

REPRESENTATIVE GOVERNMENT AND DIRECT DEMOCRACY: ISSUES OF CORRELATION

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Abstract

In the framework of the implementation of the constitutional imperative of the Russian statehood in anticipation of the President elections in the country, the relevance of the consideration of representative government and forms of direct democracy in the context of their relationship has increased. The purpose of this article is the search for mechanisms to increase trust in the authorities, using forms of direct democracy in the work of the representative bodies of the country.

The constitutional democracy is one of the main characteristics of state organization in modern Russia. It can be named as a basis of the Russian statehood. The part of political and legal ideology which relates directly to the constitutionalism should be analyzed in relations with the ideas about national sovereignty and democracy, civil liberties, the people control of the public power and the mechanisms of participation in its work. The mechanism of direct democracy includes various forms. The direct democracy is realized with the help of these forms.

Today Russia faces a new opportunity for the formation of civil society - the citizens can install the genuine control over the state.

It is necessary to develop the civil initiative and self-government, forms that allow citizens to engage in solving society's problems in order to realize this opportunity. Forms of direct democracy, constitutional framework of a democratic and legal state, which are enshrined in the Constitution of the Russian Federation, can play a great role in such activity. The following authors' suggestion is reflected in the article. It is possible to use different forms of direct democracy in order to identify and combine personal, collective and public interests, to find a compromise between them to ensure the principle of social justice in various spheres of society.

The legislation on public hearings, surveys which are applied in constitutional, municipal, civil, land law and some other branches of the Russian law was analyzed as an example. The conclusions about the feasibility of changing forms of work of representative bodies with extension of the participation of citizens, civil society institutions and political parties in addressing issues of state and public life are made with the help of the methods of comparative law, the analytical method and generalization.

Keywords: democracy, representative authorities, public

MAIN TEXT

Constitutional norms in modern Russia have a fairly consolidated democracy as the basis of constitutional power. Thus, the 1993 Constitution enshrines as a source of power and bearer of sovereignty, the multinational people of the Russian Federation. This was not in previous constitutions of the country, positioning itself as a state of workers and peasants. The Constitution clearly States that a distinction must be drawn between the constitutional system of people's power (part 2 of article 3) and the constitutional order of the authorities (article 11). Clipping as a source of power and bearer of sovereignty, the multinational people of Russia, the current Constitution has determined how the people exercise their power directly and through bodies of state power. The people, acting sovereign in all spheres of life, decide how to organize their government. It makes using the Constitution.

The basis of the authority of the people is his will, which is realized through various forms — public and private. Not coincidentally, the constitutional phrase: "...the only source of power in the Russian Federation is its multinational people". It is the will of the people gives the quality of legitimacy of state power, its all forms: legislative, Executive, judicial, oversight. The constitutional provisions indicate the source of power that emphasizes its fundamental principle.

In the context of direct democracy are allocated to higher forms - the referendum and the elections; in the framework of representative government enshrined a system of elected representative bodies. Assigned individual political right of citizens to participate in public Affairs.

Modern modernization of the Russian state once again poses the problem of finding the optimal model of coexistence, the relation of the state and civil society.

The eminent academician Oleg E. Kutafin wrote: "... the Main thing for democracy that we had civil society, i.e. a society that is actively involved in public and political life". In another work, he noted that government in the transition period can be established by the institutions of civil society. We cannot agree with the opinion of O. E. Kutafin that "in the context of traditional backwardness of civil society institutions in our country needed the constitutional basis of their free self-development". (Kutafin O. E. Russian constitutionalism. - M., 2008. P. 236. (544 pages).

Legal registration of civil society at the Federal level in modern Russia is carried out primarily through sectoral legislation by dot regulation. The subjects of the Russian Federation go in this direction: in addition to strengthening the legal status of subjects of civil society and procedures for their interaction, goal-setting in the sphere of civil society can be seen in their constitutions and statutes.

The desire to create a civil society on its territory in the preamble enshrined in the statutes of the Moscow, Magadan, Ivanovo, Kemerovo, Orel, Tambov regions, the Constitution of the Republic of Dagestan, the statutes of the Kamchatka and Perm territories.

Expresses a desire to accept the principles of legal state and civil society in the Statutes of the Stavropol territory, the Amur and Murmansk regions.

