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Territory in the Constitutional Standards of Unitary States

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Abstract

The article is based on the analysis of the constitutions of seven European countries (Albania, Hungary, Greece, Spain, Malta, Poland, Sweden). The research allows to reveal general and specific approaches to consolidation of norms on territories in a state and give the characteristic of the corresponding constitutional norms. Given the authors' comprehensive approach to the definition of the territory of the state declared constitutional norms were assessed from the perspective of the fundamental principles and constituent elements of the territory. Considering the specifics of the constitutional types of state territories authors suggest typical and variative models and determine the constitutions of unitary states, distinguished by their originality in the declared group of legal relations. The original constitutional language areas associated with the introduction at the state level, these types of areas that are not typical for other countries.

Keywords: Territory, state territory, unitary state, autonomy, unity, integrity, territorial self-government.

Introduction

Territory, being an inalienable attribute of a state, is constantly in the center of scientific attention [1-5], including, and within the framework of jurisprudence.

Legal science actively manifests itself in study of territory from the standpoint of the methodology of its branch lines and institutional features. In contrast to the private-law approach, which treats the territory as an object of ownership or civil-legal turnover [6-8], the public-law specifics reveals the territory as the limits of state sovereignty, which determines the sign of the state, the criterion of citizens self-identification [9-11], the sphere of exclusive jurisdiction of the state, the boundaries of the jurisdiction of the state mechanism and local self-government, the basis for the development of ethnoses [12-14], etc.

The objective rates of world state creation processes, as well as geopolitical challenges, require a serious conceptual study and legislative regulation of the status of territories. In this regard, not only foreign experience of the constitutional consolidation of the basic norms on a territory in federations but also in the states of a unitary type is of interest [15, 16].

With this in mind, the article focuses upon eight unitary states with different development histories (Albania, Hungary, Greece, Spain, Malta, Poland, Romania and Sweden).

Methods

The study is based on a dialectical approach to the disclosure of legal phenomena and processes using general scientific (system, logical, analysis and synthesis) and private-science methods. The latter include the formal-legal, linguistic-legal, comparative-legal methods, which were collectively used to study the variety of forms of consolidating the phenomenon of the territory (from the fundamental principles to the indication of constituent elements) at the constitutional level.

The focus group includes seven European states with different history of development of the political and legal aspect and state regime. Such a choice will make it possible to obtain representative results of the research with regard to the definition of typical and variative models of constitutional consolidation of provisions on the territory of the state. The

constitutions of these states are taken from the Internet library "Constitutions of the states (countries) of the world" [17].

Main part

Unitarianism is the simplest form of territorial organization of a state. The state is considered unitary (simple), if its parts do not have the status of state formation. A unitary state may consist of separate autonomous national-state entities that have a number of attributes of their own statehood. As a rule, the unitary state has only one constitution, one citizenship, one system of higher authorities. The constituent parts of the unitary state most often have the status of units of administrative-territorial division. They are governed by laws adopted by central authorities. As a rule, their territory can be changed by a simple national law without the consent of local authorities and population

In the context of the declared comprehensive awareness of a territory in a state, it seems advisable to analyze the constitutions of unitary states in order to identify the forms of consolidation of regulations on a territory.

First of all, let us give an example of a constitution which lacks actual "territorial" norms. This is the Constitution of the Kingdom of Sweden of February 27, 1974. The Constitution mentions only occupied territories "Neither the Riksdag nor the Government may make decisions in occupied territory. Nor may any powers vested in a person in his capacity as a member of the Riksdag or as a minister be exercised in such territory" (Ch. 13, Art. 10) [17].

Greece has its own original norms on the status of a territory in the state. Art. 18 of its Constitution contains a provision that law may regulate the disposal of abandoned lands for the purpose of revalorizing them to the benefit of the national economy and the rehabilitation of destitute farmers. Thus, the norms of this act specify "abandoned territories".

Let us note that in addition to the mentioned category, "forest expanses" are also determined in this Constitution (Articles 24, 117).

In general, the territory of Greece is divided into regions, regions are divided into districts, districts - into municipalities and communities.

As the Constitution of Greece contains a specific norm concerning the relations between the Church and the state (Article 3), its further provisions pay special attention to the region of Aghion Oros. Thus Art. 105 of the Greek Constitution states that the Athos

peninsula extending beyond Megali Vigla and constituting the region of Aghion Oros shall, in accordance with its ancient privileged status, be a self-governed part of the Greek State, whose sovereignty thereon shall remain intact [18].

Aghion Oros is governed, according to its regime, by its twenty Holy Monasteries among which the entire Athos peninsula is divided; the territory of the peninsula shall be exempt from expropriation.

Two constitutions (Malta and Hungary) have only one norm concerning a territory in a state.

Thus, in the Constitution of the Hungarian People's Republic only in Art. F there is only one provision that allows to judge of the territory of Hungary, territories of districts, cities and municipalities [17].

The Constitution of the Republic of Malta of 1964 also has only one Art. 1 which contains the provision concerning a territory. Its formulation is specific as this state is an island state: the territories of Malta consist of those territories comprised in Malta immediately before the appointed day, including the territorial waters thereof, or of such territories and waters as Parliament may from time to time by law determine [17].

Typical definitions of a territory in a state from the point of consolidation of its principles, instructions to administrative-territorial division and local self-government are revealed in the analyzed constitutions.

So, Art. 3 of the Constitution of the Republic of Albania formalizes the integrity of a state territory [17].

