

Models of normative consolidation of the municipal police constitutional and legal status

Modelos de consolidación normativa del estatus constitucional y legal de la policía municipal

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Abstract

The article is devoted to the comparative legal analysis of normative general and specialized legal acts, which indirectly or directly fix the constitutional and legal status of the lower level of public order protection bodies - the municipal police. The relevance of this study is explained by the attribution of local self-government bodies to the number of subjects of public order protection in the Russian Federation through the establishment of the municipal police, after the adoption of a specialized law on the municipal police. The comparative legal study made it possible to highlight the existing models of normative consolidation of the municipal police constitutional and legal status in accordance with the form of state structure.

Keywords: local government, municipal police, public order protection, form of government.

Resumen

El artículo está dedicado al análisis jurídico comparado de los actos jurídicos normativos generales y especializados, que fijan directa o indirectamente el estatus constitucional y jurídico de los órganos de protección del orden público de nivel inferior, la policía municipal. La relevancia de este estudio se explica por la atribución de los órganos de autogobierno local al número de sujetos de protección del orden público en la Federación de Rusia a través del establecimiento de la policía municipal, después de la adopción de una ley especializada sobre la policía municipal. El estudio jurídico comparado permitió destacar los modelos existentes de consolidación normativa del estatus constitucional y legal de la policía municipal de acuerdo con la forma de estructura estatal.

Palabras clave: gobierno local, policía municipal, protección del orden público, forma de gobierno.



Introduction

The normative consolidation of the municipal police constitutional and legal status, as an object of research, is of interest in view of local government body attribution to the lower level of public order protection bodies. This object is of double interest due to the fact that the functions of public order protection in the Russian Federation are assigned to local governments at the constitutional level, in the Art. 132 of the RF Constitution.

The main law of the state enshrines only the general and most important public relations in terms of content and nature. This also applies to the consolidation of the local self-government constitutional functions, which were further developed in the norms of the Federal Law No. 131 "On the general principles of local self-government organization in the Russian Federation" (06.10.2003) (Federal Law N 131-FZ), the Art. 15 and 16 of which are directly assigned to urban districts and municipal districts as a matter of local importance to protect public order through the creation of municipal militia. At the same time, part 3 of the Art. 83 of the said law indicate that the provisions of the aforementioned articles come into force after the adoption of the federal law, which determines the procedure for the municipal police organization and activities.

Thus, the most obvious normative consolidation of the constitutional and legal status of municipal police bodies and its relationship with the form of government can be traced in a number of foreign countries. This allows to distinguish two models of normative consolidation of the municipal police constitutional and legal status: federal and unitary.

Methodology

After studying the models of normative consolidation of the municipal police constitutional and legal status, the methodological foundations of the study were formed, such as the comparative legal method and the systemic and structural method. With the help of these methods, the legal systems of different states are examined by comparing state and legal institutions and their basic principles, and it can also be concluded that the system of sources of law on the activities of the municipal militia is functioning effectively or ineffectively.

Results

In terms of content, the norms that secure the constitutional and legal status of the municipal

police can be divided into the norms of a general and specialized nature.

To begin with, it should be said that most states recognize the norms of international law and international treaties as an integral part of national legislation. This conclusion applies to the legislation in the field of municipal police.

In particular, the acts of a general nature in the field of protecting and ensuring human rights and freedoms can be attributed to the acts of an international nature in terms of consolidating the constitutional legal status of the municipal militia (police): Universal Declaration of Human Rights; International Covenant on Civil and Political Rights and others.

Specialized acts include the following ones: The Code of Conduct for Law Enforcement Officials (Code of Conduct for Law Enforcement Officials) and Guidelines (Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials) to this code; The Declaration on the Police (Resolution No. 690, 1979); The Recommendation of the Committee of Ministers of the Council of Europe "On a European Code of Police Ethics" (Recommendation N REC, 2001); International standards for law enforcement bodies (Official website of the UN Human Rights Office) and others.

