved into it. Thanks to a growing understanding the important role of regions in the course of European development, and especially after adoption of The European Charter of Local Government in 1985, the Conference of Local and Regional Authorities of the Council of Europe (since 1994, Congress of the Local and Regional Authorities) has concentrated its efforts on the development of the European Charter of Regional Self-Government. The Draft of the European Charter of Regional Self-Government has been presented to member-states of the Council of Europe for discussion by Resolution № 37 (1996) [6] and presented to the Committee of Ministers which plays a key role in the institutional mechanism of the Council of Europe with goal of their considering possibility of its notification.

However, as regards different models of regionalization in Europe, the complexities that have arisen in connection with the accession of the states with unstable democratic traditions to the Council of Europe, some states have begun to be concerned that the institutionalization of regional self-government will promote separatism. Consequently, despite the political momentum generated by the draft of the European Charter of Regional Self-Government, activity on its introduction into force has slowed braked, and the document has been removed from discussion. Despite it being only in a draft status, the European Charter of Regional Self-Government has played a significant role as a political and ideological target in terms of the development of regional self-government in Europe. In particular, in Resolution № 83 (1999) On the Current State of and Prospects for Regionalization in Europe [7] the Congress of the Local and

Regional Authorities urged that all administrative reforms carried out by the members-states of the Council of Europe should be based on the principles of the Draft of the European Charter of Regional Self- Government.

In particular, in 1999, Poland reformed its public administration in such a manner as to provide for the creation of regional self- government that has been highly praised by the Council of Europe which in turn has recommended the use of Poland's experience for other countries (Resolution № 102 (2000) On Evaluation of Regionalization in Central Europe, especially in Poland [8] of the Congress of Local and Regional Authorities). The recommendation № 102 (2001) On Local and Regional Democracy in Ukraine [9] of the Congress of Local and Regional Authorities suggested that in Ukraine a democratic system of regional self-government, based on the principles of the Draft of the European Charter of Regional Self-Government should also be developed.

Finally, after various coordination actions and consultations, the new document – the Draft of the European Charter of Regional Democracy, which has been recommended to be adopted as a binding document by the Congress of the Local and Regional Authorities in the Recommendation № 240 (2008) dated from 30.05.2008 [10] has been developed.

Thus, the modern European standard of self-government at the regional level is established by the ECRD Draft, and also by a significant number of other documents of the Council of Europe concerning regionalism and regional development. The ECDR Draft is the product of the political compromise between the broader European regional movement and the bodies of the Council of Europe which are responsible for realisation of policy decisions. Without abandoning the general principles of regionalism fixed in the Draft of the European Charter of Regional Self-Government (1997), the ECDR Draft adapts them to conditions of both the states possessing steady traditions of regionalism, and states which are only developing some measure of regionalism. Because of changes in understanding democracy as public value and as an institute, the

ECRD Draft fills (in some cases) the European regionalism with the new maintenance and gives it a new momentum. The changing of the name of the document testifies to the fact that regional self-government is becoming a part of the European democratic standard and, as a consequence, the categories of «regional self-government» and «regional democracy» are becoming identical. Consequently, the non-recognition of or ignoring of the rights of regions for some form of self-government within the political regime of a state testifies to the existence of significant problems in terms of democracy therein. “Democratic ethos” of the ECRD Draft is strengthened with the European Convention on human rights and freedoms (1950) as one of its major sources.

In comparison with 1997, when the Draft of the European Charter of Regional Self-Government was adopted, the ECRD Draft has also recognised a new and obvious phenomenon, – that is globalisation. Being a process of political, economic and cultural integration (with orientation towards general unification, globalisation, in many cases, helps to destroy the basic values and culture of regions, and thus contributed to a loss of cultural variety. In accordance with that, the statements of the ECRD Draft indicate that regional democracy helps to balance globalisation’s influence, in particular, by means of encouraging of the development of definite social, economic and cultural policy at the regional level. Regional democracy, being based on regional interests, regional identity and values, fosters political and cultural localism and thus serves to compensate negative sides of globalisation. Referring to theoretical and legal sources of the Concept of regional democracy of the European Charter of Regional and Minority Languages, which was directed towards preserving regional cultural heritage which, in many respects, has a linguistic basis.

