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G. Dosmagambetova,
*the candidate of Political Sciences Acting Professor,
«Political Strategy of the State» Department of the
Academy of Public Administration
under the President of the Republic of Kazakhstan*

POWERS AND RESOURCES OF SELF-GOVERNMENT BODIES IN KAZAKHSTAN: POLITICAL AND LEGAL ANALYSIS

Abstract

The article analyses the process of institutionalization of political-legal and social bases of the constitutional model of local self-governance.

The author identifies the major issues concerning constitutional restrictions and shows the contradictions in providing organizational and legal bases of local self-government. The author also provides arguments confirming necessity to overview the current policy and to introduce the required corrections within the framework of the functioning constitutional model in order to expand powers and to increase resources of the local self-government bodies.

It has been proved that modification of the system of local self-governance in Kazakhstan was carried out through strengthening of the role of representative authority bodies which legislatively also represented bodies of local self-governance.

Key words: *local self-governance, law, division of competences, system of local self-governance, maslikhats, elections*

Jel codes: *K, K10, R28, R38, Z13.*

Аңдатпа

Мақалада жергілікті өзін-өзі басқарудың конституциялық моделінің саяси-құқықтық және әлеуметтік негіздерін институционализациялау процесіне талдау жасалған.

Конституциялық шектеулерге байланысты проблемелер анықталып, Қазақстан Республикасында жергілікті өзін-өзі басқарудың тиімді және толыққанды жүйесін құру мүмкін еместігін айқындайтын жергілікті өзін-өзі басқарудың ұйымдық-құқықтық негіздерін қамтамасыз етудегі жүйелік қарама-қайшылықтар анықталды.

Қолданыстағы саясатты қосымша талдау қажеттілігіне және оған жергілікті өзін-өзі басқару органдарының өкілеттіктерін кеңейтіп, ресурстарын ұлғайту үшін қолданыстағы конституциялық үлгі шеңберінде түзетулер енгізу қажеттілігіне дәлелдер келтірілген.

Қазақстанда мемлекеттік жергілікті өзін-өзі басқару жүйесін жетілдіруге жергілікті өзін-өзі басқару органдарының мүддесін заңды түрде білдіретін сайланған билік органдарының рөлін күшейту арқылы қол жеткізуге болатыны негізге алынды.

Тірек сөздер: *жергілікті өзін-өзі басқару, заң, құзыреттілікті бөлу, мемлекеттік жергілікті өзін-өзі басқару жүйесі, мәслихаттар, сайлау.*

Jel: *K, K10, R28, R38, Z13.*

Аннотация

В статье проанализирован процесс институционализации политико-правовых и социальных основ конституционной модели местного самоуправления.

Выявлены проблемы, связанные с конституционными ограничениями, и показаны системные противоречия в обеспечении организационно-правовых основ местного самоуправления, определяющих невозможность создания полноценной системы местного самоуправления в Казахстане. Аргументирована необходимость дополнительного анализа существующей политики и внесения необходимых корректив в рамках действующей конституционной модели для расширения полномочий и увеличения ресурсов органам местного самоуправления.

Обосновано, что совершенствование системы местного государственного управления в Казахстане происходило через усиление роли представительных органов власти, которые законодательно представляют и органы местного самоуправления.

Ключевые слова: *местное самоуправление, закон, разграничение компетенции, система местного государственного управления, маслихаты, выборы.*

Jel коды: *K, K10, R28, R38, Z13.*

Question of existence of the public power system today is a question of possibility of radical and basic reorganization, which, first of all, finds the solution in the change of priorities problem. It means refusal of the totalitarian statehood idea – «the person for the state» – in favor of the democratic statehood principle – «the state for the person». Only in that case the state and the public policy will

start listening to processes occurring in society. Creating favorable conditions for self-development of the person, realization of its numerous inquiries and requirements as the main idea will take place.

Naturally, imbalances and the conflicts of interests definitely remain, but they will have non antagonistic character. And the question of public administration, realization of public power will become a question of the authority and citizens' partnership. According to historical experience, the local self-government acts as the main driving force of the public power reforming.

Local self-government defines forms of civil society dependence from the state and development of democratic mechanisms of providing their optimum ratio at the same time, as well as the return influence of society on the government. This phenomenon is admitted by vast majority of researchers and practical workers at the different levels of administration bodies.

