

INNOVATION, WORK, SOCIETY

PRINCIPLES OF LOCAL GOVERNMENT:
TERMINOLOGICAL ISSUES (PART TWO)**Vitaliy Barvinenko**

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Summary

The European Charter of Local Self-Government 1985 provides for a number of principles of local self-government that are important for compliance in Ukraine. Some of these principles are already included in national legislation, and they are declared principles of local self-government in Ukraine. Some are not yet. Mostly the scientists, that are specialists in the Ukrainian municipal law, do not write about these principles. That is why the author has used only the monographical works of B.V. Kalinovsky and S.V. Malikov.

The author gives the overview of S.V. Malikov's researches of the topic, and concludes: although the European Charter of Local Self-Government 1985 itself was studied by S.V. Malikov in more detail than the vast majority of Ukrainian authors – specialists in municipal law, precisely the principles of local self-government enshrined in it, he paid only relatively little attention.

The author gives the overview of B.V. Kalinovsky's researches of the topic, and concludes: he has correctly interpreted at least one of the principles of local self-government from the provisions of each of the articles of the first section of the European Charter of Local Self-Government 1985; the author counts 13 principles in total. Among these principles, 11 have been named; sometimes suggested B.V. Kalinovsky title of the principle is debatable, especially taking into account the provisions of the municipal legislation of Ukraine.

Key words: local self-government, municipal administration, territorial collective, values of local self-government in Ukraine, principles of local self-government, Council of Europe, municipal axiology.

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1. Introduction

The European Charter of Local Self-Government 1985 provides for a number of principles of local self-government that are important for compliance in Ukraine. Some of these principles are already included in national legislation, and they are declared principles of local self-government in Ukraine. Some are not yet.

In this regard, it is of interest how the provisions of the European Charter of Local Self-Government 1985 in general and the principles enshrined in it in particular are evaluated by specialists in municipal law in Ukraine, referring to the work of Ukrainian researchers.

The authors, that are specialists in the Ukrainian municipal law, do not write about these principles – including O.V. Batanov, I.A. Galiyahmetov, and other authors (*for example, Qaracayev, 2022 and Mishyna, 2021, 2022*). That is why the author has used only the monographical works of B.V. Kalinovsky and S.V. Malikov. These authors gave their opinions on the topic, mentioned above.

To write this research, the author has used the systematical and axiological approaches, based on the dialectics. The methods used in this article are as follows: deductive and inductive, analysis and synthesis (including the legal analysis), comparative and doctrinal research.

The aim of the article is to analyze, how the Ukrainian municipal literature covers the topic of the European municipal principles, enshrined in the European Charter of Local Self-Government 1985.

2. The terminological variety in the Ukrainian municipal literature

In Ukrainian legal literature, the question of the impact of the European Charter of Local Self-Government 1985 on municipal legislation, the question of the implementation of these provisions in Ukraine was investigated by S.V. Malikov – his thesis for the degree of candidate of legal sciences on the topic "Principles of local self-government in Ukraine" (2012) reflects the author's view on how exactly the provisions of the 1985 Charter can be most effectively applied in Ukraine.

First, S.V. Malikov noted the axiological significance of the European Charter of Local Self-Government 1985, and therefore, the fact that this document, based on its content and the way in which this content was formalized, is the source of the principles of local self-government. The researcher noted: "The European Charter of Local Self-Government 1985 is a system of norms-principles that reflect the processes of constitution and institutionalization of the Ministry of Internal Affairs as a legal institution, an element of the constitutional system, which must be implemented by the member states of the Charter on their territories in the context of fulfilling the international obligations assumed by them under the international treaty" (*Malikov,2012: 44*). It is worth fully agreeing with this opinion.

Secondly, S.V. Malikov singled out the principles that, in his opinion, are contained in the European Charter of Local Self-Government 1985. Among such principles, he proposed to consider the following:

- the principle of recognition and legalization of the Ministry of Internal Affairs, the principle of granting the Ministry of Internal Affairs its own competence, etc. (*Malikov,2012: 56*);
- the principle of local self-government (*Malikov,2012: 77*);
- the principle of local democracy (*Malikov,2012: 77*).