Because of much ambiguity in terms of perception of the concept of regional democracy, a significant amount of organizational models for regional management has developed in different countries of Europe. With the aim of providing flexibility of standards for European regionalism, a special emphasis

in the ECRD Draft was made on various forms of institutional organisation of European regions, and on the right of each state to determine independently the grounds for the functioning of regional authorities. In particular, in Europe, it is possible to identify 5 models of regionalization and models of regional policy which corresponds to them:

- regionalization by means of federalization (Austria, Germany, Belgium, Bosnia and Herzegovina, Russia, Switzerland);
- regionalization by means of autonomy (Spain, Italy, the United Kingdom);
- regionalization by means of territorial decentralisation (for instance, France, Hungary, Poland, Czech Republic, Sweden);
- regionalization by means of creation of bodies of common competence, for example, Finland, by local government initiative (quasi-regionalization);
- regionalization for the realisation of functions of the central authority (administrative regionalization) including Romania, Ukraine, Belarus, Greece, Portugal, etc.

Finally, it should be noted that a number of European states (because of their size, natural and geographical or historical and political conditions) do not use regionalization as a centre–periphery method of harmonisation of relations, for example, Andorra, Luxembourg, Latvia, Croatia, Azerbaijan. In these countries the subnational level of territorial division is local government. Besides, identification of “pure” models of regionalization is complicated because often there is a combination of models found in one country (France, Finland, Portugal, Italy).

At the same time, the first four models do correspond with the requirements of the ECRD Draft, though they specify interests of those European countries which, for various reasons, have not yet implemented regional self-government into their public system.

Unlike the Draft of the European Charter of Regional Self-Government, which presumed the adoption of all of its principles (without any exception), the ECRD Draft, is a more flexible document, which contains three potential levels of acknowledgement:

- subscribing to all general principles of regional democracy as defined in Section I (clauses 3-21);
- subscribing to one of the recommended models of the regional administration arrangement as specified in Section II (clauses 22-28);
- subscribing to 2/3 of rates which determine financial, economic, territorial, and legal grounds for regional self-government, its rights and guarantees specified in Section III (clause 29-44).

It allows, on the one hand, not to unify the institution of regional democracy, and provides an opportunity to develop the national model of regional self-government, and, on the other hand, to provide effective development of the regional level in terms of territorial arrangement of public administration in the countries of Europe on the basis of preserving of general principles of the ECRD Draft. The possibility to concretise regions, where the rates of the ECRD Draft do not extend, give additional flexibility to it.

Recognising that the general principles of regional self-government which are embodied in the text in terms of concrete standards (models, patterns), have basic value in the ECRD Draft, it is useful to provide a short description of them.

The ECRD Draft recognises the principle of democratic governance (which focuses on the activity of regional authorities which must acknowledge human rights, support peace and consensus, stability and prosperity, and stable solidarity development) as the initial principle of regional self-government. Thus, the ECRD Draft is focused not only on developing a system of regional democracy, but also on providing for its efficiency. Therefore, on the one hand, regional self-government is a part of the concept of democratic governance, and,

on the other hand, a mechanism for democratic governance in that it is a necessary requirement in terms of political legitimacy. Thus the model of democratic governance is based on basic principles, not on unequivocal practice.

In the European Strategy of innovative and efficient control at local level [11], such elements of democratic governance are defined:

- 1) fair elections to public bodies, their representativeness, provision for citizens' participation in decision-making process;
- 2) conformity of decisions to requirements and expectations of citizens;
- 3) efficiency and productivity of government;
- 4) transparency in decision-making and policy realisation;
- 5) rule of law;
- 6) ethical conduct;
- 7) high professionalism and competence;
- 8) innovative character of government and susceptibility to innovations;
- 9) stable development and a long-term outcome orientation;
- 10) rational financial management;
- 11) acknowledgement of human rights, cultural multi (diverse) nature, orientation towards social interaction;
- 12) responsibility.