According to the European Charter of Local Self-Government (1985), one of bases of any democratic system is represented by local self-government. It represents a form of the regional government, the most corresponding to market economy and political pluralism. Need of economic and political freedom as a source of society prosperity dictates such organization of the power. It would provide independence, an initiative and responsibility of the population, its representative bodies and administration in the solution of local problems.

The constitutional fixing in the 90th of the 20th century the right of citizens for local self-government became a realization of Kazakhstan intentions to conform the democratic standards and commitment to the principles of the European Charter of Local Self-Government. Article 89 of the 1995 Constitution proclaimed local self-government as expression of the power of the people. [1]

But the reality shows that formation of the local self-government system appeared the most difficult task. It was supposed that it will be one of bases of the constitutional system. The fundamental principle of power organization should act as the instrument of close interaction with the population and uses of public control which along with the principle of powers division will define a public administration system. In practice this institution in Kazakhstan did not realize its opportunities so far.

During the twenty-year period of independence of our republic the problem of local self-government's effective functioning remains actual, as formation of this institution as the integrating attribute of a democratic system, occurred ambiguously. Certainly, the first years of independence became for our state the hard period of statehood creation, radical restructuring of political and economic system, the state institutions, public consciousness, carrying out reforms in all spheres of public life. The institutionalization of local self-government in Kazakhstan against the specified processes was overshadowed.

Undertaken measures did not solve an issue of creating effective and efficient system of local self-government according to the constitutional requirements, conventional values of democracy and the municipal management, fixed by the European Charter of Local Self-Government. Many questions remain unresolved. The most important were the way of formation of local government bodies, their relationship with central power, the general amount and the content of the affairs subordinated to municipal structures. There are certain gaps in the legislation which should be eliminated.

At the same time there is an understanding that the local self-government is not born suddenly, in an hour. It is also confirmed by the Russian researcher G. Barabashev who notes: «In respectable western democracies more than one and a half century was required on, that tempered on fire of anti-feudal revolutions a capacious formula: the local self-government is the power of local population in affairs of the local value, carried out by citizens directly and through electoral bodies, within the law, but without intervention of the central power, – acquired a flesh of real practice». [2] And as world experience confirms, the local self-government is result of a certain evolution, an indicator of the state withdrawal from command methods of management. Undoubtedly, it is the certificate of a maturity of the citizens, ready to assume all completeness of the power and responsibility for the solution of local tasks.

The Head of state specified the need for modernizations of the public administration system, revision of the relations and accurate differentiation of competences between levels of public administration, decentralization of the state functions, strengthening a role of representative bodies. The last 2007 Constitutional amendments and the followed changes in the legislation fixed model of local self-government, set its key parameters, and defined the direction of this institution further development.

There is another important prerequisite of updating a subject of local self-government. The problem of administrative function of the power significantly becomes aggravated at critical, crisis stages of

history. Structural changes in public relations demand reform of political management system. The centralization and decentralization proportion becomes a fundamental problem here.

Reorganization of political management conducts to violation of the developed algorithms and can provoke both strengthening a tendency to unjustified centralization, and a tendency to increasing separatism. Therefore distribution of powers between the central power and local management is becoming a condition of successful political system transformation. And this distribution depends on a alignment of political forces in society that politicizes a centralization and decentralization ratio and, respectively, a role of local self-government in political system.

It is necessary to recognize that at the state level there is no uniform vision of essence and expediency of local self-government. Though from the formal and legal point of view it is possible to rightfully claim that the European Charter of Local Self-Government is realized in present Kazakhstan as this principle is recorded in the Constitution. The 2007 constitutional changes and additions created a basis for formation of local government structure in the territory of cities and regions in Kazakhstan. This formation is assigned to local representative bodies – Maslikhats [1].

It is necessary to overcome an existing stereotype of public consciousness concerning local self-government. They are perceived as particularly economic organizations unlike government bodies, strongly connected with political activity according to the population. Actually, local level of the power in public opinion often is not yet submitted as a force which is possible to solve effectively current issues of local community.

The population often not only sees, but also feels inability of local government to solve specific issues because of lack of means, or references of the solution of these questions to higher power bodies. All this does not assist formation and further development of local self-government system in our country in any way.

The Soviet period mentality also remains when local government waited installations from central government for their own decisions adoption. Disbelief in forces of society to regulate independently their life and activity without coercion of the state institutions disturbs today to recognize that the local government is a form of self-organization of the population.

It is possible to assume the logic of actions. For local self-government to had real powers and effective control levers, it needs to be included to power institution. If the local self-government will be a public organization, it remains deprived of civil rights.

