

INTERNATIONAL MUNICIPAL LAW AS A FIELD OF INTERNATIONAL PUBLIC LAW: ON THE QUESTION OF THE FORMATION OF THE INDUSTRY

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The article is devoted to the scientific and theoretical substantiation of the position on the formation of international municipal law as a field of modern international public law. In domestic jurisprudence, the topic is being studied for the first time. The authors connect the emergence of international municipal law with the processes of constitutionalization of international public law and the internationalization of the constitutional legal order of states. These processes were accompanied by the growth of international recognition of the institution of local self-government. First of all, through its international legal regulation and contextualization of topical aspects of the activities of local governments, taking into account their international activities. In particular, through the development and adoption of a number of international multilateral treaties and the preparation at the United Nations level of the draft World Charter of Local Self-Government. In the context of the internationalization of the constitutional legal order of countries in the field of urban law, significant processes of borrowing international legal standards of local self-government by state constitutional law are indicated.

Based on the analysis of international practice, a conclusion is made about the compliance of Ukrainian legislation with international standards. At the same time, recommendations are given for its improvement, in particular, for financing local governments, budgetary decentralization, limiting the competence of local state administrations, etc.

The formation and development of the architecture of modern public international law, its institutional and structural system is usually associated with its sectoral construction, which is based on the definition of the subject of legal regulation and method of legal regulation. The emergence of a new subject of legal regulation in public international law, as an independent and autonomous legal system, is based on the actualization, emergence, activation, contextualization of cooperation in a new field of interstate cooperation, which in practice is determined by the emergence of a new object of international law. In this case, the methods of international legal regulation in public international law remain constant – either imperative or dispositive.

However, today in the formation of new branches of public international law plays an important role trend that emerged during the formation of a new form of globalization – legal, which has such a nomenclature – the constitutionalization of public international law and the internationalization of constitutional order.

In general, the national legislation of Ukraine meets world standards, but some legislative norms should be improved. First of all, this concerns the financing of the local state administrations, limiting the competence of local state administrations to the level of control functions and mediation between the local governments, the executive branch and the President. In addition, it makes sense to provide a mechanism for the implementation of the international legal standards for the subjects of Ukrainian local self-government.

References

1. Peters A. Compensatory Constitutionalism: The Function and Potential of Fundamental International Norms and Structures. *Leiden Journal of International Law*. 2006. Vol. 19. P. 580.
2. The Verkhovna Rada of Ukraine (1969), Vienna Convention “On the Law of Treaties”, available at: <https://zakon.rada.gov.ua/laws/show/995118#Text> (Accessed 21 October 2021).
3. The Constitution of Ukraine (1996), *Vidomosti Verkhovnoi Rady Ukrainy*, vol. 30.

4. Valiarovskiy, F.Y. *Konstytutsyonalizatsiya mezhdunarodnoho prava kak hlobalnaia tendentsiya* [Constitutionalization of international law as a global trend]. Available at: <https://pgu.ru/upload/iblock/83f/uch2011i00034.pdf> (Accessed 21 October 2021).

5. Charter of the United Nations (1945), available at: <https://zakon.rada.gov.ua/laws/show/995010#Text> (Accessed 21 October 2021).

6. The Verkhovna Rada of Ukraine (1948), Universal Declaration of Human Rights, available at: <https://zakon.rada.gov.ua/laws/show/995015#Text> (Accessed 21 October 2021).

7. The Verkhovna Rada of Ukraine, International Covenant on Civil and Political Rights (1966), available at: <https://zakon.rada.gov.ua/laws/show/995043#Text>; International Covenant on Economic, Social and Cultural Rights (1966), available at: <https://zakon.rada.gov.ua/laws/show/995042#Text> (Accessed 21 October 2021).

8. The Verkhovna Rada of Ukraine (1950), European Convention for the Protection of Human Rights and Fundamental Freedoms, available at: <https://zakon.rada.gov.ua/laws/show/995004#Text> (Accessed 21 October 2021).

9. The Verkhovna Rada of Ukraine (2004), The Law of Ukraine “About international agreements of Ukraine”, available at: <https://zakon.rada.gov.ua/laws/show/1906-15#Text> (Accessed 21 October 2021).

