Февраль, № 1 **Юридические науки** **2014**

УДК 342.25

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ОБЪЕДИНЕНИЕ МУНИЦИПАЛЬНЫХ ОБРАЗОВАНИЙ В РОССИИ, ФИНЛЯНДИИ И КАНАДЕ: ПРОЦЕДУРА И ПРОБЛЕМЫ УЧАСТИЯ МЕСТНОГО НАСЕЛЕНИЯ*

Дается краткий анализ процедур объединения муниципальных образований в России, Финляндии и Канаде. Целью является изучение вопроса о том, поддерживают ли установленные законодательные процедуры вовлечение всех заинтересованных групп в процесс муниципальных преобразований. Установлено, что действующее в указанных странах законодательство в вопросе объединения муниципальных образований непропорционально дисбалансированно в пользу органов государственной власти и не предусматривает реального привлечения местного населения к решению подобных вопросов. Реформа соответствующих положений с усилением роли местного населения явилась бы важным шагом на пути развития и укрепления муниципальной демократии.

Ключевые слова: объединение муниципальных образований, правовое регулирование, участие местного населения

INTRODUCTION

Any state which recognizes local government as a form of public authority has to deal in detail with its territorial organization, because the proper territorial organization is a factor of its performance efficiency. The indicated efficiency, in turn, is possible only when municipal boundaries support for the match between the needs of local people in solving a particular set of local issues and the possibility of addressing them within a specific geographic territory.

Over time, changes in population, social and economic conditions and (or) volume of issues to be dealt with locally may entail the need to change the boundaries of municipalities or even transform them as entities. Hence, legislative rules for the territorial organization of local government should provide for the possibility and the mechanism of such changes.

One important form of territorial restructures of municipalities is their amalgamation. In contrast to such form as boundary changes, amalgamation requires elimination of several 'old' municipalities as corporate entities and creation of a 'new' unified municipality, with all relevant consequences such as development of a new structure of municipal bodies, rearrangement of the schemes of municipal service delivery, and changes in local economic management within unified territories.

It is thus logical to assume that the relevant legislation, defining municipal amalgamation, should provide clear rules for addressing the following questions: 1) what are the criteria and conditions under which it is possible (necessary) to amalgamate municipalities, 2) who has the right to initiate municipal amalgamation, and 3) what is the procedure provides for the implementation of changes.

The main goal of this article is to analyze municipal amalgamation procedures in three countries – Canada, Russia and Finland, and to examine their central governments' involvement in the process. The choice of these countries is not incidental. Russia, as well as Canada, is a vast Federal state, with rather autonomous subjects influencing the performance of local governments within their borders, albeit not to the extent done by their Canadian counterparts (provinces). Finland, in contrast, is a unitary state, but with strong and long tradition of local governments' autonomy.

The issue in question is whether the established procedures for municipal amalgamation support for accommodation of the stakeholders (local and central governments, businesses, but most importantly – citizens) interests, or whether the current procedures exist primarily to accommodate central governments' policy on relevant issues. What are the abilities of local citizens in the examined states to influence decision-making regarding the territorial organization of local government, and whether it is really a privilege of central governments to decide such matters without considering local citizens' views?

LEGAL FRAMEWORK FOR MUNICIPAL AMALGAMATIONS

In Russian Federation general principles of local government operation is in the joint jurisdiction of the Federal center and regions (part 'n' of the Article 72 of the Russian Constitution). It is worth noting that in the area of joint jurisdiction, Federal laws are paramount. The basic act on the organization of local government, Federal Law 131, provides for the possibility of changes in the territorial organization

of local government, including amalgamation of municipalities.

Territorial changes are implemented by regional laws upon the initiative of local citizens, local governments, regional or Federal public authorities. The presence of the latter ones on the list is questionable, since Federal authorities are not supposed to have any particular interest in specific municipal boundaries and, except for the power to initiate changes, are not in any way involved in the boundaries' redrawing procedure.

Russian law lacks any criteria for the necessity of municipalities' amalgamation, even though they are envisaged for certain other forms of territorial changes (for example, the abolition). The legislators, apparently, believe that the circumstances triggering amalgamation may be different and the emergence of the corresponding initiatives is itself a sufficient precondition for addressing this issue in the manner prescribed by law.