The above-mentioned acts are not applicable to all states, however, in general terms, they clearly show the normative consolidation of the constitutional legal status of the municipal militia (police), as the bodies of public order protection, representing a supranational level of this status consolidation.

At the state level, the normative consolidation of the constitutional and legal status is carried out directly in the Basic Laws of states, as well as in state legislation (in federal laws and the laws of unitary states). This study will be based on the normative practice of those states where the bodies of the municipal police are already functioning. Let's take the following countries as an example: Austria, Brazil, Italy, Canada, Portugal, France, Switzerland, and South Africa.

The general constitutional norms include the norms that allow tracing the relationship between the constitutional and legal status of the municipal militia (police) and the democratic principles of the state system and society organization as a whole, enshrined in the state, based on respect for human and civil rights and freedoms; the norms that consolidate the foundations of the municipal police activities as local self-government bodies, and



therefore public authorities, without touching on their competencies. These principles can be considered universal due to the fact that they are characteristic of democratic states.

The specialized norms should include the norms establishing the basis for the activities of public order protection bodies, as well as various kinds of requirements, as indicated in the Art. 78d of the Austrian Constitution (Official website of the UN Human Rights Office). This article establishes the need to have uniforms, as well as weapons, for all public order authorities due to the police nature of their activities, with the exception of a number of units, such as security units for various sectors of the economy, market surveillance authorities, fire services, and so on. The par. 2 of the article 118 of Austrian Constitution also indicates that communities are responsible for the implementation of public administration tasks in their own area of competence, which includes the local security police and simply the local police, which ensure order when carrying out any activities in the territory of municipalities.

The article 272 of the Portuguese Constitution (Official website of the Portuguese Parliament) explicitly states that the functions of the police include the protection of democratic rule of law, internal security and the rights of citizens. The general objectives of the police service are enshrined in the Constitution of South Africa (Official website of the Government of South Africa) in the Art. 205, which includes the prevention, fight and investigation of crimes in order to maintain public order, protect the inhabitants of the state, their property, as well as the observance and implementation of laws.

This should also include constitutional norms that directly enshrine the possibility of establishing municipal police bodies at the local level. The article 144 of the Brazilian Constitution (Official website of the President of Brazil) provides municipalities with the right to create municipal guards, established to protect municipalities, their property and infrastructure. The article 15 of the Austrian Constitution states that the functions of the municipal security police are provided by the community.

The South African Constitution also enshrines the possibility of creating police services at the local government level, if there is such a need, which is reflected in the Part 2 of the Art. 205. In turn, the Part 7 of the Art. 206 stipulates that national legislation should provide the basis for the creation, powers, functions and control of municipal police services.

The federal model of the normative consolidation of the municipal police constitutional and legal status involves the consolidation of this status at the state level, in addition to the constitutional norms, by the norms of federal legislation in the form of general or specialized laws.

Federal general laws include the Federal Law "On the Organization of Security Management and the Activities of the Security Police" (Federal Legal Information System of Austria (RIS)), which affects general issues of police organization in the state, indirectly relating to the activities of the local security police (municipal police).

As a specialized federal legislation, one can single out the Brazilian Law No. 13.022 "On the General Charter of the Municipal Guard" (August 8, 2014) (<https://presrepublica.jusbrasil.com>), which enshrines the foundations of the organization and activities of the Municipal Guard in Brazil. The law under consideration is of a basic nature, establishing the principles of the municipal guard activity, its competence, the foundations of the municipal guard organization, depending on the municipality population number.

The unitary model of the municipal police constitutional and legal status normative consolidation also presupposes the presence of general and specialized state laws.

The General Code of Local Authorities (<https://www.legifrance.gouv.fr>) has been adopted in France, which, in particular, addresses the issues of the municipal police constitutional and legal status. So the Art. L2212-2 defines the objectives of the municipal police, to which the legislator refers public order, safety, security and sanitation provision. This also includes the Code of National Security (<https://www.legifrance.gouv.fr>), which fixes various issues of competence, organizational issues, the issues of coordination of activities in state cooperation, the issues of control, and so on.

