

## THE ROLE OF MAGDEBURG LAW IN THE FORMATION OF PHENOMENOLOGY OF MUNICIPAL HUMAN RIGHTS (PERSONALITY, MEMBER OF THE TERRITORIAL COMMUNITY)

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**Summary.** The article is devoted to the study of the role of Magdeburg law in the formation of the phenomenology of municipal human rights (individual, member of the territorial community).

It is proved that the formation of the institution of local self-government in modern Ukraine marks the manifestation of several strategically important for the existence, functioning, development and improvement of democratic rule of law trends that demonstrate the potential of the post-Soviet state for radical renewal and transformation. This process is characterized by a number of important trends in historical, social, economic, political, cultural, social properties that directly affect the phenomenology of statehood, its quality, forms of its implementation, prognostic aspects of its development and the phenomenology of man himself, transforming it from the appropriate conceptual substrate in the active subject of local society, interested in real changes in their living conditions. It is argued that among the historical guidelines that influence the formation of municipal human rights within the local territorial community, an important place is occupied by the Magdeburg city law, which emerged in the late thirteenth century. In Germany, and thanks to its detailed regulations and territorial distribution in Europe, actively contributed to the formation of the human rights system in the context of local self-government and within the territorial community.

**Key words:** human rights, municipal human rights, Magdeburg law, local self-government, territorial community

### 1. LOCAL SELF-GOVERNMENT IN MODERN UKRAINE: THE ROLE AND SIGNIFICANCE FOR THE FORMATION OF STATEHOOD

The formation of the institution of local self-government in Ukraine<sup>1</sup> is a manifestation of several strategically important for the existence, functioning, development and improvement of democratic rule of law trends that demonstrate the potential of the post-Soviet state for radical renewal and transformation. We are interested in trends that mark a literal socio-praxeological, normative-functional and technological-dynamic “breakthrough” caused by the institution of LSG in the socio-humanitarian sphere, and more precisely, in the field of production, formation, development, improvement and realization of human and civil rights in the conditions of local democracy. This breakthrough is characterized by a number of important trends in historical, social, economic, political, cultural, social

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<sup>1</sup> Henceforth cited as: LSG.

properties that directly affect the phenomenology of statehood, its quality, forms of its implementation, prognostic aspects of its development and the phenomenology of man himself, transforming it from the appropriate conceptual substrate in the active subject of local society, interested in real changes in their living conditions. These trends are determined by the following:

First, the formation of this institution is a manifestation of deep processes of democratization of statehood, as well as the activities of all components of its subjects, from government agencies, their officials and officials, and ending with the average citizen – when human rights and freedoms and their guarantees determine the content and direction of the state (see Art. 3 of the Constitution of Ukraine)<sup>2</sup> (the trend of “democratization from above” – M.B.).

Secondly, by legalizing the institution of LSG at the constitutional level, the state officially recognized the existence of other interests produced by territorial communities,<sup>3</sup> which are the primary subject of local self-government (see Art. 140 of the Constitution of Ukraine), which are not ontologically identical to the state interests (the emergence of the dichotomy “state interests – local interests” – M.B.), but do not contradict them (there is a state of harmonization of these interests through the emergence of common teleological dominants in the formation and development of democratic rule of law and their nomenclature), functional coincidence, objective contextual coordination, subordination, reordination – M.B.). Thus, it is possible to state the end of the era of the state’s monopoly on the system of interests and meanings produced by the state, and a significant restriction of state statism (the tendency of constitutional legalization – M.B.).

Thirdly, recognizing the sphere of LSG as a sphere of functioning of TCs, which are a powerful subject of private interests produced by residents – members of such communities, the state not only recognized the dichotomy “public interests – private interests,” but also consciously modeled it, in order to realize a powerful teleological dominant. The state is accountable to man for his activities. The establishment and protection of human rights and freedoms is the main duty of the state (see Art. 3 of the Constitution of Ukraine) (the tendency to recognize private interests in public administration – M.B.).

Fourthly, the LSG, based on the fact that within its limits a particular person realizes his life cycle, has become a real legal sphere in which existential intentions, needs, aspirations, interests of people united by territorial and local sign of residence are formed (locus and topos – M.B.), as well as implement almost all, with some exceptions, the rights and freedoms of man and citizen, which allows us to say that TC in the conditions of LSG is transformed into a sphere, space for the implementation of constitutional rights, freedoms and responsibilities and, consequently, in the field realization of the constitutional and legal status of man and citizen, and constitutional human rights, freedoms and responsibilities are

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<sup>2</sup> Act of 28.06.1996, “Vidomosti Verkhovnoyi Rady Ukrainy” No. 30, p. 141.