When distinguishing these principles, S.V. Malikov in his monographic work does not demonstrate which articles of the European Charter of Local Self-Government 1985 he refers to, when distinguishing these principles (some assumptions can be made about this, but they are not accurate, since in the analyzed work these principles are cited by themselves, outside of that context, which would facilitate the search for the "primary source" among the provisions of the European Charter of Local Self-Government.

Thirdly, S.V. Malikov paid particular attention to the Additional Protocol to the European Charter of Local Self-Government 1985 in the context of researching the principles contained therein. The author considers that the Additional Protocol, namely its Article 1, "establishes a new principle (standard) of the Ministry of Internal Affairs – the right to participate in the affairs of a local authority" (*Malikov,2012: 181*). This is the only one of the principles – the principle

of local self-government, analyzed by S.V. Malikov. It is also the only one principle the author gives the description of the content for. Also, this is the only principle from among the aforementioned, regarding which S.V. Malikov clearly refers to the provisions of the document in which this principle is contained.

Regarding the "principle (standard) of the Ministry of Internal Affairs – the right to participate in the affairs of the local authority" S.V. Malikov proposed to consider that "the etymological features of this principle ... are that:

- a) such a right means the right to take decisive measures to determine or influence the exercise of the powers and duties of a local authority;
- b) states within their jurisdiction must ensure this right to everyone;
- c) the legislation of the country must provide for means that contribute to the exercise of this right without any form of discrimination;
- d) any formalities, conditions or limitations of this right must be established by legislation and comply with the international legal obligations of the state;
- e) the following formalities, conditions and restrictions must be necessary to ensure:
 - 1) ethical honesty and transparency in the exercise of powers and duties of local authorities;
 - 2) functioning of real political democracy;
 - 3) support of public safety in a democratic society;
 - 4) fulfillment by the Party of the requirements of its international legal obligations"

(*Malikov, 2012: 181-182*).

This author's position and its justification should be taken into account. According to S.V. Malikov, Article 2 of the Additional Protocol to the European Charter of Local Self-Government 1985 details this principle, establishing the procedural features of its practical implementation.

Thus, although the European Charter of Local Self-Government 1985 itself was studied by S.V. Malikov in more detail than the vast majority of Ukrainian authors – specialists in municipal law, precisely the principles of local self-government enshrined in it, he paid only relatively little attention.

3. The comparison attempts

Another Ukrainian researcher who studied in detail the principles of local self-government laid down in the European Charter of Local Self-Government 1985 is B.V. Kalinovsky. He summarized the results of his scientific research in a dissertation for obtaining a candidate of legal sciences degree on the topic "Constitutional principles of local self-government in Ukraine" (2004). Unlike S.V. Malikov, B.V. Kalinovsky devoted a separate sub-section of his research to these issues – sub-section 1.3. "Implementation of the principles of the European Charter of Local Self-Government in national legislation."

First, it is important how the author succinctly characterized the European Charter of Local Self-Government 1985. As aptly noted by B.V. Kalinovsky, "The European Charter of Local Self-Government orients all democratic states in relation to those principles and features that must correspond to the organization and activity of local self-government in democratic countries, the relationship of local self-government in these countries with local government, which is carried out on a state basis" (*Kalinovsky, 2004: 53*). One should agree with this description.

Secondly, B.V. Kalinovsky formulated that "when forming national principles of local self-government in domestic legislation, it is necessary to adhere to the generally recognized principles of local self-government common to all countries – members of the Council of Europe. At the same time, it should be remembered that the most important documents establishing the principles of local self-government in Ukraine are the Constitution of Ukraine and the Law of Ukraine "On Local Self-Government in Ukraine" (*Kalinovsky, 2004: 54*). Thus, it becomes obvious the direction of the author's efforts – further improvement of the municipal legislation of Ukraine. It is through the prism of this that the study of the text of the European Charter of Local Self-Government 1985 is conducted.