The vote in a regional legislature should be preceded by a certain form of conciliation procedures. These procedures, however, dependent on the type of the territorial changes involved, range from mandatory receipt of the local citizens' consent through a local referendum to non-binding vote in a local council. Surprisingly enough, in case of amalgamation there is no direct citizens' vote. Amalgamation of lower-tier municipalities (urban and rural settlements) requires consent of respective local councils, whereas for the same action with the upper-tier municipalities (districts) only non-binding, 'advisory' local council vote is needed. In any case, the federal law does not make the outcome of conciliation procedures imperative for regional legislators. They may simply refuse to support the proposed plan of amalgamation or de-amalgamation, although they are also limited in the ability to push through their own plan without taking relevant preliminary steps.

The interpretation of the discussed procedures leads to the conclusion that local citizens' abilities to influence amalgamation of municipalities they live in are in reality very limited. Although the local citizens are vested with the power to initiate the amalgamation, they cannot directly influence the outcome, whether on the stage of consultations or the vote in regional legislature.

MUNICIPAL AMALGAMATIONS IN FINLAND: IS COMMUNAL AUTONOMY REAL?

In Finland, the issues of territorial organization of local government are partially regulated by the Constitution and several national acts including one notable Law on the municipal division (Kuntajakolaki, 2009).

In contrast to Russian legislation, the Finnish law defines the premises, at least one of which is required to conduct municipal restructure. The map of municipalities can be altered if the change improves: 1) functional and economic conditions for the municipal service delivery, 2) quality of municipal services and living conditions of the inhabitants of the region, 3) possible forms of employment in the region, and 4) the flexibility of social organization in the region.

The initiative to amalgamate municipalities ('communes') can be pushed by local councils, preparing an appropriate joint decision. In some cases, a proposal to amalgamate communes or transfer part of their territory to other municipalities may be prepared by the national Ministry of Interior through the special procedure called 'survey of the municipal division'. The Ministry may initiate such a survey either itself, or at the request of a commune or a group of not less than twenty per cent of the citizens of a commune.

In any case, the survey results are advisory for the communes. As a Finnish researcher A. Koski points out, in Finland municipal integration is a voluntary process: judgments of the need to merge municipalities are the responsibility of local government, the central government is unable to make decisions on the enlargement contrary to the will of communes [1; 36].

However, the final decision on the amalgamation lies in the hands of the State Council of Finland, which acts as a registration chamber for the corresponding agreements, drawn up by municipalities involved in the merger. The State Council may either approve or reject the agreement. The decision of the Council is based on the assessment of the agreement's compliance with the above mentioned premises. With that prior, the possible difficulty in reaching non-biased and reasonable decision by the Council lies in the hazy language of the preconditions. For example, how is it possible to reach a firm ground when deciding whether amalgamation of municipalities will promote 'flexibility of social organization in the region'?

Considering this problem, it is interesting to examine the ruling of the Russian Constitutional Court (№ 15-P of November 30, 2000), which declared unconstitutional the provisions of the Charter of the Kursk region, envisaging the principle of 'the maximum efficiency of solving social and economic issues' as a criterion for the decisions on whether to incorporate certain territory as a municipality.

According to the Court's decision, the guidelines produced for the municipalities' incorporation should not restrict the citizens' constitutional rights to local self-government. The Court held that such 'vague' definitions as 'maximum efficiency' may unduly expand the powers of the regions to decide the fate of municipalities without observing the citizens' rights. One could argue, that such a ruling is possible only if there is the specific constitutional protection of the citizens' right to local government, which, for example, is absent in the case of Canada. However, there could be another message received

from the discussed ruling. Whatever powers central governments may have to influence the incorporation, amalgamation or other procedures affecting municipalities, their decisions should be reasonable and justified to the furthest extent possible.

Nevertheless, the logic of the Finnish legislator is clear: it is impossible to carry out the merger of municipalities without a thorough study of its effects.

MUNICIPAL AMALGAMATIONS IN CANADA: DISCRETION OF PROVINCES

In North America, unlike Europe, the constitutional arrangements for the establishment of the institute of local self-government were accompanied by a parallel alignment of federal relations, which determined the disentanglement of powers for legislative regulation of local government in favor of the regions (both in Canada and the U. S.).

The present Federal constitutional framework in Canada does not give local government an autonomous status, while avoiding the detailed regulation of related issues in principle. The Canadian Constitution contains only one provision relating to local government. Under Section 92 of the 1867 Constitutional Act of Canada, the municipal institutions within the province belong to the exclusive jurisdiction of the legislature of the province. This arrangement leads to the regulation of all of relevant organizational issues by Canadian provincial law, with significant differences in the approaches to territorial changes, including municipal mergers.

