

Principles of municipal service in the Russian Federation and in the European Union

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Abstract

The article considers problems of legal regulation of principles of municipal service in the Russian Federation and in the European Union and its consequences for municipalities.

Key words

municipal service, principles of municipal service, the Russian Federation, the European Union, municipalities, public service.

The modern western theory of law divides all principles of law into two groups: general and fundamental principles. The fundamental principles are "originally constitutional provisions, in hierarchy of the statuses settle down above laws". Such fundamental principles of the Russian law are fixed in the Constitution of the Russian Federation. The general principles are the provision (rule) of the objective right (instead of the natural or ideal right) which not surely are reproduced in provisions (rules) of a positive law, however they are often fixed in laws and this way principles dominate over a positive law. The general principles of law shouldn't contradict the fundamental principles that establish main provisions of local government, municipal service in the Russian Federation and in the European Union. All fundamental principles of law are general principles, but general principles of law can become fundamental only after their regulation in the state Basic law (Constitution).

The analysis of legal regulation of the principles of municipal service by the European Union Law and the Russian Federation Law lets us see the main difference between these systems of law.

There are 23118 municipalities in the Russian Federation as of January 01, 2012¹. The European Union totals 27 member

¹ URL: <http://www.gks.ru/dbscripts/munst/>

countries currently², each of those has its own municipalities. These quantitative indexes of municipalities follow us to understanding that local government and municipal service particularly need detailed legal regulation at the federal level in the Russian Federation and at the level of the European Union. In spite of the fact that the legislation on municipal service can't be absolutely identical for each municipality of a state, it should be under construction on uniform principles – fundamental (constitutional) principles and general principles of law, namely: principles fixed in the law that regulates local government or municipal service directly.

In Russian Municipal law all principles of municipal service are shared on two independent, but the interconnected groups: principles of functioning of municipal service and organizational principles of municipal service.

The legislation of the Russian Federation has a federal legal act that regulates general positions of municipal service in the Russian Federation and its main basic principles. It is the Federal Law "About municipal service in the Russian Federation" (02.03.2007, № 25).

The main principles of municipal service in the Russian Federation are (Article 4):

- 1) Human rights and freedoms;
- 2) Equal access of the citizens knowing a state language of the Russian Federation to municipal service and equal conditions of its passing irrespective of sex, race, nationality, origin, property and official capacity, residence, religion, belief, belonging to public associations and other circumstances not connected with professional and business qualities of the municipal employee;
- 3) Professionalism of municipal employees;
- 4) Stability of municipal service;
- 5) Availability of information on activity of municipal employees;
- 6) Interaction with public associations and citizens;
- 7) Unity of the main requirements to municipal service considering historical and other local traditions;
- 8) Legal and social security of municipal employees;
- 9) Responsibility of municipal employees for default or inadequate execution of the functions;

² URL: http://europa.eu/about-eu/countries/member-countries/index_en.htm

10) Extra party membership of municipal service.

More than that every municipality of the Russian Federation has a right to set its own principles of municipal service, but they shouldn't contradict the principles established by the Federal Law.

The situation with establishment of principles of municipal service in the European Union is quite different.

The first difference between the legal regulations of municipal service in the Russian Federation and in the European Union concerns with understanding of what "municipal service" is.

According to article 2 Federal Law "About Municipal Service in the Russian Federation" the municipal service is a professional activity of citizens which is carried out on a constant basis at the positions of municipal service replaced by an execution of an employment agreement (contract). Modern domestic doctrinal sources of the Russian Municipal law confirm that the service can be considered municipal only at simultaneous existence of four conditions: 1) it is professional activity of the corresponding person; 2) it is carried out on a constant basis; 3) the real service assumes occupation of one of positions of municipal service; 4) the position of such service is replaced only on the basis of the contract.

In the European Union it is used to understand municipal service as municipal (public) services as those. Some papers of the European Union includes such definitions of municipal service when European public (municipal) service means 'a cross-border public sector service supplied by public administrations (refers to either national public administrations (at any level) or bodies acting on their behalf, and/or EU public administrations), either to one another or to European businesses and citizens'³.

Such distinction underlies establishment of different principles of municipal service in the Russian Federation and in the European Union.