It is noteworthy that Art. 151 of the Constitution of the Republic of Albania noted that issues related to the territorial integrity of the Republic of Albania ... cannot be submitted to a referendum.

In the context of the stated research, it is possible to pay attention to Part 6 "Local Government" of the Constitution of Albania. Following its content, it's possible to determine territories that are under jurisdiction of various units of public authority and local self-government.

Thus, it is possible to determine the territories of communes (municipalities) and regions, since the primary units of local government are communes or municipalities and regions.

Art. 108 of the Constitution of Albania states that the territorial-administrative division of the units of local government is established by law on the basis of mutual economic needs and interests, and of historical tradition. Their borders may not be changed without first hearing the opinion of their inhabitants.

In the framework of the above-mentioned group of constitutions, we will mention the Constitution of Poland [17]. The basic principles of the territorial organization of the Republic of Poland are contained in Chapter I of the Constitution (Articles 15, 16), and more detailed regulation is in Chapter VII. According to the Constitution, the territorial structure is called upon to ensure the decentralization of public authority. Residents of each unit of the main territorial division - commune (gmina), as well as other units established by law, perform all tasks of a self-government. The Constitution guarantees the rights of units of territorial self-government [18].

Art. 5 of the Constitution of Poland establishes such principles of a territory as independence (niepodleglosci) and inviolability.

According to Chapter VII "Local Government" of the Polish Constitution, it's possible to determine the territory of the communes (gmina). Other units of regional or/and local government are specified by law (Article 164).

According to Art. 172 of the Constitution of Poland, units of local government have the right to associate.

Further, we note that among the analyzed constituent acts, the Constitution of Romania has the most consolidated norms on a territory. Art. 3 named "Territory" states [17]:

- the territory of Romania is inalienable and no foreign populations may be displaced or colonized on the territory of the Romanian State;

- the frontiers of the country are sanctioned by an organic law, with the observance of the principles and other generally recognized regulations of international law;

- the territory is organized administratively into communes, towns and counties. Some towns are declared municipalities, according to the provisions of the law.

Particular attention should be paid to the constitutional norms on the territory in Spain. The Constitution of Spain of 1978 resolved the national problem by granting the status of autonomy to the different areas of Spain (Part VIII, Sections 137-158), but without a federal form of governing [17].

Part VIII " Territorial Organization of the State" of the Spanish Constitution determines the types of state territories considering the criterion of the public structures jurisdiction. Section 137 of the Spanish Constitution states that the State is organised territorially into municipalities, provinces and the Self-governing Communities. All these bodies shall enjoy self-government for the management of their respective interests.

Section 138 determines the principle of economic equilibrium between different areas of the Spanish territory: The State guarantees the effective implementation of the principle of solidarity, by endeavouring to establish a fair and adequate economic balance between the different areas of the Spanish territory and taking into special consideration the circumstances pertaining to those which are islands.

Differences between Statutes of the different Self-governing Communities may in no case imply economic or social privileges.

Chapter 2 "Local Administration" (Part VIII) of the Spanish Constitution determines the status of a territory of municipalities and provinces. They meet the criterion of the limits of the authorities' jurisdiction.

Section 141 of the Constitution of Spain states that the province is a local entity, with its own legal entity, arising from the grouping of municipalities, and a territorial division designed to carry out the activities of the State. Any alteration of provincial boundaries must be approved by the Cortes Generales in an organic act.

The norms on Self-governing Communities have a special place in the Spanish Constitution (Part VIII, Chapter 3). They not only determine the status of these territories, but also the order of process towards self-government.

Thus, in the exercise of the right to self-government bordering provinces with common historic, cultural and economic characteristics, insular territories and provinces with a historic regional status may accede to self-government and form Self-governing Communities (Comunidades Autónomas).

The right to initiate the process towards self-government lies with all the Provincial Councils concerned or with the corresponding inter-island body and with two-thirds of the municipalities whose population represents at least the majority of the electorate of each province or island. These requirements must be met within six months from the initial agreement reached to this aim by any of the local Corporations concerned.

If this initiative is not successful, it may be repeated only after five years have elapsed (Section 143).

The final decision on Self-governing Communities is taken by the Cortes Generales.

Section 145 prohibits a federation of Self-governing Communities.

We can make a conclusion that the issue of territory is one of the most important for Spain basing on additional and transitional provisions of the Constitution of Spain, which in the majority are devoted to the territory. For example, the first additional provision states that the Spanish Constitution protects and respects the historical rights of the territories with traditional charters (fueros).

Recommendations

Summarizing the study, we note that in the analyzed constitutions the norms on territory are laconic and not numerous. We associate this fact with the peculiarity of a unitary political and territorial structure of a state, which is initially unified and centralized. As an exception to the focus group of constitutions, we point out the statutory act of Romania, which formulates norms on the territory in the state in the specific article.

Similar detailed norms are also typical for states which include autonomies (Self-governing Communities). We believe that such states, initially trying to resolve a problem for the country, describe it in detail at the constitutional level.

Conclusion

The research allowed to distinguish a typical variant of consolidating the norms on territory in the constitutions of the focus group of states. The example of it is the format of reflecting principles of territory, its administrative division and local self-government in Albania and Poland.

In some states, there is only one article, usually indicating either the composition of the territory in the state, or its principles, or the administrative division (Hungary and Malta).

A special constitutional format for reflecting the norms on territory is the Constitution of Greece as it determines original types of territory (forest, abandoned), as well as a detailed description of the region of Aghion Oros.

In the course of the study, the Constitution of Sweden is presented as an example of the zero version, which does not contain provisions on the territory of the state.

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