10. Peters, A. (2009), The Merits of Global Constitutionalism. *Indiana Journal of Global Legal Studies* (Summer). Vol. 16. Issue 2. P. 399.

11. Schwöbel, Ch. The Appeal of the Project of Global Constitutionalism to Public International Lawyers. *German Law Journal*. 2012. Vol. 13. № 1. P. 1-22.

12. Bohdandy, von A. (2010). *Doktrynalnui konstruktivizm v proshlom y budushchem: stratehiya otveta na nasushchnue voprosy, stoiashchye pered konstytutsyonno-pravovoi naukoj v Evrope* [Doctrinal constructivism in the past and the future: a strategy for answering the pressing questions facing constitutional law in Europe]. *Sravnitel'noe konstytutsyonnoe obozrenye* [Comparative constitutional review], no. 1, p. 58.

13. Bogdandy, von A. Pluralism, Direct Effect, and the Ultimate Say: On the Relationship between International and Domestic Constitutional Law. *International Journal of Constitutional Law*. 2008. Vol. 6. No. 3-4. P. 402.

14. Varlamova, N.V., Vasyleva, T.A. (2017), *Internatsyonalizatsiya konstytutsyonnoho prava: sovremennyye tendentsyy* [Internationalization of constitutional law: current trends]. Monograph. Moscow, IGP RAS, p. 18.

15. Goodin, R. *Designing Constitutions: the Political Constitution of a Mixed Commonwealth. Constitutionalism and Transformation: European and Theoretical Perspectives*. Ed. by R. Bellamy, D. Castiglione. Blackwell, 1996, p. 223.

16. Osiatunskiy, V. (2004). *Paradoksu konstytutsyonnoho zaymstvovaniya* [Paradoxes of constitutional borrowing]. *Sravnitel'noe konstytutsyonnoe obozrenye* [Comparative constitutional review], no. 3, p. 53; Sanders Ch. *Constitutional Culture in Transition. Constitutional Cultures*. Ed. by M. Wyrzykowski. Warszawa, 2001, p. 37.

17. Baimurato, M.O., Pohorilko, V.F., Baltysi, Yu.Yu. (2009), *Munitsypalne pravo* [Ukrainy Municipal law of Ukraine]. Kyiv, Legal unity, 720 p.

18. European Charter of Local Self-Government (1985); European Framework Convention on Transfrontier Co-operation between Territorial Communities or Authorities (1980).

19. *Zakliuchenye 12 (1999) o predvartelnom proekte Vsemyrnoi khartyi mestnoho samoupravleniya* [Opinion 12 (1999) on the Preliminary Draft World Charter of Local Self-Government], available at: <https://rm.coe.int/168071ae3e> (Accessed 21 October 2021).

20. Malcolm, N. Shaw. *International Law*. Sixth edition. Cambridge University Press, 2008, pp. 129-139.

21. Karl Josef Partsch. *International Law and Municipal Law* (1987). *Encyclopedia of Disputes Installment*, pp. 238-257, available at: <https://www.sciencedirect.com/science/article/pii/B9780444862419500634> (Accessed 21 October 2021).

22. Baimuratov, M., Ozhereliev, V. (2019). *Mizhnarodne publichne pravo i noosfera: na shliakhu do stvorennia yedynoi analitychnoi modeli* [International Public Law and the Noosphere: Towards a Unified Analytical Model]. *Publichne pravo* [Public law], no. 1 (33), p. 120.

23. *Interioryzatsiia* [Interiorization]. *Vikipediya. Vilna entsyklopediia* [Wikipedia. Free encyclopedia], available at: <https://uk.wikipedia.org/wiki/%D0%86%D0%BD%D1%82%D0%B5%D1%80%D1%96%D0%BE%D1%80%D0%B8%D0%B7%D0%B0%D1%86%D1%96%D1%8F> (Accessed 21 October 2021).

24. Burde, P. (2018). *Ekonomycheskaia antropolohiia* [Economic Anthropology]. Moscow, Delo Publishing House, Russian Academy of Natural Sciences and Geography, p. 47.