The statutory consolidation of the local police status through the norms of general and specialized legislation is carried out in such a state as Portugal. The Law of Portugal No. 176/2013 (Electronic Journal of Portuguese Law) establishes the legal regime of local authorities, as well as inter-territorial associations, the procedure for state power delegation to local authorities. The Article 23 of the aforementioned law provides municipalities with powers in the field of municipal police, and the decision on the establishment of public order protection bodies in the municipalities is taken by the municipal assembly.

Also within the state of Portugal, there is a specialized Framework Law No. 19/2004 defining



the regime and form of the municipal police creation (Electronic Journal of Portuguese Law), similar to the specialized Italian Framework Law on the Regulation of Municipal Police (March 7, 1986) (Official website of the Italian Republic legislation).

In the case of the federal model, it is necessary to highlight the regional level of the constitutional and legal status consolidation of the municipal police through the fundamental acts of the Federation and regional legislation subjects.

The Constitution of the Canton of Basel-Land in Switzerland (<http://bl.clex.ch>), contains the general provisions, indicating the independence of municipalities from state power in the Art. 44, thereby consolidating the competence of municipalities in various spheres of public life.

The fundamental acts of the constituent entities of the federation, in addition to general norms in the field of the constitutional legal status of the municipal militia (police), which for the most part have a similar content to the Basic Laws of States, also contain specialized norms.

Let's consider Switzerland. So the Art. 27 of the Constitution of the canton of Aargau (Official website of the Aargau State Chancellery) assigns the responsibility to ensure public order and safety to the canton and municipalities. As the tasks of municipalities, the Constitution of the Canton of Lucerne (Systematic Collection of Laws (SRL) of the Canton of Lucerne) identifies the tasks in the field of public order and security within the municipality (Art. 11).

The Constitution of the State of Rio de Janeiro, Brazil (Official website of Rio de Janeiro Government) repeats the norms of the Brazilian Constitution and secures the right to establish a municipal guard for municipalities (Art. 183).

The provisions of the federal constitution and the fundamental acts of the federation constituent entities serve as the basis for regional legislation.

The British Columbia Police Act (Official website of Canadian legislation) can be distinguished as specialized regional act, the Art. 1.1 of the chapter 1 of which states that the municipal police acts as the police force operating in the province. According to the Part 2, Art. 3, Chapter 2 of the law, municipal police bodies are created in municipalities the population of which makes more than 5 thousand.

For example, in the canton of Zurich, Switzerland, there is the Law on Police Organization (November 29, 2004) at the regional level (Official website of the canton of Zurich) and the Police Law (April 23,

2007) (Official website of the canton of Zurich), which apply both to the cantonal police and to the local police, which should include urban and rural police.

Due to the specifics of the state structure of unitary states, the normative consolidation of the constitutional and legal status of the municipal militia (police) is implemented by the state and administrative-territorial units on the territory of such states, which include local government bodies, thereby conditionally calling it the local level. Let's take the state of Italy as an example.

The analysis of the Italian Constitution (Section 5), the laws in the field of the municipal police status provision show that, due to the specifics of the administrative-territorial division of the Italian Republic (regions - provinces - communes), where the provinces act as state territorial units and regional divisions, the regulation of municipal police activities is carried out at the state level and at the administrative-territorial level. In turn, the administrative-territorial level includes regional legislation and local legislation, which includes provinces and communes. In view of this, it is advisable to call the municipal police of the Italian Republic local, and not municipal, which is implemented in practice.

So on the basis of the Art. 6 of the Framework Law, as well as the Art. 117 of the Constitution of the Republic of Italy, which assigns the authority to issue normative legal acts in various fields to the regions of the state, as administrative entities, a number of regional laws have been adopted that carry out the normative consolidation of the municipal police status. In particular, this also applies to the issuance of acts in the field of the city and rural police activity.