The relation to this public institution among opponents of local self-government in Kazakhstan is not strategic, but rather «instrumental». It is seen not as the principle, but a certain applied value, the tool for implementation of administrative and economic functions and affairs.

All this predetermines evidence and urgency of a problem solution – development of the complete concept of municipal management and public self-government in the republic.

Approaches to definition of local self-government essence are contradictory as from representatives of different power branches and levels, and researchers. The general dissatisfaction with a condition of local self-government and the broadest dispersion of opinions on a role of local self-government institution in political system of Kazakhstan are characteristics of these discussions. Thus it should be noted that legal approach is used in Kazakhstan in the analysis of local self-government institution, a ratio of the state and local government. Researches of the local power organization are conducted, mainly, by domestic lawyers and economists.

Formation of the local self-government institution in the Republic of Kazakhstan from independence is conditionally divided by scholars on some stages. Thus, in our opinion, considering conceptual approaches to the local self-government development, it is possible to distinguish three more integrated periods:

The first stage (1991–1995) is the period from the independence till the adoption of the 1995 Constitution of the Republic of Kazakhstan. This period was characterized by decrease in powers of the local self-government fixed by the Soviet regulations, carrying out policy of rigid centralization of the power, up to absence of this institution in the first 1993 Constitution.

The second stage (1995–2007) was characterized by adoption of the 1995 Constitution and later changes and additions concerning local self-government. During this period the Constitution consolidated the norms concerning local self-government by inclusion of the separate section. However this norm had declarative character as the organizational moments of the local self-government functioning were not designated. In the same time, this period is significant with noticeable activization of attempts from public and government representatives to form various models of local self-government institution in Kazakhstan.

The third stage (2007 to the present). The 2007 constitutional reform and the subsequent changes into the legislation provided definition of the Kazakhstan model of local self-government. Maslikhats were assumed as a basis acting as local representative bodies of public administration and local self-government at the same time.

The Republic of Kazakhstan did a certain way searching its own model of local self-government. As it was noted above, some principles of the local self-government functioning were consolidated in the 1995 Constitution of the Republic of Kazakhstan. The legal basis of the local self-government is supplemented by the On Local Public Administration and Self-Government in the Republic of Kazakhstan Law (2001).

The 2007 constitutional reform and the subsequent changes into the legislation provided definition of the Kazakhstan model of local self-government. Maslikhats were assumed as a basis acting as local representative bodies of public administration and local self-government at the same time.

But numerous attempts to create an effective legislative basis of local self-government in Kazakhstan encountered the constitutional restriction which was not allow joining together public and state institutions. Therefore all developed projects, in effect, were various options of parallel coexistence model of representative bodies– maslikhats and local self-government – duplicating each other. It is difficult at such system to avoid opposition between local public administration and self-government, working at the same territory and pursuing the identical aims.

Point 2 of 89 article of the Constitution establishes that the local self- government is carried out by the population directly, as well as through maslikhats and other local self-government bodies in the local communities on the territories with compactly living groups of population.

Due to the last changes of the constitutional norms all levels maslikhats were recognized as local self-government. Whereas 89 article of the old edition of Constitution did actually the right of citizens for local self-government absolutely declarative. Constitution did not directly specify which bodies was local self-government, or what bodies need to be created for institutional registration of local self-government. Besides, this article established possibility to delegate implementation of the state functions to local self-government. [1]

This situation is also coordinated with the European Charter of Local Self-Government. It underlines that implementation of the state powers, as a rule, has mainly to be assigned to the authorities closest to citizens. [3] Such powers respectively are outside of local charge. They are additional functions, not relating by the nature to the local self-government sphere. Therefore, transfer of the state powers has to be without government substitution by local self-government and deformation of the local self-government nature. [4]

Thus, the 2007 constitutional reform significantly expanded regulation of the local self-government questions. It gave opportunities to develop practical mechanisms to realize the right of citizens on local self-government, created the base for further legislative development and regulation of this institution.

Fixing powers of local self-government for maslikhats is explained by similarity of their formation and activity as the local representative bodies elected by the local population and urged to express interests of local community, to resolve issues directly within the administrative and territorial units. Development of local self-government in a context of this reform has defined dual character of maslikhats. It is based on the concept of the local self-government dualism allocating the state and public features in its nature.

