

Artículo de investigación

Territory formalization in the constitutions of CIS countries

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Formalização do território nas constituições dos países da CEI

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Escrito por:

Lyudmila But'ko⁵¹
Boris V. Makogon⁵²
Aleksej N. Nifanov⁵³
Oleg N. Poluhin⁵⁴
Sergey V. Tychinin⁵⁵

Abstract

The article presents the author's analysis of CIS constitutions to identify the territorial norms in them, taking into account the integrated approach to the definition of the latter. Typical constitutive formats relating to the territory in the focus group of states have been identified and characterized. The consideration of the options for constitutional and legal consolidation of the territorial norms in CIS countries is conditioned by the fact that at the time of the Soviet Union collapse "as a geopolitical reality" the republics received sovereignty and were in a comparable system of political and legal coordinates. The research attention is focused on the identification of the constitutional format concerning the territorial norms in the member states and CIS participants (Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Uzbekistan).

Key words: territory, state territory, the territory of an administrative unit, municipal territory, autonomy, management, self-government.

Resumen

El artículo presenta el análisis del autor de las constituciones de la CEI para identificar las normas territoriales en ellas, teniendo en cuenta el enfoque integrado de la definición de esta última. Se han identificado y caracterizado formatos constitutivos típicos relacionados con el territorio en el grupo focal de estados. La consideración de las opciones para la consolidación constitucional y legal de las normas territoriales en los países de la CEI está condicionada al hecho de que en el momento del colapso de la Unión Soviética "como realidad geopolítica" las repúblicas recibieron soberanía y estaban en un sistema comparable de política y coordenadas legales. La atención de la investigación se centra en la identificación del formato constitucional relativo a las normas territoriales en los Estados miembros y los participantes de la CEI (Armenia, Azerbaiyán, Bielorrusia, Kazajstán, Kirguistán, Moldavia, Tayikistán, Turkmenistán, Uzbekistán).

Palabras clave: territorio, territorio estatal, territorio de una unidad administrativa, territorio municipal, autonomía, gestión, autogobierno.

Resumo

O artigo apresenta a análise do autor das constituições do CIS para identificar as normas territoriais nelas contidas, levando em consideração a abordagem integrada para a definição das últimas. Formatos constitutivos típicos relacionados ao território no grupo focal de estados foram identificados e

⁵¹ Belgorod State University, 85, Pobedy Street, Belgorod, the Belgorod region, 308015, Russia

⁵² Belgorod State University, 85, Pobedy Street, Belgorod, the Belgorod region, 308015, Russia

⁵³ Belgorod State University, 85, Pobedy Street, Belgorod, the Belgorod region, 308015, Russia
E-mail: nif@list.ru

⁵⁴ Belgorod State University, 85, Pobedy Street, Belgorod, the Belgorod region, 308015, Russia

⁵⁵ Belgorod State University, 85, Pobedy Street, Belgorod, the Belgorod region, 308015, Russia

caracterizados. A consideração das opções para a consolidação constitucional e legal das normas territoriais nos países da CEI é condicionada pelo fato de que na época do colapso da União Soviética "como uma realidade geopolítica" as repúblicas receberam soberania e estavam em um sistema comparável de política e coordenadas legais. A atenção da pesquisa está focada na identificação do formato constitucional relativo às normas territoriais nos estados membros e participantes da CEI (Armênia, Azerbaijão, Bielorrússia, Cazaquistão, Quirguistão, Moldávia, Tadjiquistão, Turcomenistão, Uzbequistão).

Palavras-chave: território, território estatal, território de unidade administrativa, território municipal, autonomia, gestão, autogoverno.

Introduction

The phenomenon of the territory is distinguished by the fact that it keeps the scientific attention among the representatives of the most diverse areas of knowledge, who have tried to comprehend the depth of this unique material basis for mankind existence.

Legal science also manifests itself actively in the territorial study from the standpoint of its branch line and institutional feature methodology (Keshtkar M.M 2013).

In contrast to the private law approach, which regards the territory as an object of ownership or civil-legal turnover (Sem'yanova A.Yu. 2005), the public-law specifics describes the territory as the limits of state sovereignty, (Smith A.D. 1981) the determining sign of a state (Keshtkar, M.M and Ghazanfari M. 2017), the criterion of self-identification for citizens (Nested Identities: Nationalism, Territory, and Scale / ed. by G.H. Herb, D.H. Kaplan. Lanhan. 1999.), the sphere of a state exclusive jurisdiction (Chernyshev D.N. 2010), the boundaries of state mechanism and local self-government jurisdiction (Trubilov G.V. 2017), the basis for the development of ethnic groups, etc. (Bahador, M and Keshtkar M.M 2017.).