Since it is hard to generalize about the Canadian approach to amalgamation, only two, principally opposite provincial approaches toward relevant procedures are examined for the purpose of this section – ones of British Columbia and Ontario.

Under Section 279 of the British Columbia Community Charter of 2003, the patent incorporating a new municipality may not be issued unless a vote has been taken separately in each of the merging municipalities, and for each of those municipalities, more than 50 per cent of the votes counted as valid favor the proposed incorporation. The title of the Section, 'No forced amalgamations' speaks for itself.

According to Section 8 of the BC Local Government Act of 1996, municipal restructuring may be instigated by the council of a municipality all or part of which is in the area, the board of trustees of an improvement district all or part of which is in the area or by a municipal affairs minister, if the minister is of the opinion that territorial changes are in the public interest. Under Section 8 (2) (c), individual citizens in the number of two or more are allowed to initiate municipal restructuring only if they are residents of any part of the area that is not in an existing municipality.

The mentioned provisions of the Local Government Act and the Community Charter seem to be very liberal in comparison with the relevant provisions in the Ontario Municipal Act of 2001.

Section 172 of the Municipal Act provides seven municipal restructuring options, with amalgamation mentioned as a separate one and suitable for municipalities only of the same (lower or upper) tier. The Act envisages three general procedural options for the restructuring. It should be noted, however, that these options do not apply to several major cities like Toronto or Ottawa, along with regional municipalities or their lower-tier municipalities except with respect to minor restructuring proposals.

Under the first option (Section 173), the council of a municipality or local body in a geographic area may make a proposal to restructure municipalities by submitting to municipal affairs minister a report containing a description of the restructure and proof that the proposal has the necessary degree of support of the prescribed municipalities and that the municipality or local body consulted the public in the required manner.

In order to be implemented by the ministerial order, the proposal should be in compliance with the restructuring principles and standards, which under Section 179 may be set by the minister him- or herself. However, the current relevant Ontario Regulation 216/96 sets only one such principle: 'No restructuring is permitted if the municipality that would exist after the restructuring would consist of two or more parts that are not contiguous'. This 'principle' seems to be more of the restrictive exception not to conduct municipal restructuring, rather than a precondition to allow it. This technically means that the existing legal barrier to amalgamation is limited, giving the decision-makers broad discretion in finding a rationale for it.

Alternatively (Section 174), the minister may convene a special commission to develop a proposal for restructuring municipalities. Following consultations with stakeholders and the preparation of the restructuring proposal, the commission may make orders to implement it.

Under Section 182, there is a possibility to dissolve all or part of the single-tier municipality and (or) annex all or part of it to another municipality. The decision can be made by the special quasi-judicial body, the Ontario Municipal Board. The procedure may be initiated either by municipal affairs minister (with the approval of the provincial Government) or the affected single-tier municipality.

Hence, the list of actors able to initiate municipal mergers in Ontario is, in comparison with British Columbia, shorter. Furthermore, restructuring through commission option allows provincial authorities to push for amalgamation of municipalities without their consent. And, of course, none of the above mentioned options provide for the possibility of a direct citizens vote on the issue.

IS THERE A NEED FOR MORE PUBLIC INVOLVEMENT?

One could argue, though, that in a democratic state the authority of national or regional government is anyway rooted in the power of the people. Therefore, when central government pursues municipal restructure, it does so because it is entrusted by the people and receives a carte blanche to implement its policies. However, no one would be surprised with the fact that politicians too often break their promises after get elected. As evidenced in a recent research, 'parties, and the politicians who lead them, are about one overwhelmingly important thing: gaining office. Policy commitments are…secondary or non-existent' [2; 11].

Empirical data show frequent switch in positions towards municipal mergers by their fiercest opponents and vice versa. Andrew Sancton describes one such example from the Canadian practice: '[In 1993] Premier Donald Cameron of Nova Scotia (a Progressive Conservative), who favored the idea of municipal amalgamations in Cape Breton and Halifax… was replaced by John Savage (a Liberal), who proclaimed during the election campaign that amalgamation of the four Halifax municipalities was 'a crazy idea' [4; 143]. However, 'despite Premier Savage's initial declared opposition to amalgamation, he reversed his position in October 1994 as part of an overall strategy to reduce government spending and to promote economic development' [4; 144]. This slip in position led to the creation of the enormous Halifax Regional Municipality, performance efficiency of which is still disputed.