At the same time, standards of the Constitution did not give an accurate regulation of the local self-government nature in Kazakhstan. Spheres of competence of government bodies and local self-government are not differentiated, in particular. [1] Thus, these questions found the solution in the relevant branch acts, but generally in the Law On Local Public Administration in the Republic of Kazakhstan (2001). So, the model of local self-government, considering existing realities and traditions of public administration – the big territory, the small population, need to preserve the unitary state – was offered in this document.

It was defined that the local self-government is carried out separately within the oblast, the rayon, the city, the city rayon, the aul district, the settlement and the aul which is not a part of the aul district. Maslikhats and akims carry out respectively representative and executive functions of local self-government at oblast and rayon levels. Thus akims are integrated into system of local self-government, carrying out functions of local public administration and resolving issues of local charge at the same time. At aul level, where maslikhats are not provided, representative functions are carried out by members of local community at meetings (shod) by means of direct will. [5]

As a result of the large-scale reforms in Kazakhstan and acceptance of changes and additions in the legislation on local management and self-government (February, 2009) the legal basis for system of local public administration and self-government was created. Adoption of this law promoted search of new forms of the local self-government introduction directed on active participation of citizens in the solution of local issues [6] .

At the same time, this law did not solve a number of questions on full functioning of local government institution. For example, one of the most essential signs of local self-government system in foreign countries is a universal selectivity of its bodies. Our law creates an inequality in realization the right for local self-government. According to article 1 of the Law maslikhats are created only at the oblast or rayon level [5]. Thus, the population of the aul (rural) district, the settlement, the aul (village) which is not a part of the aul (rural) district, are deprived of the right for the independent solution of local questions through masticates.

The provision that local self-government can be carried out also through others, unlike maslikhats, local governments is a gap. The law did not establish an order of election of such bodies, forms of their functioning, their powers in the solution of local questions and performance of the state functions.

Considering that maslikhats act as the main local government today, being body of the representative government and the local self-government at the same time, it should be noted that local communities of the aul (rural) districts have no opportunity to exercise their right through elective representative bodies. And questions of local self-government are assigned on akims here, which are urged to reflect interests of local community.

Thus, the Law complicated the status of all levels akims, having assigned to them along with powers of local public administration and the self-government function. At the same time, it is specified in this provision of the law that they are local representatives of the President and the Government of the Republic of Kazakhstan [5]. It is necessary to be defined, whether all akims represent interests of local community, or only those in which territory there are no local governments, in particular, maslikhats.

The law established concept of local self-government as the activity which is carried out by the population directly, and also through maslikhats and other local governments, directed on the independent solution of questions of local value under their own responsibility, in the order determined by the Law and other regulations. Questions of local value are understood in the law as questions of activity of oblast, the rayon, the city, the city rayon, the aul (rural) district, the settlement and the aul (village) which is not a part of the aul (rural) district. The regulation of this activity according to the Law and other acts of the Republic of Kazakhstan is connected with ensuring the rights and legitimate interests of the majority of inhabitants of the corresponding administrative and territorial unit. [5]

There is no clear split in maslikhats and akims' competence concerning their functions carried out them separately in the sphere of local public administration, and the functions in the sphere of local government, i.e. «questions of local value». There is no accurate border between «the state affairs» and «affairs of local community».

Lack of organizational and legal status of local self-government is a considerable shortcoming. Point 8 of the Law article 5 provides, that maslikhat does not possess the rights of the legal entity [5]. But acting as a representative body of the local government, it represents interests of local community. In fact, absence of the legal entity rights for maslikhat deprives local community the civil rights and, first of all, political ones. That does the right for the independent solution of local questions purely nominal. Many researchers indicate presence of the legal entity status among the main signs of the developed local self-government. Its presence provides to local self-government comfort cooperation both with the state bodies, and with citizens. [7]

One more imperfection of the Kazakhstan legislation concerning local government is lack of the provisions concerning the status of employees of local self-government. As the nature of local self-government has more public than state character, it is advisable to fix them special status instead of their reference to category of civil servants. Specifics of municipal service should be taking into account, its public character connected with providing public services.