Let us clarify that the constitutional law of many countries of the world uses the concept of "territory" concerning its internal arrangement (Keshtkar M.M 2013). This thesis confirms the experience of the United States, where the territories were originally represented by all the areas that did not have an independent government as opposed to the states of self-government and were administered by the US administration directly. The practice followed the path that all states except the first thirteen ones, as well as Texas, California and West Virginia, were the territories first. Thus, in 1876 there were eight organized territories among separate administrative territories (Idaho, Arizona, Wyoming, Washington, Dakota,

Montana, New Mexico and Utah) and two unorganized territories (Alaska and Indian Territory) (Hannah M.G. 2000).

In France, apart from the state and state institutions, there is the notion of a territorial collective (Article 72 of the Constitution of France). The territorial collectives in France are the regions that are located between the national level - the state and local levels - departments and communes (González Llontop and Otero González, 2017). The territorial collectives in France are divided into two types: first, communes, departments and regions subject to the rules of common law, and, secondly, the collectives of the Paris region, Corsica, overseas departments and territories - that is, those that have a special status (Thoenig, J.-C. 2005).

At the same time, the constitutional formalization of the territorial organization has its own national specifics, of course. So the territory in the constitutional standards of federal states (Butko L.V., Markhgeym M.V., Nifanov A.N., Novikova A.E., Usatov S.A. 2017) differs from the constituting of a territory in unitary states objectively (Markhgeym M.V., Nifanov A.N., Novikova A.E., Poluhin O.N., Tonkov E. E. 2017.).

The consideration of the peculiarities of the historical, political and national constitutional development of CIS countries gave us the grounds to consider the options for their constitutional and legal consolidation of the norms on the territory separately from other unitary states.

Methodology.

The study was based on a dialectical approach to the study of legal phenomena and the processes using general scientific (system, logical, analysis and synthesis) and private-scientific methods. The latter include the formal-legal, linguistic-legal and comparative-legal method, which were collectively used for the





study of constitutional texts in order to identify the variants and the features of territorial organization in the specified focus group of states; the consolidation of the territorial constitutionally significant principles in them; the formalization of "municipal formation" and "autonomy" categories.

Initially, the focus group consisted of 9 CIS countries, whose constitutions were taken from the Internet library "The Constitutions of the states (countries) of the world" (<http://worldconstitutions.ru/>). The choice of this focus group was conditioned by the fact that the republics that gained sovereignty more than a quarter of a century ago were in a comparable system of political and legal coordinates. This made it possible to reveal more clearly the general and particular in the approaches of states to the structuring of their territorial structure and the record of the categories associated with it in the basic laws.

Discussion and results

The focus group for the identification of the constitutional format of the norms on a territory is represented by the member states and CIS participants (Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Uzbekistan).

The analysis showed the existence of a group of constituent acts, in which a special section (a chapter) on the status peculiarities of a state territory is isolated. However, these norms are devoted to the territory indirectly, their direct purpose is to regulate the management within a certain territory, or to determine an administrative and a territorial structure.

Thus, the Constitution of the Republic of Uzbekistan provides for a separate Chapter XVI "Administrative and territorial structure of the Republic of Uzbekistan". Its art. 68 from the point of view of territorial administration and self-government criterion (although the title of the chapter says only management), indicates that the Republic of Uzbekistan consists of regions, the districts of cities, towns, villages, auls and the Republic of Karakalpakstan. Let's note that the structure of this constitutional norm, despite the declared territorial structure, does not contain the following formulations: "the territory of the Republic of Uzbekistan consists of regions, districts", etc.

The considered group of acts, in our opinion, should also include the Constitution of Moldova in connection with the fact that an independent art. 3 with the name "Territory" is provided in it. It reflects the principle of inalienability of the Republic of Moldova territory, as well as the provisions on state borders ("the borders of the country are fixed by an organic law with the observance of universally recognized principles and norms of international law") (Antón Chávez, 2017). As we see, this article is important in the informative aspect only when some status features of the state of Moldova territory are determined. There are no regulations about the order of status and other details change, about its species diversity in the analyzed article.

Further, in our opinion, it is worthwhile to pay attention to the consolidation of the territorial principles in the constitutions of the focus group of states.

Thus, the Constitution of Azerbaijan, Art. 11 (Part 1) determines that the territory of the Republic of Azerbaijan is unified, inviolable and inseparable (Part 1).