<sup>3</sup> Henceforth cited as: TC.

transformed into municipal human rights (individual, member of the TC) (trend of dynamic development and improvement of the constitutional and legal status of man and citizen – M.B.).

Fifthly, the sphere of LSG begins to play a great representative, integrative and transformational role for a particular person, acquires great individual social and psychological-functional significance, because it is within LSG and TC that a person presents himself as a person to other members of local society, as a person endowed with individual characteristics, has its own needs, interests, own value system, own behavioral guidelines, and is of interest to other members of the TC in the context of building communication (the trend of dynamic development and improvement of individual status of a person in social environment that surrounds it – M.B.).

Sixth, these trends have a serious historical basis, based on the guidelines of Magdeburg law.

## 2. MAGDEBURG CITY LAW AND HUMAN RIGHTS: AT THE CROSSROADS OF HISTORICAL EPOCHS

This is determined by the fact that Magdeburg law is one of the most famous systems of city law, which emerged in the late thirteenth century in Germany, in the city of Magdeburg, as a feudal city law, according to which economic activity, property rights, socio-political life and caste status of citizens were governed by their own system of legal norms, which corresponded to the role of cities as centers of production and exchange [Chigrinov 2010, 255]. Although German city law was preceded by the statutes of Italian cities, Magdeburg law became the first universal system of city law in Europe, which could be applied in any commercial and industrial city and the basic principle of which was self-government of citizens. It is this self-government – forms of which included, first of all, the formation of city authorities through their election (magistrate), the emergence and functioning of relevant rights of citizens, affecting personal, political, economic, religious, individual, group and collective freedoms human rights at the level of local self-government, which in today's sense can be identified as municipal human rights.

It should be noted that such a subject-object transformation and technological processualization of these trends, which arises and is determined by powerful processes of legal globalization, forcing developed democracies not only to pursue a policy of combining the maximum constitutional rights and freedoms of each person resides or resides in their territory and protects their own national interests, state sovereignty, political, socio-economic, cultural development of its citizens, as well as the formation, through the development and signing of international multilateral international agreements (universal or regional levels), a system of international legal standards local self-government, which after their ratification by other countries of the world or region, become the norms of domestic

(national) legislation that guarantees the construction in these countries – developed; developing countries; post-Soviet states, etc., the civilized system of LSG. That is, a system in which the TC, through elections, forms the relevant bodies of the LSG, acting in its interests and to implement issues of local importance or issues of local life – issues of collective importance, the solution of which depends on the stable existence and functioning of TC and its members – residents of the respective territory of the state.

Hence, in the given context, the issues of realization of constitutional rights and freedoms of man and citizen at the level of LSG are objectified, actualized and contextualized, which is carried out in synergy with the activities of local self-government bodies on realization of rights and freedoms of TC members. And this, in turn, actualizes the issue of formation of the municipal legal status of a person, because it is because of this status of residents-members of the TC, which is realized through full or partial coincidence of the formation and implementation of such a status of a person with his constitutional and legal status (depending on the legal status of the person – M.B.).

### 3. MAGDEBURG LAW AND HUMAN RIGHTS AS A HISTORICAL AND NORMATIVE PROCESS

Both in historical retrospect and in the modern sense, the processes of formation of Magdeburg law in the contextualization of the development of rights and freedoms of citizens are of theoretical and praxeological interest. It should be noted that this right was formed on the basis of the prevailing in Western Europe legal norms of the Romano-Germanic law from various sources, including the privileges granted by Archbishop Wichmann to the city patrician (1188), “Saxon Mirror,” court rulings Sheffen Magdeburg, the charter of the city of Magdeburg. But in contrast to the Saxon Mirror, the Magdeburg laws defined in more detail the norms related to the regulation of commodity-money relations and the corresponding freedoms that logically flowed from them [Sokol and Aleksandrovich 2007, 27].

The beginning of Magdeburg law is considered to be the privilege of Archbishop Wichmann. Next was a charter of the Saxon Duke of Albert from 1294, which was purchased by the people of Magdeburg. This charter also played an important role in the process of creating Magdeburg law. Important in the formation of the rules of this law were the regulations developed by the City Council of Magdeburg for other cities.