For example, B.V. Kalinovsky, at the outset, formulates that "the Constitution of Ukraine to a certain extent concretizes part of the principles of the European Charter of Local Self-Government in relation to the peculiarities of our state. The recognition of local self-government as the basis of the organization of local public power found its embodiment, as required by Art. 2 of the European Charter of Local Self-Government, in the Constitution of Ukraine, in particular in Art. 5, according to which, "the people exercise power directly and through state authorities and local self-government bodies" (*Kalinovsky, 2004: 55*). Considering this initial thesis, it is advisable to get acquainted with other author's conclusions and generalizations.

Thirdly, sometimes it is not very clear why B.V. Kalinovsky interprets this or that principle from the text of the European Charter of Local Self-Government 1985. It is appropriate to consider step by step which principles he considers to be contained in the European Charter of Local Self-Government 1985.

1. The above-mentioned principle of recognition of local self-government, which is referred to as the "principle of local self-government" in Article 2 of the European Charter of Local Self-Government 1985. The author adds his understanding of the essence of this principle: "According to this principle, the relationship between the center and places, central and local authorities should no longer be built on the basis of rigid centralization or the so-called democratic centralism characteristic of the former Soviet system, but on the constitutional principles of law, organizational and material and financial independence (autonomy) of local self-government" (*Kalinovsky, 2004: 55*). This does not cause any comments.

2. B.V. Kalinovsky continues: "part 2 of Art. 4 of the European Charter of Local Self-Government 1985 enshrines the principle according to which: "Local authorities, within the limits of the law, have the full right to freely resolve any issue that is not removed from their sphere of competence and the solution of which is not entrusted to any other body" (*Kalinovsky, 2004: 60*). He does not formulate his point of view regarding the name of this principle, but it is likely that it is one of the manifestations (aspects) of the principle of legal, organizational and material and financial independence within the limits of the powers defined by law – the author mentions this principle in the analyzed subsection of his research. This does not cause any comments.

3. "Part 3 of Art. 4 of the European Charter of Local Self-Government 1985 enshrines the general principle of decentralization of public administration functions, better known in Ukraine as the principle of subsidiarity" (*Kalinovsky, 2004: 64*), – emphasizes B.V. Kalinovsky. He also draws attention to the fact that this principle should be called the "principle of subsidiarity (decentralization)". The question of whether the principle of subsidiarity and the principle of decentralization are identical requires additional research. There is no doubt that the mentioned part of Article 7 of the European Charter of Local Self-Government 1985 enshrines the principle of subsidiarity.

4. B.V. Kalinovsky states that the European Charter of Local Self-Government 1985 also enshrines the principle of the ubiquity of local self-government (*Kalinovsky, 2004: 62*).

This statement requires at least a reference to the relevant provision of the European Charter of Local Self-Government 1985, and preferably additional authorial argumentation.

5. As the next principle included in the European Charter of Local Self-Government 1985, B.V. Kalinovskiy calls "the principle of full powers of local self-government and unlimited self-government rights", he "deduces" it from the content of part 4 of Art. 4 European Charter of Local Self-Government 1985 (*Kalinovsky, 2004: 63*). This conclusion requires argumentation – in our opinion, this is another manifestation (aspect) of the principle of legal, organizational and material and financial independence within the limits of the powers defined by law (see the second principle in this list).

6. B.V. Kalinovskiy continues: "Part 5 of the Art. 4 of the European Charter of Local Self-Government 1985 defines the principle of adaptation of delegated powers to local conditions" (*Kalinovsky, 2004: 64*). This conclusion requires argumentation – in our opinion, this is another manifestation (aspect) of the principle of legal, organizational and material and financial independence within the limits of the powers defined by law (see the second principle in this list).

7. The next B.V. Kalinovskiy places such a principle as the principle of taking into account the interests of territorial communities, with reference to Part 6 of Art. 4 of the European Charter of Local Self-Government 1985 (*Kalinovsky, 2004: 65*). This provision of the Charter is formulated as follows: "In the process of planning and decision-making regarding all issues that directly concern local self-government bodies, the latter should be consulted, as far as possible, in a timely and proper manner". This statement needs additional argumentation – for example, one can talk about the principle of people's rule and other principles of local self-government.