25. Bobrovnyk, D.O. (2019). *Hlobalistskyi potentsial terytorialnoi hromady: teoretychni pidkhody do vyznachennia* [The globalist potential of the territorial community: theoretical approaches to definition]. *Chasopys Kyivskoho universytetu prava* [Journal of Kyiv University of Law], no. 2, pp. 79-85.

26. Kofman, B.Ia. (2019) *Rol konstytutsiinoho prava v zabezpechenni pravovoho statusu liudyny, osobystosti i hromadianyna v umovakh hlobalizatsii: pytannia teorii ta praktyky* [The role of constitutional law in ensuring the legal status of man, individual and citizen in the context of globalization: issues of theory and practice]. Monograph. Kyiv, Lyudmila Publishing House, 355 p.

27. Baimuratov, M.O. (2011). *Publichna samovriadna (munitsypalna) vlada v Ukraini: metodolohichni pidkhody do vyznachennia osnovnykh oznak* [Public self-government (municipal) power in Ukraine: methodological approaches to determining the main features]. *Publichne pravo* [Public law], issue 2, pp. 4-11.

28. Kofman, B.Ia. (2019). *Rol konstytutsiinoho prava v zabezpechenni pravovoho statusu liudyny, osobystosti i hromadianyna v umovakh hlobalizatsii: pytannia teorii ta praktyky* [The role of constitutional law in ensuring the legal status of man, individual and citizen in the context of globalization: issues of theory and practice]. Monograph. Kyiv, Lyudmila Publishing House, pp. 241-259

29. Kaminska, N.V. (2010). *Mistseve samovriaduvannia: teoretyko-istorychni i porivnialno-pravovi analiz* [Local self-government: theoretical-historical and comparative-legal analysis]. Kyiv, KNT, 145 p.

30. Charter of the United Nations and Charter of the International Court of Justice (New York, 26 June 1945), available at: <https://zakon.rada.gov.ua/laws/show/995010#Text> (Accessed 21 October 2021).

31. Heins, V. *Nongovernmental Organizations in International Society: Struggles over Recognition*. New York: Palgrave Macmillan, 2008. p. 43.

32. Union of International Associations. *Yearbook of International Organizations: Guide to Global Civil Society Networks, 2000-2001*. Vol. 1. Munich, 2002, p. 1407.

33. Declaration on Social Progress and Development: Adopted by UN General Assembly resolution 2542 (XXIV) of 11 December 1969, available at: <https://zakon.rada.gov.ua/laws/show/995116#Text> (Accessed 21 October 2021).

34. Horbatenko, V.P. (1998). *Vsesvitnia Deklaratsiia mistsevoho samovriaduvannia* [World Declaration of Local Self-Government]. *Yurydychna entsyklopediia* [Legal encyclopedia], vol. 1, Kyiv, "Ukr. Encyclopedia", 332 p.

35. Pohorilko, V.F., Baimuratov, M.O., Baltsii, Yu.Iu., Batanov, O.V., Voloshyn, Yu.O. (2009). *Munitsypalne pravo Ukrainy* [Municipal law of Ukraine]. Kyiv, Legal Unity, p. 112.

36. Statute of the Council of Europe (London, 5 May 1949), available at: <https://zakon.rada.gov.ua/laws/show/994001#Text> (Accessed 21 October 2021).

37. European Framework Convention on Transfrontier Co-operation between Territorial Communities or Authorities (Madrid, 21 May 1980), available at: <https://zakon.rada.gov.ua/laws/show/995106#Text> (Accessed 21 October 2021).

38. European Charter of Local Self-Government (Strasbourg, 15 October 1985), available at: <https://zakon.rada.gov.ua/laws/show/994036#Text> (Accessed 21 October 2021).

39. Pohorilko, V.F., Baimuratov, M.O., Baltsii, Yu.Iu., Batanov, O.V., Voloshyn, Yu.O. (2009). *Munitsypalne pravo Ukrainy* [Municipal law of Ukraine]. Kyiv, Legal Unity, p. 116.