These include: Charter, created in 1211 to the Duke of Silesia Henry the Bearded and approved by him for the city of Goldenberg; A deed on behalf of the chiefs of Magdeburg, which has neither the addressee nor the date, but is dated to 1211 after the same duke; Charter for the Silesian city of Novomarkt from 1235; Two charters of chiefs and warriors, created at the request of Henry III of Silesia for the city of Breslau (1261); A letter sent by councilors, sheffens and townspeople to the burghers of Breslau in 1295; Clarification of the Magdeburg

law for the city of Görlitz in 1304, which became the basis for the creation of the Görlitz Code; The charter of 1261 became the basis for the Breslav Code of 1306 and others [Kobylets'kyy 2008, 43]. A characteristic feature of these historical documents was, first, giving these cities the rights of local self-government by providing the opportunity to form their own and independent representative body, acting on behalf and in the interests of citizens, which, secondly, provided for the formation of appropriate mutual organizational and organizational legal relations between them and the magistrate, and this, thirdly, was the beginning of the emergence of human rights in the field of local self-government.

These trends are confirmed by the processes of codification of Magdeburg law, which in the XIV century. was systematized in five books: 1-a – the election and appointment of city councilors, their rights and responsibilities, publicity and legality of their actions; 2-a – was devoted to issues of judicial organization and procedure for selection of judges and other jurors, their remuneration, time and place of hearings, jurisdiction of various courts, requirements for court fees, seizure of property, etc.; 3rd – systematized complaints and determined their types (complaints of bodily harm and murder, embezzlement, perjury, usury, deception, counterfeiting, etc.); 4-a – contained family law, including a significant number of articles on the rights of family members to inherited property, as well as issues of dowry, marriage and inheritance agreements, the rights of the head of the house, wife and children at the disposal of various types of family property; 5th – included heterogeneous rules and decisions that did not fit under the headings of the first four books [Anisimov 2010, 27]. That is, it can be stated that for the first time the rights of TC members were actually codified, which were not so much transposed from the national level of their use, as were borrowed from the local life of a particular person, human groups and groups that arose in their daily lives in the process of implementation and realization of a person's life cycle, given their constant applicability and special daily importance to ensure such a cycle.

#### 4. HISTORICAL FORERUNNER OF MAGDEBURG LAW

It should be emphasized that a great role in the emergence and genesis of such rights, their formation at the local level of society and identification with those that have their manifestation, functioning and implementation within the TC, played historical trends around the functioning of city-cities in Ancient Greece and municipalities in ancient Rome [Baymuratov 2007, 189–98; Idem 2009, 67–84] – they were the centers of social community and the formation of a clear human intersubjectivity – the tendency of man to live in a human community, as well as centers for developing a system of specific rights of city dwellers, which by and large became signs of further formation and development of the phenomenology of statehood (the presence of a representative body, the formation of a system of government, armed forces, life support system of community members (water supply, baking bread, sanitation, religious support centers daily life, etc.).

## 5. MAGDEBURG LAW AND MODERN MUNICIPAL HUMAN RIGHTS

Thus, Magdeburg law by granting cities self-government, judicial immunity, tax benefits, land ownership, benefits in craft and trade activities, exemption from military service (except for the convoy), while stimulating the development of the system of rights of citizens, which were objectively associated with the implementation of their life cycle in everyday life and were borrowed from human memory regarding the experience of the functioning of human communities since ancient times. This was facilitated by active local structural and local rule-making processes – in cities with Magdeburg law created self-governing bodies and courts, established the procedure for electing power and their functions, formed and initiated in practice basic rules of civil and criminal law, rules of procedure, and introduced rules of taxation, trade procedure, regulation of craft shops and merchants' associations. That is, rationing and standardization covered almost all basic and existential spheres of human existence and functioning in the local community, which in the modern sense were transformed into their respective rights at the municipal level of society, which together form the constitutional and legal status of man.

Of interest are the peculiarities of the development of Magdeburg law in Poland. Magdeburg city law was transferred from this city to East Prussia, Silesia, the Czech Republic, Hungary, Poland, Belarus, Lithuania, and Ukraine. As it spread in different countries, it underwent more or less significant changes depending on local conditions, but it always influenced the formation of the legal status of members of the urban community, not only those who were already citizens, but also those who were just becoming citizens. Thus, the privileges of the Magdeburg law repeatedly emphasize that such a right is granted on the basis that the city grows, develops, and therefore the subject of constant attention of the city government is the extension of city jurisdiction to all residents. Thus, all the new settlers are transferred to the power of the magistrate, and then those citizens who live in houses belonging to the aristocracy and the clergy leave under his jurisdiction. All this, in the end, practically forms a single and formally equal systemic set of rights and responsibilities of citizens, both in relation to the city authorities and in relations with each other in everyday communications – which in historical discourse has shaped their municipal rights.

