



DEVELOPMENT PROSPECTS OF THE INSTITUTE OF REPRESENTATIVE DEMOCRACY

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ABSTRACT

This paper clarifies the issue of representative democracy, its historical roots and development in the world. Representative democracy, despite the variety of assessments regarding its current state and prospects, including very critical assessments associated, in particular, with technologically proven models of party systems and voting (election) systems, decorative parliamentarism and other manifestations of defects and dysfunctions of modern institutions of state democracy.

KEY WORDS: *representative democracy, development, state, law, enforcing*

Issues related to the phenomenon of representation democracy are one of the key, basic ones in the theory of state, law, constitutional and legal science, and are constantly in the focus of attention of researchers. Having a fundamental nature and being conditioned by the constant process of political and legal development of civilization, they are, like a number of others, among the inexhaustible and highly debatable, controversial, and are associated with the presence of a certain amount of uncertainty in them due to reasons such as subjective (philosophical) worldview diversity and ideological preferences of researchers) and objective (constant change and complication of political and legal reality). With all the abundance of scientific works devoted to this topic, today it is hardly possible to talk about the existence of an established general theory of public representation. Various, sometimes mutually exclusive, opinions are expressed regarding the very essence, grounds and limits of representation in public law, the understanding and relationship between direct and representative democracy, the representative system, popular representation, and other more specific issues of this kind.

With all this, representative democracy, despite the variety of assessments regarding its current state and prospects, including very critical assessments associated, in particular, with technologically proven models of party systems and voting (election) systems, decorative parliamentarism and other manifestations of defects and dysfunctions of modern institutions of state democracy, which in the past 20th century largely discredited themselves, including countries with so-called developed democracies, yet firmly established itself as an integral part of the doctrine and practice of modern constitutionalism. It is considered as one of the most important constitutional characteristics of a democratic state, a necessary element of the organizational and legal mechanism for the implementation of democracy. You can often find statements that this is the leading (main) form of democracy.

The problems associated with the phenomenon of representation in constitutional law are fundamental and debatable, characterized by the lack of unity of scientific approaches. This justifies the need to once again turn to the analysis of the scientific, theoretical and constitutional legal aspects of representative democracy, bearing in mind the current goals of forming a general theory of public representation. It should be noted, first of all, that representative democracy, despite the variety of assessments regarding its state and prospects, including very pessimistic assessments, has firmly established itself as an integral part of the doctrine and practice of modern constitutionalism. It is considered as one of the most important characteristics of a democratic state, a necessary element of the organizational and legal mechanism for the implementation of democracy.

It is often characterized as the leading form of democracy, but such an assessment is only partly fair. Democracy is based on the unity of power of the people, therefore the institutions (forms) of direct (immediate) and representative (mediated) democracy cannot be opposed. In itself, raising the question of the priority of one of the forms of democracy is untenable and inevitably leads to belittling the role and significance of one of these forms. Effective implementation of the power of the people is possible only with a combination of direct and representative democracy [1].

Of course, in the conditions of actually developing state-political relations, certain democratic institutions can receive preferential development, in particular, taking into account the goals, needs of the development of society, and specific national interests. But the very nature of relations of democracy is supposed to ensure a balance of the constitutional values underlying them, and legislative regulation must maintain an optimal balance of direct and representative democracy. This serves as the most important guarantee of the integrity, stability and effective functioning of the democratic organization of the constitutional system.

The institutions of representation, in one way or another, have always accompanied the publicly political organization of society, which allowed G. Jellinek to classify the very idea of representation as one of the original legal views of man [2]. Representative-mediated forms of governance are visible already in the conditions of communal self-government of primitive society, in which certain administrative and jurisdictional powers were recognized by members of the collective due to tradition and trust in tribal leaders. Carrying out the functions of organizing joint life activities in the tribe, these persons essentially acted as



representatives of this community invested with public authority. It is noteworthy that even in the conditions of classical Athenian democracy, the institutions of direct democracy were not only supplemented and supported, but also to a certain extent limited by the organizational structures of public representation. For example, the revision of laws in Athens, as V. Buzeskul noted, was not carried out according to a random mood or the arbitrariness of the people's assembly, but only at a certain time, and the casting vote belonged to a special commission of people of more mature age, bound by an oath [3]. Currently, the idea of representative government as one of the foundations of legal democracy has wide formal legal recognition. According to Art. 21 of the Universal Declaration of Human Rights of 1948, everyone has the right to participate in the government of his country, directly or through freely elected representatives, and the will of the people must be the basis of government authority. This is how the idea of the inextricable relationship between public representation and human legal freedom is most succinctly, visibly, and vividly expressed, the most important guarantee of which is the universal direct and equal participation of citizens in the formation of public authorities and the management of state affairs.

"The Treaty on the European Union lays the principle of representative democracy at the basis of the functioning of the Union (Part 1, Article 10), bearing in mind the role of this principle in the process of European self-identification and integration. In the constitutions of the Dominican Republic (Article 2), Brazil (Article 1), Venezuela (Article 1), Guatemala (Article 2), Nicaragua (Article 10), representative democracy is enshrined as a form (system) of government of the state, and The Constitution of Azerbaijan also establishes the right to represent the people (Article 4). At the same time, in some countries (primarily Latin America), the exercise of people's sovereignty is associated only with representative democracy (Article 22 of the Constitution of Argentina, Article 4 of the Political Constitution of Bolivia, Article 33 of the Constitution of Haiti, Article 2 of the Constitution of the Republic of San Marino). In Japan, the Constitution affirms the principle of representative government as "common to all mankind" [4].

In the broadest sense, representation means expressing someone's interests, making decisions and taking actions based on existing grounds based on law, tradition, will, etc., while the consequences associated with such decisions and actions are occur for the person being represented, as if he himself had accepted or committed them.

Without questioning the importance of such efforts, it is worth noting that their fruitfulness is determined by the need to use adequate research methodology, the development of comprehensive, interdisciplinary theoretical approaches that allow taking into account, objectively existing features of the manifestation of institutions of representation in private law and public law spheres. The creation of a general theoretical structure of representation assumes, as an important prerequisite, the conceptual justification of the categories of representation in private and public law. To form a general concept of public representation, which does not yet exist in Russian law, it is required, as correctly noted, a doctrinal update of constitutional law: distinguishing the properties of public representation and representation in private law, establishing the properties of popular representation as a system-forming, but not the only type of public representation in a modern state. The specifics of public representation are determined, first of all, by its subject composition, objects, forms and methods of implementation of representation, as well as the nature of the regulatory and legal impact on relations of this kind, which differ in private and public law. Representation as a public legal institution is complex in nature, associated with certain public goals, principles, functions, competence, and has, as a public authority (body).

Public representation, in contrast to representation in private law, is based on the interests not of individual individualized subjects, but of social groups, organizations, communities, which do not always have a clear subjective expression. It is implemented on the basis of a combination and integrative interaction of legislative, normative and volitional principles in relation to the achievement of the common good. As such, public representation arises on an imperative basis in the presence of a measure of free discretion determined by the constitution and law regarding the specific involvement of participants in these relations. In public representation, the object of the legal relationship itself is not always clearly visible. There is a common opinion that the social prerequisites for public representation are associated with the practical impossibility of regular use of direct institutions of democracy in territorially large state entities, as well as the objective inability of the people to resolve the entire range of issues of public importance independently.

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