The desire to strengthen federalism, democracy, legal state, local governments and civil society enshrined in the Charter of the Bryansk region; the Statutes of the Voronezh and Novgorod regions recognized the principles of civil society; the foundations of civil society and the polity established by the Constitution of the Republic of Sakha (Yakutia).

The contradictions in the modern economic crisis in Russia could be overcome through joint efforts of state and civil society, implemented on the platform real democracy in the country.

The participation of civil society institutions in enhancing trust in the government is seen by transferring the powers to the prevention of corruption and detection of corruption the institutions of civil society – this move seems timely and appropriate, is justified in modern conditions.

Note that in the current Russian anti-corruption legislation cooperation of public authorities with civil society elevated to the rank of a basic principle of the implementation of activities on combating corruption. As follows from paragraph 2 of article 1 of the Law on combating corruption, this type of interaction applies to all stages (stages) of corruption: a) prevention and prevention of corruption; b) the fight against corruption (detection, prevention, suppression, disclosure and investigation of corruption offences); c) minimization and (or) liquidation of consequences of corruption offenses .

Russian anti-corruption legislation, providing broad opportunities for the participation of civil society in combating corruption in all spheres of society, however, does not establish the specific content of such

participation forms and mechanisms of interaction with the state.

This is evidenced by National strategy of counteraction of corruption. Among the main directions of its implementation, a special place is the involvement of civil society institutions in combating corruption. Civil society institutions, organizations and individuals named as the subjects of the implementation of the National strategy along with state authorities, other state bodies, bodies of state power of subjects of the Russian Federation. Involvement in work on counteraction of corruption of various organizational-legal forms of public associations and other civil society actors is a required element of mechanism of realization of National strategy.

Federal law of 17.07.2009 № 172 "About anticorruption examination of regulatory legal acts and drafts of normative legal acts" establishes the legal and organizational basis of anti-corruption expertise of normative legal acts and their projects, an independent examination of draft normative legal acts may conduct public organizations and citizens; the conclusion of the independent public examination has recommendatory character and is subject to review. Do not belittle the importance of another direction of civil society participation in anti-corruption procedures of the legal monitoring in the field.

Identify the views of the population when using such forms as public hearings, surveys, etc. is fixed by the sources of the various branches of the Russian legal system, and primarily used in the constitutional and municipal law.

So, the Federal law of 06.10.1999 N 184 (as amended from 04.11.2014) "On General principles of organization of legislative (representative) and Executive state authorities of constituent entities of the Russian Federation" stipulates that the draft budget of a constituent entity of the Russian Federation and the annual report on its implementation there are public hearings.

Federal law of 06.10.2003 "On General principles of organization of local self-government in the Russian Federation" enshrines public hearings as a way to discuss projects of municipal legal acts concerning local value with participation of inhabitants of the municipality, a representative body of municipal formation, head of the municipal education and provide a mandatory review at public hearings of draft laws and issues (article 28).

The most common mechanisms for achieving the balance of interests enshrined in the Federal law from 21.07.2014 "On fundamentals of public control in the Russian Federation". The law gives the definition of social control: "the activity of subjects of public control in order to control over activity of bodies of state power, bodies of local self-government, state and municipal organizations, other bodies and organizations engaged in compliance with Federal laws the activities of individual bodies of state authority and for public review, analysis and public evaluation of their published acts and decisions".; lists and forms: public monitoring, public inspection, public scrutiny and other forms not contradicting to the Federal legislation. Social control can also be implemented in the forms of interaction of civil society institutions with state authorities and bodies of local self-government: public comment, public (public) hearings and other forms of interaction.

Activity of the public monitoring Commission, according to the Federal law dated 10.06.2008 "On public control over ensuring human rights in places of detention and about assistance to persons in places of detention" is holding public discussions, hearings and other events concerning their activities.

One of the forms of revealing and, to some extent, considering the circumstances in the regulation of relations in various spheres of society and state, the pursuit of the identification of public opinion by the legislator, from the point of view of the author, is the introduction into the legal validity of democratic institutions, even where they are seemingly not applicable.

So, requiring special knowledge in the sphere of protection, antidumping and compensatory measures when importing goods provides the possibility of holding public hearings; the protection of the rights and legitimate interests of investors on the securities market it is possible to use public hearings; public procurement, in accordance with applicable law, a mandatory procedure - democratic institution of public discussions.