Defining democratic governance as grounds for regional self-government functioning, the ECRD Draft fixes the principle of citizens' participation. The Draft of the European Charter of Regional Self-Government (1987) contained only a very general requirement to not prevent different forms of citizens' participation in decision-making, the main accent in decision-making was focused on public bodies and public servants. The ECRD Draft, on the contrary, focuses on regional authorities, which should: a) stimulate citizens' participation in public affairs; b) facilitate a managerial process approach that will be closer to the public. This reflects the gradual shift from representative to direct forms of democracy that is an important part of the emerging general model of the

European democracy which is reflected in many documents of the Council of Europe. In particular, Recommendation № 19 (2001) of the Committee of Ministers On Participation of Citizens in Local Public Life [12] determines the basic directions, organizational forms and concrete steps to support citizens' involvement and participation in local public life.

The major problem of differentiation of responsibilities between the central government and regional self-government involves the determination of a principle which can serve as a basis resolving questions regarding what services are best provided at what level of administration. The formation of a stable vertical system of public administration serves to provide not only a legally accurate distribution of powers, but also the determination of clear criteria which support a rational division of responsibilities. In the absence of agreed principles random or unilaterally assigned differentiation of responsibilities will invariably become a source of conflicts between the levels of public administration. In accordance with this, the ECRD Draft, developing the Recommendation № 19 (1995) of the Committee of Ministers of the Council of Europe On the Implementation of the Principle of Subsidiarity [13], fixes and accurately determines a subsidiarity principle as a basis for distribution of responsibility: regional self-government should be responsible for those problems, which, because of their scale and nature can be most productively and effectively solved at the regional level. Accordingly, on the one hand, regional authorities are not given the responsibility for services and tasks which can be most effectively solved at national or local level, and, on the other hand, the state and local government are not allowed to obtain competence for activities best suited for the regional level of administration. Thus, subsidiarity does not provide for the delegation of responsibility exclusively to the regional level, in some cases it means, on the contrary, delegation of responsibility to the national level (or, even, to the international level).

One more novel element of the ECRD Draft is the infusing of the principle of «good governance) in the framework of activity of the regional authorities. The constituent elements of good governance according to the documents of the United Nations and EU [14] are: participation; a consensus orientation; responsiveness; equity and inclusiveness; accountability; transparency; effectiveness and efficiency; and the rule of law. Among the primary goals of this model are minimising corruption through facilitating stakeholders' participation, and the improvement of productivity and efficiency. It is noticeable, that the principle of “good governance» in many respects is a further expression of the concept of “democratic governance». However if the concept of “democratic governance” is oriented towards the increasing efficiency of regional self-government in general (including regional community, executive and representative bodies, public servants, NGOs), «good governance» is aimed to increase efficiency of the regional executive bodies (only part but not the whole system of regional self-government).

The Draft of the European Charter of Regional Self-Government of 1997 did not accurately define the concept of “region” and that was one of the reasons to criticise this document. The ECRD Draft determines regions to be the intermediate level between the national and local government levels. The ECRD Draft treats a “region” as` a more or less large territory which, according to economic, geographical, historical and cultural features differs from other territories. A region is also a specific social and political entity, that is a territorial community. It is interesting, that the English version of the ECRD Draft uses the category “regional authorities” to determine regions, while the French one uses the term “regional communities” (*collectivités régionales*), which is seems to be a more accurate terminology.

Thus, it is considered, that the availability or lack of a regional community testifies to the availability or lack of a region, regardless of its legislative designator or the absence there of. In other words, a region de facto

does not always coincide with a region de jure. Accordingly, when the ECRD is adopted, even those regions which are not recognised legislatively can be the object of ECRD action. Further, in accordance with this, the non-recognition of objectively existing regions (communities) and the ignoring of their aspirations to self-government, creates major problems in terms of the realisation of democracy in a country.