For example, in the region of Sardinia, in the area of local police activities, the Law No. 9 "Local Police Regulations and Regional Security Policy" (August 22, 2007) (Official website of the Region of Sardinia) is in force, establishing general rules for the municipal police activities.

In the case of provincial legislation, an example is the province of Bolzano, where a specialized law "Municipal Police Rules" (November 10, 1993) (Official website of Bolzano province legislation) regulates public relations regarding the activities of the provincial police and consists of 12 articles.

In Portugal, municipal regulations are adopted in the field of the municipal police organization and functioning (Official website of the municipality of Villa de Conde). Similar municipal legal acts are also adopted by the authorities of communes in the Italian Republic (Official website of the



Municipality of Padua), as the lower level of the administrative-territorial power - local government.

The federal model also assumes the consolidation of the municipal police constitutional and legal status at the municipal level. For example, the constitutional legal status of the Brazilian Municipal Guard within the municipality of El Salvador is enshrined in the "Organic Law of the Municipality of El Salvador" (Official website of the Municipality of El Salvador), which is the fundamental act of this municipality, indicating the purposes of the municipal guard in the municipality.

At the same time, specialized acts are also adopted at the level of municipalities. For example, the activities of the municipal guard in the municipality of Votorantim in the state of São Paulo, Brazil are regulated by the municipal law No. 009 (July 18, 2017) at the local level (Official website of the municipality of Votorantim) which establishes general rules for the activities of the municipal guard.

Both models imply the possibility of normative consolidation of the municipal police status through public law agreements (the agreements and contracts) between public authority levels, in the case of the federal model, or between territories, in the case of the unitary model.

Paragraph 3, Section 1 of the Law on the Organization of the Police of the Canton of Zurich gives municipalities the right to establish a municipal police within a given municipality, or the right to join their efforts in this area with other municipalities that already have municipal public order authorities in the form of an agreement. Paragraph 4 of the Law gives municipalities the right to conclude agreements with the canton on the provision of police services on the territory of the municipality of the latter on a reimbursable basis.

Here it is necessary to point to the British Columbia Police Act, Part 2, Art. 3, chapter 2, where the obligations of municipalities, the population of which makes more than 5 thousand people, are enshrined in the obligation to carry out policing not only through the establishment of a municipal police, but also in the form of an agreement conclusion with the provincial authorities on police service provision, or in the form of an agreement with another municipality. The agreement between the municipalities stipulates both the provision of police services by one municipality to another and the unification of the municipal police bodies of different municipalities.

In the case of police service provision to municipalities by the provincial police, in general, an entire system of sub-contracts or contracts can

be traced for the provision of police services. In particular, there is the Agreement between Canada and the Province of British Columbia in British Columbia (Official website of the Provincial Government of British Columbia), in accordance with which the Royal Canadian Mounted Police exercise police functions in the province, and if there is a corresponding agreement between the province and the municipality, these federal police forces are authorized to implement police functions also within a specific municipality. The agreement also provides for the possibility to resolve these issues by municipalities with the federation directly.

The Art. L5212-1 of the French National Security Code provides for the possibility of a unified municipal police corps establishment within several municipalities in the form of an inter-territorial act. The Municipal Police Rules Act of the province of Bolzano, Italy, contains the provisions on inter-territorial cooperation in the field of policing.

The possibility of normative consolidation of the constitutional and legal status of the municipal police will also be common to both models in the form of contracts for the provision of police services by third parties. As an example, we can cite the previously reviewed legislative practice of Switzerland, where the Law of the Canton of Zurich on the organization of the police (paragraph 5) provides for the possibility of carrying out police functions on the territory of the municipality by third parties on the basis of a contract.

These contracts are similar to the Russian practice of contract conclusion for the provision of municipal services, which have a dual nature - civil law and public law. However, the prevailing importance here is civil right norms due to the regulation of this institution of law by various branches of law.

This normative practice is not reflected in the legislation of other states, however, this legislation does not contain a ban on the conclusion of such agreements and the implementation of a number of administrative functions (police functions) by third-party organizations.