However, it should be noted that the peculiarity of Magdeburg city law, which spread in Poland, was that the latter was not an exact copy of Western European city law, but was a transplant of this right to new ground and the creation of new organizational forms similar to Magdeburg self-government in the legal and economic life of the local population [Zabashita 2011]. Through Poland, Magdeburg law was transferred to the Belarusian lands during the period of state and legal rapprochement of the Grand Duchy of Lithuania and the Polish Crown, beginning with the Krevsk Union in 1385.

In Belarus and Lithuania, according to the Polish historian V.A. Maciejowski, before the introduction of Magdeburg law, there was a city law, which was significantly different from Magdeburg. Thus, when the Magdeburg patricians were just about to carve out of feudal law – the “Saxon Mirror” – “legal clothes” for their city law, on the banks of the Western Dvina and Dnieper – in Polotsk and Kiev – there was already a chamber, the city was headed by mayors foremen, and court decisions were made on the basis of law – on the basis of “Russian Truth.” It can be argued that the established order of governance provided citizens with appropriate rights and responsibilities, which had adequate democratic support in the form of forms of direct and representative democracy, as well as judicial protection [Maciejowski 1890, 279].

The only source of self-government in the cities of Belarus “Domagdeburg period” – information about Polotsk. “Chronicle of Bykhovets” reports that “the city of Polotsk and the men of Polotsk” “were guided by the council, as Veliky Novgorod and Pskov.” Thus, the cities of the Grand Duchy of Lithuania, which received self-government under Magdeburg law, did not immediately receive all the privileges and privileges that this right gave [Sil’chanka and Valiancinaŭna 2000, 32], and therefore we can state the processes of dynamics in the formation, development and improvement of legal status.

In summary, it is necessary to note the important and special role of Magdeburg law in the formation of the phenomenology of municipal human rights (individual, member of the territorial community), given, firstly, its importance for the urban discourse of the human life cycle carried out its activities within the territorial community in local government and, thirdly, in such conditions formed a list of such rights, based on the existential guidelines for the existence of a particular person, his local groups (family, school, production structures) and the entire urban community.

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ROLA PRAWA MAGDEBURSKIEGO W KSZTAŁTOWANIU FENOMENOLOGII  
MIEJSKICH PRAW CZŁOWIEKA (OSOBOWOŚĆ, CZŁONEK WSPÓLNOTY  
TERYTORIALNEJ)

**Streszczenie.** Artykuł poświęcony jest badaniu roli prawa magdeburgskiego w kształtowaniu fenomenologii miejskich praw człowieka (jednostka, członek wspólnoty terytorialnej).

Udowodniono, że powstanie instytucji samorządu lokalnego we współczesnej Ukrainie jest przejawem kilku strategicznie ważnych dla istnienia, funkcjonowania, rozwoju i doskonalenia demokratycznych trendów praworządności, które ukazują potencjał państwa poradzieckiego w zakresie radykalnej odnowy i przemiany. Proces ten charakteryzuje się szeregiem ważnych trendów w procesach historycznych, społecznych, ekonomicznych, politycznych, kulturowych, społecznych, które bezpośrednio wpływają na fenomenologię państwowości, na jej jakość, formy jej realizacji, na prognostyczne aspekty jej rozwoju oraz fenomenologię samego człowieka przekształcając go z odpowiedniego podłoża pojęciowego w aktywny podmiot społeczności lokalnej, zainteresowanej realnymi zmianami warunków życia.

Uważa się, że wśród historycznych założeń wpływających na kształtowanie miejskich praw człowieka w ramach lokalnej społeczności terytorialnej ważne miejsce zajmuje prawo miejskie magdeburgskie, które pojawiło się pod koniec XIII w. w Niemczech, a dzięki swoim szczegółowym regulacjom i zasięgowi terytorialnemu w Europie, aktywnie przyczyniało się do kształtowania systemu praw człowieka w kontekście samorządu lokalnego i wspólnoty terytorialnej.

**Słowa kluczowe:** prawa człowieka, miejskie prawa człowieka, prawo magdeburgskie, samorząd lokalny, wspólnota terytorialna

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