Unlike regional self-government, the institution of local government is completely recognised in all countries which are a part of the Council of Europe. The effective functioning of regional self-government provides for more effective interaction with other types of public authorities, especially with local government. The whole text of the ECRD Draft underlines its organic ties with the European Charter of Local Government. Because they possess many common features, especially, being aimed to realise local territorial interests, the institutions of local and regional self-government will always have interaction. However, this interaction can be most effective under conditions of distinct division of functions and responsibilities between two independent public institutions, and regional democracy should not be developed to the detriment of local self-government.

As noted above, the fear of national governments that expansion of regional authorities rights can lead to strengthening or to appearing of encouraging separatist movements was one of the reasons of non-acceptance of the Draft of the European Charter of Regional Self-Government (1997). As a result, in the ECRD Draft, a principle of loyalty and respect for the territorial integrity of the states is regarded as the priority. Accordingly, mutual relations between the state and the regional self-government should be established on the basis of mutual loyalty, equal dignity and should reflect a respect for national sovereignty, national unity and territorial integrity.

Stable development and efficiency in functioning of any state and regions depend not only on a “competence distribution” model, but also on the

mechanisms of competence realisation. One of their principles is the principle of subsidiarity which has been noted above. A different mechanism, which allows flexibility in terms of “competence distribution” (between the state and regions), is the institution of cooperation or mutual activity in solving those problems, which impact the two levels of government. That is why, the ECRD draft establishes a cohesion principle which determines that the state and its regions, and also local governments should co-operate, and work with each other for the purpose of achieving the goals of every public institution.

It is known, the logic and the mechanism of legal regulation of any problem conclude, that for fastening wider legal freedom it is necessary, by means of legal regulation, to use a prohibition, and for fastening narrower legal freedom, it is necessary to use a permission. Because of that, legal regulation of public authority is, as a rule, regulated on the basis of the principle that “it is permitted what is directly permitted by law”. Thus, “minimum permitted” or “maximum permitted” generate “maximum prohibited” or “minimum prohibited” that under conditions of legal state and the developed civil society does not allow for the usurping of the public power. Unlike the sphere of public administration, the system of civil society in democratic political regimes is regulated by a different legal paradigm – that is “it is permitted that is not prohibited”, and this warrants high degree of freedom for its subjects. The ECRD Draft is developed according to the last principle of legal regulation of public relations, that is, a consequence for referring the institution of regional self-government to the form of civil society functioning according to the principle established in the text of the ECRD Draft.

The outlined principles of regional democracy find their continuation and specification in other parts of the ECRD Draft which are oriented towards the organisational, legal, territorial, financial and economic bases of regional self-government activity, and represent a guarantee of the rights and responsibilities of regional democracy. Among them there are:

- constitutional and legislative bases of regional self-government;
- spheres of regional self-government functioning;
- regional representative bodies and the status of regional representatives;
- regional executive bodies and their officials;
- resources of regional self-government;
- supervision of regional self-government acts;
- protection of regional self-government rights.

Conclusion. The statements of the ECRD Draft form the standard of regional self-government, which is understood as the set of rules, requirements to the system of regional self-government, as an orientation of a regional policy of a state and in which (for the purpose of voluntary reuse) the certain characteristics of regional self-government, the rules for regional policy formation and various directions for their application are established. Thus it is necessary to notice that, when the European Charter of Local Self-Government has been adopting, the Post-Soviet states, including Ukraine, were not the members of the Council of Europe that is why they had no possibility to affect the development of standards for local self-government.

Perspectives of further researches. As a result, they had to transfer them, in many respects mechanically, for implementing in their countries, somewhere, actually, importing them. Regarding regional self-government, Ukraine has all possibilities to affect the offered norms, to fix domestic traditions of regional self-government in the preparing document.

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