8. B.V. Kalinovskiy continues: "Article 5 of the European Charter of Local Self-Government 1985 enshrines the principle of the integrity of the territory" (*Kalinovsky, 2004: 66*). This statement needs additional argumentation. In our opinion, this is another manifestation (aspect) of the principle of legal, organizational and material and financial independence within the limits of the powers defined by law (see the second principle in this list).

9–10. B.V. Kalinovskiy states that "The Charter clarifies two basic principles affecting the personnel of local self-government bodies: free performance of their functions and unhindered participation in competitions for obtaining a place in local self-government bodies" (*Kalinovsky, 2004: 67*). He does not refer to a specific article of the European Charter of Local Self-Government 1985, but probably refers to the second part of Article 6 "Appropriate administrative structures and resources for local self-government bodies to carry out their tasks". So, according to B.V. Kalinovskiy, this part of the European Charter of Local Self-Government 1985 contains two principles of local self-government at once, namely:

- the principle of free performance of their functions by officials of local self-government bodies;
- the principle of unhindered participation in contests for a place in local self-government bodies.

The separation of these principles requires additional argumentation, for example, the second principle is seen as nothing more than one of the manifestations of the principle of equality.

11. Later B.V. Kalinovskiy emphasizes the principle of "financial autonomy of local self-government, which is provided for in Art. 9 of the European Charter of Local Self-Government 1985" (*Kalinovsky, 2004: 69*). In our opinion, this is about another manifestation (aspect) of the principle of legal, organizational and material and financial independence within the limits of the powers defined by law (see the second principle in this list) – already about the aspect of material and financial independence.

12. In relation to the provisions of Article 10 "The right of local self-government bodies to freedom of association" B.V. Kalinovsky does not offer the name of the corresponding principle, although he states its existence. Thus, the study states that "The right to create associations, which belongs to local self-government bodies, can be exercised at three different levels: among themselves – on specific issues within their country; within associations of local authorities with the right to join international associations of local authorities; with self-government bodies of another country. The European Charter of Local Self-Government 1985, without regulating the form of implementation of this principle, emphasizes its mandatory nature" (*Kalinovsky, 2004: 70*). In order to make the author's proposal more comprehensive, it would be appropriate to formulate a name for this principle.

13. The last principle identified by B.V. Kalinovsky. He noted that "Art. 11 of the European Charter of Local Self-Government 1985, which completes the main part of the document, defines the fundamental principle according to which the freedom of action of local self-government bodies, within the limits of the powers established by law, must be protected" (*Kalinovsky, 2004: 70*). Firstly, it is not very clear why this principle is "fundamental". Secondly, again, this principle is not titled by the author. It can be assumed that it is about the principle of state support and guarantee of local self-government.

In his research, B.V. Kalinovsky also noted that "the democratic standards of the European Union and the Council of Europe are undoubtedly identical. And that is why the mechanism for implementing the principles of the European Charter of Local Self-Government in the practice of subjects of local self-government in Ukraine requires great attention" (*Kalinovsky, 2004: 72*). At the time of writing his work, this fully corresponded to the realities of the development of the state and society, and this thesis remains relevant even today.

4. Conclusions

Summing up, it is worth noting: B.V. Kalinovsky has correctly interpreted at least one of the principles of local self-government from the provisions of each of the articles of the first section of the European Charter of Local Self-Government 1985; the author counts 13 principles in total. Among these principles, 11 have been named; sometimes suggested B.V. Kalinovsky title of the principle is debatable, especially taking into account the provisions of the municipal legislation of Ukraine.

Nevertheless, there are no other specialists in the Ukrainian constitutional and municipal law, that has analyzed the principles of the European Charter of Local Self-Government 1985 as thoroughly as B.V. Kalynovsky. So, this vector of the research is a trend for the Ukrainian legal science, especially taking into the account the European Integration's perspectives of Ukraine.

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