40. Kopyl, B.K. *Dosvid reformuvannia mistsevoho samovriaduvannia v krainakh Yevropeiskoho Soiuzu* [Experience of local government reform in the European Union], available at: <http://www.kbuapa.kharkov.ua/e-book/tpdu/2010-4/doc/2/08.pdf> (Accessed 21 October 2021).

41. Baimuratov, M.A. *Mezhdunarodnye standarty mestnogo samoupravleniia y ykh rol v stanovlenii publychnoi samopravlencheskoi (munytsypalnoi) vlasty v Ukrainy* [International standards of local self-government and their role in the formation of public self-government (municipal) power in Ukraine], available at: <http://tfiles/docs/bulleten/18> (Accessed 21 October 2021).

42. Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report, CDLAD(2002)023rev, available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2002\)023rev2-cor-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2002)023rev2-cor-e) (Accessed 21 October 2021).

43. Code of Good Practice on Referendums, CDL-AD (2007) 008rev, available at: <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282007%29008-e> (Accessed 21 October 2021).

44. Code of Good Practice in the field of Political Parties, CDL-AD (2009) 002, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2009\)002-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)002-e) (Accessed 21 October 2021).

45. Code of Good Practice for Civil Participation in the Decision Making Process, CONF/PLE(2009) CODE, available at: <https://www.coe.int/en/web/ingo/civil-participation> (Accessed 21 October 2021).

46. On the intensification of Ukraine's cooperation with the European Union within the framework of Euroregions and prospects for cross-border cooperation: Parliamentary hearings. Session Hall of the Verkhovna Rada of Ukraine, May 16, 2007, available at: http://static.rada.gov.ua/zakon/skl5/par_sl/sl1605107.htm (Accessed 21 October 2021).

47. Kaminska, N.V. (2010), *Mistseve samovriaduvannia: teoretyko-istorychnyi i porivnialno-pravovy analiz* [Local self-government: theoretical-historical and comparative-legal analysis]. Kyiv, KNT, 2010, p. 147.

48. Cabinet of Minister of Ukraine (2020), Resolution "On amendments to the Methodology for the formation of affluent territorial communities", available at: <https://zakon.rada.gov.ua/laws/show/34-2020-%D0%BF#Text>; The Government supported the draft resolutions of the Verkhovna Rada on the formation and liquidation of districts in Ukraine, available at: <https://www.kmu.gov.ua/news/uryad-pidtrimav-proektipostanov-vru-pro-utvorennia-ta-likvidaciyu-rajoniv-v-ukrayini>; On the formation and liquidation of districts: Resolution of the Verkhovna Rada of Ukraine available at: <https://zakon.rada.gov.ua/laws/show/807-20#Text> (Accessed 21 October 2021).

49. Soroko, V. *Dosvid ta aktualni problemy kadrovoho zabezpechennia orhaniv mistsevoho samovriaduvannia v suchasnykh umovakh* [Experience and current problems of staffing of local governments in modern conditions] available at: http://www.guds.gov.ua/control/uk/publish/printable_article (Accessed 21 October 2021).

50. Volska, O., Sapelnikova, N., Koltsova, D. (2019). *Aktualni problemy kadrovoho zabezpechennia orhaniv publichnoi vlady* [Current problems of staffing public authorities]. *Visnyk Natsionalnoi akademii Derzhavnoi prykordonnoi sluzhby Ukrainy* [Bulletin of the National Academy of the State Border Guard Service of Ukraine], vol. 1, p. 11.

51. Bezzub, I. *Vvedennia instytutu prefektiv v Ukraini: koryst chy zahroza dlia mistsevoho samovriaduvannia* [Introduction of the institute of prefects in Ukraine: benefit or threat to local self-government], available at: http://www.nbuviap.gov.ua/index.php?option=com_content&view=article&id=2148:vvedennia-institutu-prefektiv-v-ukrajini&catid=8&Itemid=350 (Accessed 21 October 2021).

52. Buturlakina, T.O., Olenchyn, V.V. (2010). *Problemy zmitsnennia finansovoi nezalezhnosti mistsevoho samovriaduvannia* [Problems of strengthening the financial independence of local self-government]. *Naukovyi visnyk Uzhhorodskoho universytetu. Ekonomika* [Scientific Bulletin of Uzhgorod University. Economy], vol. 31, p. 228.