There is no special legal act in the European Union that sets the general principles of municipal service. But it has various official papers which contain some principles of municipal service and uncover their contents. Besides it's important to consider that European Union Law after Lisbon gains one significant feature: regulations, instructions and

³ European Interoperability Framework (EIF) for European public services (European Commission; Bruxelles, le 16.12.2010; COM (2010) 744 final).

decisions accepted on the basis of legislative procedure get the status of legal acts of the European Union. Those categories of acts accepted out of this procedure have the status of bylaws.

For example, there is the European Interoperability Framework (EIF) for European public services (European Commission; Bruxelles, le 16.12.2010; COM (2010) 744 final). It has the Chapter 2, dealing with the 'underlying principles', that sets out general principles of good administration that are relevant to the process of establishing European public services. They describe the context in which European public services are decided and implemented. These underlying principles reflect the expectations of citizens, businesses and public administrations with regard to public service delivery. All these principles complement one another regardless of their different natures, e.g. political, legal or technical.

All twelve underlying principles of the EIF are broken down into three categories:

- The first principle sets the context for EU action on European public services;
- The next group of underlying principles reflect generic user needs and expectations;
- The last group provides a foundation for cooperation among public administrations.

The underlying principles of European public service are next ones:

1. Subsidiarity and proportionality (the subsidiarity principle requires EU decisions to be taken as closely as possible to the citizen; the proportionality principle limits EU action to what is necessary to achieve agreed policy objectives, this means that the EU will opt for solutions that leave the greatest possible freedom to Member States);
2. User-centricity (public services are intended to serve the needs of citizens and businesses, those needs should determine what public services are provided and how public services are delivered);
3. Inclusion and accessibility (inclusion means allowing everyone to take full advantage of the opportunities offered by new technologies to overcome social and economic disadvantages and exclusion; accessibility ensures that people with disabilities and the elderly can use public services with the same service levels as all other citizens);
4. Security and privacy (citizens and businesses must be assured that they interact with public administrations in an environment of trust and in full compliance with the

relevant regulations, e.g. on privacy and data protection, this means that public administrations must guarantee the privacy of citizens and the confidentiality of information provided by businesses);

5. Multilingualism (ideally, European public services provided EU-wide should be available in all official EU languages to ensure that rights and expectations of European citizens are met);
6. Administrative simplification (this principle is closely linked to underlying principle 2, user-centricity);
7. Transparency (citizens and businesses should be able to understand administrative processes);
8. Preservation of information (records and information in electronic form held by administrations for the purpose of documenting procedures and decisions must be preserved; the goal is to ensure that records and other forms of information retain their legibility, reliability and integrity and can be accessed as long as needed, taking into account security and privacy);
9. Openness (openness is the willingness of persons, organisations or other members of a community of interest to share knowledge and stimulate debate within that community, the ultimate goal being to advance knowledge and the use of this knowledge to solve problems; European public administrations should aim for openness, taking into account needs, priorities, legacy, budget, market situation and a number of other factors);
10. Reusability (public administrations must be willing to share with others their solutions, concepts, frameworks, specifications, tools and components);
11. Technological neutrality and adaptability (public administrations should render access to public services independent of any specific technology or product);
12. Effectiveness and efficiency (public administrations should ensure that solutions serve businesses and citizens in the most effective and efficient way and provide the best value for taxpayer money).

European public services are built from the most basic service components that group three types of components, namely interoperability facilitators, services based on base registries, and external services, together called basic public services.

So municipal service in the Russian Federation and municipal service in the European Union have the similar

general aims, tasks, ideas, positions, the similar basic principles, however they have different definitions in the Russian legislation and in the legislation of the European Union.

Thus, the main difference between the principles of municipal service in the Russian Federation and in the European Union is that such principles in the Russian Federation are reduced to principles of passing municipal service and its organization, while in the European Union generally the principles concern directly rendering of municipal (public) services.

This distinction leads to the following situation. The purpose of adoption of the Russian Federal Law № 25 was establishment of the general principles of municipal service which then would be concretized by municipalities. But actually municipalities in their local acts only repeat conditions of the municipal service containing in the Federal Law, without adapting municipal service for the local features.

Local government in the European Union bases on a decentralization principle. That's why the system of principles of municipal service is arranged under conditions in every municipality of European Union countries, because there "municipal service" is understood as a process of rendering of municipal (public) services as those.

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