Art. 1 of the Constitution of Belarus formulated the principle of territorial integrity. Then the Part 2 of the Art. 9 states that the territory of Belarus is unified and inalienable.

The part 2 of Art. 3 of the Constitution of Kazakhstan determines that the state ensures the integrity, the inviolability and the inalienability of its territory.

Part 1 of the Art. 8 of the Kyrgyz Constitution recorded the provision that the territory of the Kyrgyz Republic is holistic and inviolable within the existing border.

According to the Constitution of Tajikistan, the territory is inseparable, inviolable and holistic (Article 7).

The Constitution of Uzbekistan emphasizes the inviolability and the indivisibility of not only the territory, but also the state border (Article 3).

The specificity of the legal design in the art. 1 of the Constitution of Turkmenistan is that unity and indivisibility are applied to state sovereignty and to the territory of Turkmenistan. It also states that the state protects the territorial integrity of Turkmenistan.

It should be clarified that there are no searchable principles in the Armenian Constitution. In our opinion, this is a significant drawback of the constituent instrument, requiring adjustments in this regard.

A separate attention should be paid to constitutional provisions that make it possible to conclude that there is a municipal territory.

Based on the analysis of the constitutions of the member countries and CIS members, there should be four principal formats to represent local self-government: a special chapter (a section) about it; in conjunction with local state government or local government; the fragmentary reference to the constitution text; the replacement of "local self-government" concept with other legal constructions.

A further study of the focus group constitutions made it possible to identify a typical method of territorial species diversity record, based on its administrative-territorial division (outside a special section or a chapter):

- "The administrative-territorial units of the Republic of Armenia are marzes (regions) and municipalities" (Article 121 of the Constitution of Armenia);

- "The territory is divided into regions, districts, cities and other administrative-territorial units. The administrative-territorial division of the state is determined by the legislation" (Part 2, Article 9 of the Constitution of Belarus);

- "In order to organize the state administration and local self-government, the territory of the Kyrgyz Republic is divided into administrative and territorial units that are defined by law" (Article 8, part 2). At the same time, the cities of Bishkek and Osh are the cities of republican significance, their status is determined by law;

- "In terms of administrative and territorial structure Turkmenistan consists of velayats, the cities with the rights of an velayat, etraps, the cities with the rights of an etrap, the cities in an etrap, settlements and gengeshliks. The territory of one or several villages forms a gengeshlik" (Article 16).

An exception here is the Part 2, Art. 11 of the Constitution of Azerbaijan, which lists only the composition of the territory: the internal waters of the Republic of Azerbaijan, the sector of the Caspian Sea (lakes) belonging to the Republic of

Azerbaijan, and the airspace over the Republic of Azerbaijan.

Regarding the order of the territorial change in the state, it is established that it is defined only in the Constitution of Azerbaijan. The part 3 of the Art. 11 states that the Azerbaijan Republic does not transfer its territory to anyone in any way and in any form; state borders can only be changed by referendum conducted by a decision of the Milli Mejlis of the Republic of Azerbaijan among the entire population of Azerbaijan, based on the will of the people of Azerbaijan.

Art. 69 of the Constitution of Uzbekistan determines that the change of the borders of the Republic of Karakalpakstan, the provinces, the city of Tashkent, as well as the formation or the abolition of regions, cities, districts is carried out with the consent of the Oliy Majlis of the Republic of Uzbekistan.

We believe that the current situation with the lack of a constitutional record concerning the procedure of the territorial status change in the remaining states is related with legislative regulation.

The analysis of the constitutions of the CIS countries showed that autonomies are envisaged in three of nine states (the Nakhichevan Autonomous Republic in Azerbaijan, the Gagauz Autonomous Republic in Moldova, and the Republic of Karakalpakstan in Uzbekistan).

All countries of the Commonwealth, which include autonomous entities, emphasize the organic interconnection of the whole and its parts, their unity. Thus, the Constitution of Azerbaijan defines the status of the Nakhichevan Autonomous Republic within Azerbaijan as its integral part. This Constitution HAS a special chapter IX, dedicated to the Nakhichevan Autonomous Republic. According to Art. 163 of the Constitution of Azerbaijan Nakhichevan Autonomous Republic is an autonomous state within the Azerbaijan Republic.