53. Kuzheliev, M.O., Plakhotniuk, V.V. (2018). *Formuvannia mistsevykh biudzhetyv v umovakh biudzhetnoi detsentralizatsii* [Formation of local budgets in terms of budget decentralization]. *Ekonomichnyi visnyk universytetu* [Economic Bulletin of the University] vol. 36 (1), p. 305.

54. Nechyporenko, A.V., Kachula, A.H. (2018). *Biudzhetna detsentralizatsiia v Ukraini: suchasnyi stan ta perspektyvy rozvytku* [Budget decentralization in Ukraine: current status and development prospects]. *Naukovyi visnyk Khersonskoho derzhavnoho universytetu. Ser. "Ekonomichni nauky"* [Scientific Bulletin of Kherson State University. Ser. "Economic Sciences"], no. 29 (2), p. 95.

55. Kuzheliev, M.O., Plakhotniuk, V.V. (2018). *Formuvannia mistsevykh biudzhetyv v umovakh biudzhetnoi detsentralizatsii* [Formation of local budgets in terms of budget decentralization]. *Ekonomichnyi visnyk universytetu* [Economic Bulletin of the University], vol. 36 (1), p. 306.

56. Boiarskyi, V.O. (2020). *Transkordonne spivrobotnytstvo yak mizhnarodnyi pryntsyf mistsevoho samovriaduvannia* [Cross-border cooperation as an international principle of local self-government]. *Konstytutsiini pryntsyfy mistsevoho samovriaduvannia ta rehionalna polityka YeS: tezy dopovidei Mizhnarodnoi naukovo-praktychnoi konferentsii* [Constitutional Principles of Local Self-Government and EU Regional Policy: Abstracts of the International Scientific and Practical Conference]. Kharkiv, p. 143.

57. Verkhohantseva, K.S. (2009). *Razvytye sovremennoho transhranychnoho sotrudnychestva Rossyy y stran Evropy: sravnytelnyi kharakter*. Diss. kand. polyt. nauk [Development of modern cross-border cooperation between Russia and European countries: comparative nature. Ph.D of sci. diss.]. Moscow, p. 11.

58. Tolkovanov, V.V. *Standarty ta pryntsyfy dobroho vriaduvannia na mistsevomu i rehionalnomu rivniakh yak zahalnoievropeiska tsinnist* [Standards and principles of good governance at local and regional

levels as a European value], available at: <http://www.dy.nayka.com.ua/?op=1&z=565> (Accessed 21 October 2021).

59. Bezverkhniuk, T.M., Sakhanenko, S.Ie., Topalova, E.Kh. (2008). *Yevropeiski standarty vriaduvannia na rehionalnomu rivni* [European standards of governance at the regional level]. Monograph. Odessa, ORIDU NADU, p. 76.

60. Definition of basic concepts and terminologies in governance and public administration. Compendium of basic terminology in governance and public administration [Electronic resource]. 2006, p. 4. Available at: <http://www.unpan1.un.org/intradoc/.../unpan022332.p> (Accessed 21 October 2021).

61. Tolkovanov, V.V. (2011). *Yevropeiska stratehiia innovatsii ta dobroho vriaduvannia na mistsevomu rivni: osnovni zavdannia, istoriia vynyknennia ta dosvid vprovadzhennia* [European strategy for innovation and good governance at local level: main objectives, history and experience of implementation]. *Aktualni problemy derzhavnoho upravlinnia: zb. nauk. pr.* [Actual problems of public administration: coll. Science], vol. 3 (47), p. 215.

62. Demchenko, I.S. (2011). *Stan implementatsii yevropeiskykh pravovykh standartiv mistsevoho samovriaduvannia v Ukraini* [Status of implementation of European legal standards of local self-government in Ukraine]. *Visnyk Natsionalnoi yurydychnoi akademii Ukrainy imeni Yaroslava Mudroho* [Bulletin of the Yaroslav Mudryi National Law Academy of Ukraine], no. 4, p. 155.

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