Under Russian law, mandatory public discussion of procurement is carried out in the procedure established by Federal Executive authority on regulation of contract system in the procurement area, in case the initial (maximum) contract price or the price of the contract concluded with single supplier (contractor, performer), exceeds one billion rubles. The legislation of subjects of the Russian Federation, municipal regulatory legal acts may also establish other cases of carrying out obligatory public discussion of procurements to meet the needs respectively of the subjects of the Russian Federation and municipal needs and the procedure of obligatory public discussion of procurements in such cases. According to the results of obligatory public

discussion of purchases, the customer can be amended in the documentation about the procurement, and the procurement may be canceled. Procurement subject to mandatory public discussion cannot be carried out without that discussion.

In the legislation on culture introduced a rule according to which the annual state report on the state of culture, the government makes to Parliament no later than 1 September of the following year. The report is subject to publication and public discussion.

The procedure for preparation and dissemination, including publication of the annual state report on the state of culture is determined by the Government of Russia.

Public hearings city planning code provides: public hearings on draft master plans of settlements, master plans of urban districts, to hold public hearings on issues of land use and development, etc.

The establishment of a public easement is subject to the results of public hearings.

In Russian regions, the legislators attract citizens to public administration. Thus, the Law of the Arkhangelsk region, the forms of state-public management called public discussion, public discussion on health issues; along with monitoring and follow-up public awareness about the situation in the health sector; the implementation of an independent quality control activities in the field of health care; public participation in addressing issues of resource provision in the health sector, including the philanthropic and guardianship.

To achieve social justice, the legislator has gone on the way of use of forms of direct democracy. The public engagement in matters that affect them, to identify opinion - without a doubt, the idea of working to achieve social justice. However, the idea is no legal mechanism for its implementation without the support of the population the idea will not be implemented.

Considering the aforementioned legislative novelties from the point of view of their realization, the reality of resilience, there are some shortcomings in the legal consolidation and the implementation mechanisms.

Obviously the lack of systematic and terminological unity. So, one law establishes the public (public) hearings, while the other establishes a public hearing.

The lack of uniform mechanisms (timing, actors, initiators) are also not conducive to the widespread use of these forms of direct democracy and feedback mechanisms at the initiative of the population. Not solved, there remains the question about institutional affiliation used in various sectors of the Russian legal system, forms of direct democracy.

With the aim of attracting people to active social activities, the establishment of a mechanism for mainstreaming the interests and opinions of citizens, information on the social and economic situation, respecting the rights and freedoms of man and citizen, to interact with non-profit organizations in Russia created the public chamber. The public chamber will cooperate closely with representative bodies with public associations on issues of spiritual and moral normalization of the society, the creation of communities of religious and ethnic tolerance, combating extremism and terrorism.

The public chamber of the region - body that the citizens interaction with state power bodies of the region (Republic, territory, region) and bodies of local self-government.

The public chamber is an independent collegial consultative body (the Republic of Adygea, Altai Krai). The public chamber (the Republic of Altai, Altai territory, Republic of Dagestan, the Ivanovo region) provide interaction of citizens with state power bodies of the region and bodies of local self-government in order to: reflect the needs and interests of citizens residing on the territory of the region; protection of the rights and freedoms of citizens and the rights of public associations in the formation and implementation of public policies; implementation public examination and public control over the activities of Executive authorities and bodies of local self-government.

The public chamber is intended to ensure the harmonization of socially important interests of citizens, public associations, associations of non-profit organizations, public authorities regional and local authorities to address the most important for the region economic and social development, protection of the rights and freedoms of citizens and democratic principles, civil society organizations, through: the involvement of citizens, public associations and associations of non-profit organizations to the formation and implementation of public policies; conducting public examination of draft laws of the Republic, territory, region, as well as drafts of regulatory legal acts of Executive authorities of the regions and legal acts of local authorities; make recommendations to the public authorities of the region in determining the priorities of state support of public associations and other citizens associations whose activities are aimed at development of civil society in the

region.

In conclusion, reasonable conclusion: it is the firm belief of the authors, the institutions of civil society to participate in the work of representative bodies, in matters of public and state life; the collective enjoyment of the people belonging to the authorities, including public associations – active members of civil society – the primary regulatory today.

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