The status of the Nakhichevan Autonomous Republic is determined by the Constitution of Azerbaijan and the Constitution of the Nakhichevan Autonomous Republic. Azerbaijan does not recognize Armenia decision on the state independence of Nagorno-Karabakh and its entry into Armenia. The status of the Nagorno-Karabakh Autonomous Region was abolished by the Law of Azerbaijan "On the Abolition of the Nagorno-Karabakh Autonomous Region of the





Republic of Azerbaijan" issued on November 28, 1991.

The status of the Gagauz Republic in Moldova is determined by the Constitution of Moldova and by the Law of the Republic of Moldova "On Special Legal Status of Gagauzia (Gagauz Yeri)" issued on December 23, 1994.

Gagauzia, being an integral part of Moldova, is a territorial autonomous entity with a special status, the form of self-determination of a small Gagauz people compactly residing on the territory of Moldova. The purpose of this Republic creation is to satisfy national needs and to preserve the identity of the Gagauzians, their fullest and most comprehensive development, language and national culture development, ensuring the political and the economic independence of the region.

The law "On the special legal status of Gagauzia (Gagauz Yeri)" stipulates that if the status of the Republic of Moldova is changed to an independent state, the people of Gagauzia have the right to external self-determination (par. 4, clause 13). At that, the Republic of Moldova is the guarantor of the full and unconditional exercise of Gagauzia powers.

Further, let's note that the Republic of Karakalpakstan is the part of Uzbekistan. The Statement "On State Independence of the Republic of Uzbekistan" issued on August 31, 1991 proclaimed that "the territory of the Republic of Uzbekistan together with the territory of the Republic of Karakalpakstan, which makes the part of it, is indivisible and inviolable. The Republic of Uzbekistan, having no territorial claims to other states, possesses the supreme law regarding its territory and its natural resources."

The main provisions of this Statement had a normative expression in the Law of Uzbekistan "On the Fundamentals of State Independence of the Republic of Uzbekistan" issued on August 31, 1991, which was granted the constitutional status on September 30, 1991.

Uzbekistan is the only CIS country that recognizes the sovereign nature of the state power of the Republic that makes the part of it.

The sovereignty of Karakalpakstan is protected by Uzbekistan (Article 70 of the Constitution of Uzbekistan). Karakalpakstan has the right to withdraw from Uzbekistan on the basis of a general referendum of the people of Karakalpakstan (Article 74). However, this decision is subject to an approval by the highest state authority of Uzbekistan Oliy Majlis (paragraph 5, Article 77 of the Constitution of Uzbekistan).

The second form of the autonomy in the CIS countries should be administrative-territorial autonomy (autonomous region). It has no state characteristics. It does not have a constitution, citizenship, or any supreme bodies of state power.

Currently, there is only Gorno-Badakhshan Autonomous Oblast as the part of Tajikistan, the legal status of which is determined by the Constitution of Tajikistan and the Constitutional Law of the Republic of Tajikistan No. 108 "On the Gorno-Badakhshan Autonomous Oblast" issued on November 4, 1995. It is an integral and an indivisible part of Tajikistan.

It is prohibited to change the borders of the Gorno-Badakhshan Autonomous Region without the consent of its Majlis of People's Deputies - the supreme body of the legislative (representative) power. The powers of the Gorno-Badakhshan Autonomous Oblast in the social, economic and cultural spheres of life are defined by the Constitutional Law of the Republic of Tajikistan "On Gorno-Badakhshan Autonomous Oblast" issued on November 4, 1995.⁵⁶

Conclusions

The catalog of territorial organization principles in the constitutive acts being analyzed is approximately the same and is represented by such principles as integrity (except for Uzbekistan and Moldova); inviolability (except for Belarus, Turkmenistan and Moldova); indivisibility (except for Belarus, Kazakhstan, Kyrgyzstan, and Moldova); unity and inalienability.

If there are various variations in the constituent acts being analyzed concerning the

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http://ez2www.com/book_687_chapter_53_%C2%A7_2_Avtonomija_v_zarubezhnykh_stranakh_SNG.html

legal consolidation of local self-government institution, it is logical to assume that the municipal territory exists in these states.

The analyzed Constitutions have two typical constitutional and legal formats concerning the record of the norms about state territory in the focus group of countries: first, the allocation of the state territory, the territory of administrative units and municipalities; secondly, the allocation of autonomy territories in the state along with the specified species.

It is established that the constitutional norms on the territory in the CIS states and CIS participants are fragmentary ones; as a rule, they are not consolidated in a separate structural unit of a legal act; they have an indirect nature (i.e., the object of their direct regulation is the relationship of management or self-government in a state).

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