But, even if we agree that direct citizens' control in such matters as municipal amalgamation is necessary, can we be sure that the general public is capable of being actively involved in related procedures?

Although there is a widespread notion, that citizens in many countries tend to show little interest in local government operation, there are situations when they may become highly involved in relevant issues. This may concern not only cases when citizens are protective of their immediate local interests, like the NIMBY ('not-in-my-backyard') phenomenon [5; 345], but surprisingly when they get preoccupied with broader issues, like participation in decision-making and proliferation of democratic practices at the local level.

For example, in Toronto amalgamation case, reviewed by the Supreme Court of Canada [3], it seems that it was not the amalgamation itself, but rather the manner in which it was done that enraged certain groups of local citizens, demanding to have more power to influence such decisions.

Even in Russia, with a very low record of citizen participation in local government, there is evidence, that when people do get concerned, it is not always a concern regarding their certain daily wants. In a recent example, there has been a huge protest movement of local citizens in the Russian city of Petrozavodsk, discontented with the local administration city planning policies. A major project, which involved construction of high-rise luxury apartments in the city center, had to be cancelled because representatives of several public groups challenged the construction permit in court. The construction itself did not affect immediate interests of most of the protesters, but as many of them described, they were disgusted with the way the related permits were given — in violation of the established rules of public hearings and through 'wringing of hands in private meetings'. So, the public does sometimes seem to get concerned with the *procedure*, rather than the *substance* in the decision-making regarding local issues.

The absence of necessary local democracy tools in the hands of citizens may, on the contrary, aggravate 'social apathy'. As Richard Tindal and Susan N. Tindal assert, 'over the past century…the notion somehow developed that once the government gets involved into with some subject, then it is the government's problem, not ours. Governments have contributed to this unfortunate development by appearing to exclude the public, by acting as if only professionals and experts could have the answer' [5; 403].

CONCLUSION

Summarizing the above, it is clear that the legal rules, established for municipal mergers in Canada, Finland and Russia, albeit different in the procedural specifics, tend to favor high involvement and decisive powers of central and regional governments. The procedures in all the three countries (except, to some extent, in Canada's British Columbia) do not provide for direct public control over proposed amalgamations.

Furthermore, the criteria for amalgamation is often inexistent or blurry and does not help public officials to forecast all circumstances that may result out of municipal mergers.

What could be done to counter this problem and to conduct amalgamations in a more predictable and rational way? It seems that the right answer for all of the examined countries would be to amend the relevant legislative procedures and implement (where they are non-existent) compulsory consultations with relevant stakeholders, most importantly, citizens (through public hearings). Perhaps the discussed countries (or their provinces) should look at the experience of British Columbia, and abandon practices of forced amalgamations, done without public consent.

Why is public involvement important? The simple answer would be that a democratic system is built on the perception that the base of it is the power of people, not the power of Government. Therefore, certain procedures that enable the expression of people's will and ability to influence the structure and substance of the government mechanism should be established at all levels of government. If the system

is to be fully democratic, no reservations should be left on any particular issues marked as 'exceptional'. Otherwise, an exception may soon turn into a rule.

However, there is one more weighty argument for greater public control over municipal mergers, and, possibly, other topical issues at the local level. It seems that the Government(s), upon which we vest our powers, and which we credit with our trust to perform complex functions of public administration, may simply not possess enough expertise, and, most importantly, data on various local issues to decide the fate of municipalities unilaterally. Local citizens, better knowing the conditions of the places they settle in and live, should therefore be called upon as 'experts' to help decide relevant matters more effectively and for the common benefit.

* Работа выполнена при поддержке Программы стратегического развития ПетрГУ в рамках реализации комплекса мероприятий по развитию научно-исследовательской деятельности на 2012–2016 гг.

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MUNICIPAL AMALGAMATIONS IN RUSSIA, FINLAND, AND CANADA: PROCEDURES AND PROBLEMS OF LOCAL CITIZENS' INVOLVEMENT

This paper briefly examines established procedures for municipal mergers in three states: Russia, Finland, and Canada. The aim of the article is to analyze whether existing procedures support all major stakeholders involved in the process of municipal restructuring. The evidence, presented in the article, leads to the conclusion, that municipal procedures of amalgamation are unreasonably imbalanced in all of the examined states in favour of central governments and do not seriously involve local citizens into the process. Relevant reforms empowering local citizens could profoundly improve the situation and serve as a good step toward proliferation and enhancement of local democracy.

Key words: municipal amalgamations, legal framework, public participation

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Поступила в редакцию 17.01.2014