The key moment of the local self-government distinguishing it from all other forms of the local government organization, is participation of citizens. Transition to direct democracy is the main tendency in the majority of the developed democratic states. The speech in this case is about

expansion of the civil society sphere assuming inclusion of a bigger number of citizens in the process of decisions' acceptance and implementation. Civil participation becomes a basic element of democratic and economic development of the country. Most likely, this circumstance caused inclusion of new 3–1 chapter «Participation of citizens in local self-government» in the Law. [5]

In specified chapter the status of the member of local community is defined. The status is based on citizenship of the Republic of Kazakhstan and its registration on territories of the corresponding administrative and territorial unit. The main tool of probable direct participation of citizens in management is meeting (shod) of local community. It is provided, what the order of carrying out meeting (shod) and decision-making is defined by oblast maslikhats, maslikhats of the cities of republican submission and the capital maslikhats. [5] In other words, the body of a representative form of local self-government is allocated with competence to define a procedure of other, in this case, direct form of self-government independently.

At the same time it is necessary to note that meeting of local community is very inefficient instrument of civil participation in decision-making process at local level. For example, it is not simple to hold meeting within regions or large settlements. Thus, the decisions made at a meeting (shod) of local community can be only sent to the local self-governments that are they have advisory nature.

At the same time, other forms of self-government of local community besides the provided right of its realization through local self-government bodies and meetings (shods) of citizens are not fixed. There are other forms of the direct democracy expressing will of local community members besides the specified forms as well. For example, local elections and a local referendum, including forms of expression the opinions with deliberate and consultative meaning (discussion of the local value questions, entering of legal acts drafts by the population into public authorities and local self-government, an initiative of holding local referenda and elections, etc.).

One of the most vital issues, braking real functioning of local self-government, is lack of its real economic basis. According to the European Charter of Local Self-Government local governments have the right, within national economic policy, to possess sufficient own financial resources which they can freely dispose implementing their powers [3]. According to article 3 of the Law an economic and financial basis of the local public administration and self-government activity consists of: 1) local budget; 2) the property assigned to municipal legal entities; 3) other municipal property according to legislation of the Republic of Kazakhstan [5].

Independent budgets according to the Budgetary Code of the Republic of Kazakhstan are: republican budget; regional budget, budgets of republican value cities, budgets of capital and rayon (city of regional value). Thus the regional budget, budgets of republican value cities, budgets of capital and rayon (city of regional value) belong to local budgets. [8] There are no the city rayons, aul (rural) districts, settlements, auls (villages) in this list. Respectively they have no their own budgets.

Now creation of independent budgets at the lowest level of local management restrains that fact that the majority of regional budgets are subvensionary. It is necessary to expect that budgets of the bottom level of management also can be subvensionary in case of their formation. However social and economic problems are collected at the specified levels. About a half of the country population lives in rural areas, and therefore the solution of these problems have a huge value for further development of the country.

The financial basis of the local self-government is presented by local finance. This is an all set of money formed and used for the solution of local questions and implementation of separate state powers, delegated to the local self-government. [9]

The commensurable volume of financial resources is the most important condition for life support of local population and complex social and economic development of the respective territory. Increment and effective use of local finance is one of priority tasks of the local self-government. The practice shows that the allocated budgetary funds often are not enough at the rural district level. That compels the settlement akims to find additional sources of financing such as the businessmen sponsor's help or their own money.

Financial independence is the most essential component of the local self-government around the world. In this regard, the main task of the state in formation and development of the local self-government is strengthening the financial base of the local self-government and aspiration to its self-sufficiency and self-reliance.

Interest to a perspective of local self-government is natural today. It is justified still that process of the Kazakhstan society reforming sharply raises a question of developing political institutions of

democracy at local level, formation of a municipal management system, capable to provide execution of the changed functions adequate to modern conditions in municipality.

It is caused also by a number of considerable circumstances against difficult, sometimes contradictory processes of global reforms in various spheres of public life in Kazakhstan. Problems of power, democracy, management and self-government are of particular importance.

There is one more reason of the appeal to the political problems accompanying formation and development of local self-government at the present stage. It is obvious that not only the type of a political regime defines a centralization and decentralization relation and a way of local management. The system of the local government organization, in turn, acts as criterion to determine essence of a political regime more precisely. Especially it belongs to modern Kazakhstan where the emerging democratic approach sometimes is devaluated by its not democratic local practice.

Research of the political processes' content at local level, and features of local political institutes can become criterion of a political regime typology as a whole, «a litmus piece of paper» to its essence. It appeared that the political processes at local level in many aspects reproduce a matrix of the general political system. At the same time they possess their own internal logic, features and dynamics. It is impossible to receive adequate idea of modern Kazakhstan political system without description of these features. It is important to consider at assessing prospects of development of local government system in Kazakhstan.

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