The research carried out within the framework of the article allows us to speak about another level of normative consolidation of the municipal militia (police) constitutional and legal status (local), in the form of acts of local significance. So, in accordance with the information posted on the official website of the Vancouver Police Department, Canada, the municipal police of the city are guided by the previously reviewed British Columbia Police Act in the course of their activities. At the same time, the Vancouver Police Department developed and



adopted procedural rules and regulations (Official website of the Vancouver Police Department). These rules and instructions are of an extended nature and are aimed at consolidating not only the general rules for the municipal police activities, but also a significant number of various procedural

issues from arrests to the issues of medical assistance provision to victims by police officers.

Thus, the models of the normative consolidation of the municipal police constitutional and legal status can be presented in the following form:

Federal	Unitary
The supranational level is in the form of pacts (public law treaties), as well as non-binding acts - declarations, codes, standards, recommendations, and so on.	
State level - Basic law(s) of the federation; - Federation laws of a general orientation; - Specialized federal laws.	State level - Basic law(s) of the state; - General state laws; - Specialized laws..
Regional level - Fundamental laws of the Federation subjects; - The general laws of the Federation subjects; - Specialized laws of the Federation subjects.	Administrative-territorial level (local level) - Laws and normative legal acts of general administrative-territorial units; - Specialized laws and regulations of administrative-territorial units.
Municipal level - Founding acts of municipalities; - Specialized municipal legal acts (regulations, and so on).	Inter-territorial level - in the form of agreements and contracts between administrative-territorial units (public law contracts).
Interlevel level - agreements and contracts between the levels of public authority of various types (public law contracts).	Local level - in the form of regulations, rules and instructions.
Local level - rules and regulations.	
Civil law level - in the form of contracts for the provision of police services with third parties, which have a dual nature (public law and civil law), where civil law rules prevail.	

References

Code of Conduct for Law Enforcement Officials "(Adopted on 17.12.1979 by the Resolution 34/169 at the 106-th plenary meeting of the UN General Assembly) // RLS ConsultantPlus.

Collection of Legislation of the Basel-Land Canton // http://bl.clex.ch/app/de/texts_of_law/100/versions/2189 (reference date: 09.01.2020)

Electronic Journal of Portuguese Law // <https://dre.pt/pesquisa/-/search/270386/details/maximized> (reference date: 09.01.2020)

Federal Law N 131-FZ (issued on 06.10.2003, revised on 02.08.2019) "On general principles of local self-government organization in the Russian Federation" (amended and supplemented, and entered into force on 01.09.2019) // SRL ConsultantPlus.

Federal Legal Information System of Austria (RIS) // <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138> (reference date: 09.01.2020)

Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement

Officials "(Adopted on May 24, 1989 by the Resolution 1989/61 during the 15-th Plenary Session of the UN Economic and Social Council) // RLS ConsultantPlus.

Jusbrasil website// <https://presrepublica.jusbrasil.com.br/legisacao/133068266/lei-13022-14#art-1> (reference date: 09.01.2020)

Official website of Bolzano province legislation // http://lexbrowser.provinz.bz.it/doc/it/lp-1993-21/legge_provinciale_10_novembre_1993_n_21.aspx?view=1 (reference date: 09.01.2020)

Official website of Canadian legislation // <https://www.canlii.org/en/bc/laws/stat/rsbc-1996-c-367/latest/rsbc-1996-c-367.html?searchUrlHash=AAAAAQAKUE9MSUNFIEFDVAAAAAAB&resultIndex=7> (reference date: 09.01.2020)

Official website of Rio de Janeiro Government // http://www.dgf.rj.gov.br/legislacoes/Constituicoes/Constituicao_%20do_%20Estado_do_%20Rio_de_Janeiro-2000.pdf (reference date: 09.01.2020)

Official website of the Aaragau State Chancellery // <https://gesetzsammlungen.ag.ch/frontend/versions/2720> (reference date: 09.01.2020)

Official website of the canton of Zurich // http://www2.zhlex.zh.ch/ Appl/zhlex_r_nsf/



- 0/899D81650F48E6A5C125833D0032FB20/\$file/550.1_23.4.07_103.pdf (reference date: 09.01.2020)
- Official website of the French Republic legislation // <https://www.legifrance.gouv.fr/affichCode.do?idArticle=LEGIARTI000035993106&idSectionTA=LEGISCTA000025507747&cidTexte=LEGITEXT000025503132&dateTexte=20191217> (reference date: 09.01.2020)
- Official website of the Government of South Africa // <https://www.gov.za/documents/constitution-republic-south-africa-1996-chapter-11-security-services#205> (reference date: 09.01.2020)
- Official website of the Italian Republic legislation // <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1986-03-07;065> (reference date: 09.01.2020)
- Official website of the Municipality of El Salvador // <https://leismunicipais.com.br/leorganica-salvador-ba> (reference date: 09.01.2020)
- Official website of the Municipality of Padua // http://www.padovanet.it/sites/default/files/attachment/2018_09_24_REGOLAMENTO_DI_POLIZIA_URBANA_1.pdf (reference date: 09.01.2020);
- Official website of the Municipality of Porto // http://www.cm-porto.pt/assets/misc/documentos/editais/Editais%20-%202017/Edital_I_177729_17_Regulamento_PM.pdf (reference date: 09.01.2020)
- Official website of the municipality of Reggio Emilia // [https://www.comune.re.it/reteCivica/urp/regolamenti.nsf/2f35cb03f6fe801ac125778200380a42/c40e2ea84274f841c1257cb7002bf257/\\$FILE/REGOLAMENTO%20POLIZIA%20URBANA.pdf](https://www.comune.re.it/reteCivica/urp/regolamenti.nsf/2f35cb03f6fe801ac125778200380a42/c40e2ea84274f841c1257cb7002bf257/$FILE/REGOLAMENTO%20POLIZIA%20URBANA.pdf) (reference date: 09.01.2020)
- Official website of the municipality of Villa de Conde // <https://www.cm-viladoconde.pt/cmviladoconde/uploads/document/file/44/20080812110147300453.pdf> (reference date: 09.01.2020);
- Official website of the municipality of Votorantim // https://www.votorantim.sp.gov.br/publicos/05_lc009.pdf (reference date: 09.01.2020)
- Official website of the Portuguese Parliament // <https://www.parlamento.pt/Legislacao/Paginas/ConstituicaoRepublicaPortuguesa.aspx> (reference date: 09.01.2020)
- Official website of the President of Brazil // http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm (reference date: 09.01.2020)
- Official website of the Provincial Government of British Columbia // <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/police/publications/agreements/2012-municipal.pdf> (reference date: 09.01.2020)
- Official website of the Region of Sardinia // <https://www.regione.sardegna.it/j/v/80?s=54714&v=2&c=3311&t=1> (reference date: 09.01.2020)
- Official website of the UN Human Rights Office // <https://www.ohchr.org/Documents/Publications/training5Add1ru.pdf> (reference date: 09.01.2020)
- Official website of the Vancouver Police Department // <https://vancouver.ca/police/assets/pdf/manuals/vpd-manual-regulations-procedures.pdf> (reference date: 09.01.2020)
- Recommendation N REC (2001) 10 of the Committee of Ministers of the Council of Europe "On the European Code of Police Ethics" (Adopted on 19.09.2001 during the 765-th meeting of ministerial representatives) // RLS ConsultantPlus.
- Resolution No. 690 (1979) of the Parliamentary Assembly of the Council of Europe "Declaration on the Police" (Adopted in Strasbourg on 05/08/1979 during the 31-st session of the Parliamentary Assembly of the Council of Europe) // RLS ConsultantPlus.
- Systematic Collection of Laws (SRL) of the Canton of Lucerne // http://srl.lu.ch/app/de/texts_of_law/1/versions/3014 (reference date: 09.01.2020)