

REPRESENTATION AND ITS FORMS IN MODERN RUSSIA

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Abstract

The relevance of the topic due to the fact that questions of legal formalization of the fundamental legal values of freedom, equality and justice in the constitutional regulation are becoming increasingly important in the modern legal reality of Russia.

The legislator has been working on the consolidation of the forms of identification and a combination of personal, collective and public interests, providing the principle of social justice. This is because the goal of law is to balance interests in society and to find a compromise between them.

The purpose of this article is to identify new forms of public representation and updating of state tasks, established forms of work.

Traditionally forms of the representative bodies work have passed a long way from the formation of the Soviet state-building to the modern democratic stage of the Russian statehood.

The authors set themselves the analysis of existing normative legal acts at the Federal level, regions level and local authorities; doctrinal approaches to the formation of a new system of representation of interests with the participation of civil society institutions as a task of the research.

The formulation of this task has required monitoring of the enforcement practices of the Federal public authorities, public authorities of subjects of the Russian Federation and bodies of local self-government. The identified problems were required to classify them in a systematic and structural developing options in order to find ways for overcoming them.

The authors used the methods of comparative jurisprudence, analytical, formal logical methods, generalization and legal modeling to accomplish the problems of the study. Such work allowed to draw the following conclusions.

It is necessary to include the civil society institutions such as the public chamber, the municipal councils, youth parliaments, public associations and some others in the system of representation of public interests.

It seems appropriate amendments to existing legislation, enshrining the status of representative bodies to increase the activities of representative bodies in identifying and considering public interests and needs that arise in the development process of the state and society, scientific-technical progress, globalization.

The contents of such changes must be in extension methods feedback and interaction, the widespread use of electronic forms of communication.

Keywords: public power, society, state

MAIN TEXT

Enshrined in the Constitution of the Russian model of the exercise of power involves the necessary democratic components: democracy, separation of powers, Republican form of government, the Parliament, the system of checks and balances as the basis of interaction of all branches of government.

In examination of the constitutional-legal phenomena and institutions in the sphere of functioning of state power science of constitutional law has developed a substantial baggage. However, dynamic public relations, the global challenges lead to ongoing and emerging at times on a new round of research.

Continue to evolve and demand a deep scientific understanding of the institutions of parliamentarism, the problems of popular representation. In a modern constitutional-legal research there are a number of topical issues devoted to issues of legislative activity, the status of legislative bodies, the effectiveness in the Russian Federation laws. In the science of constitutional law is also actively exploring the status of the Deputy as a key figure in the process of lawmaking, to conduct research on the content of the rights, duties, the nature of the parliamentary mandate, the relationship of the Deputy with the party, safeguards issues of activities and responsibilities of the parliamentarian.

In the modern legal reality of Russia questions of legal formalization of the fundamental legal values of freedom, equality and justice in the constitutional regulation are becoming increasingly important. The manifestation of freedom, equality and justice through the representation of traditionally. Institutions, representation of interests in General, and the public, the national interests in the modern Russia are diverse.

Modern authors emphasize that in Russia since the late 90-ies begins the process of changing models of representation of interests. Replaced the pluralistic model of representation of interests of the Russian Federation in the mid-90s came the corporate model. It is possible that this shift is due both to the changing nature of the political regime and the characteristics of the institutional structure of Russian political system.

The existing model of a representative system of society is a fundamental interbranch normative model, common for different branches of legislation. Institutions representation of the interests can be both formal and informal, function as on the societal and local levels, according to some analysts.

Today, the Institute of public representation is a versatile way of ensuring the interests of social groups, territorial interests, the purpose of which is to establish consensus between government and civil society institutions to ensure a decent life and comprehensive development of man.

In the modern science of constitutional law is formulated many concepts of popular representation, due to the peculiarities of the historical stage of the emergence of socio-political attitudes of that particular age and socio-cultural specificities of particular societies.

The researchers' state law, as a rule, was limited when considering the representation of the people representative bodies. After all, popular representation is an institution of constitutional law, the subject of which are the public relations developing in the field of formation, operation and termination of authority and responsibility of representative bodies of state power." O. N. Bulakov proposes to include in the system of representative government collective representative bodies and elected officials of the state authorities. (Bulakov O. N. The Council of the Federation in the system of state power of the Russian Federation // Moscow, 2004. p. 11). It can be considered a representative body of local self-government and the head of municipal formation, territorial public representing the team in system of public authorities of the municipal formation of Russia.

The other view is held by G. D. Sadovnikova, which believes that a national representation should be considered only collegial bodies. (Sadovnikova G. D. the System of national representation in the Russian Federation: legal regulation and problems of development. M., 2007. page 15. P. 427).

The system of popular representation in Russia today consists of several levels and includes: 1) state the form of representation of the people (the Federal Assembly and the Legislative Assembly); 2) public forms of representation of the people (municipal representative bodies); 3) representative institutions of civil society (political parties, public chamber).

Inherently Russia is a constitutional federation. The unity of the state power system is the basis of the federal structure of the Russian Federation. Federalism as the form element of the Russian state and the basis of the split-level organization of state authority performs a structural and strategic role that provides coordination of interests of the center and the regions, civil society development and local government.

It is obvious that the Federal structure of the state affects the development of all state-legal institutions. In particular, the system of bodies of state power reflects the territorial structure of the state and provides for the creation of two levels of government: the Federation and Federation subjects. Federal character of Russia is expressed in the bicameral Parliament, in which the "upper" chamber – the Federation Council together with the state Duma is intended to express the representative nature of government.

The status of the Federal Assembly, the procedure for its formation, powers of the chambers is regulated by Chapter 5 of the Constitution. The Federal Assembly, in accordance with article 94 of the Constitution of the Russian Federation, is defined as the representative and legislative body of the Russian Federation. Tellingly, in the first place the definition of Parliament is precisely its characteristics as a representative body.

The representative character of power of the Russian Parliament means that this body is intended, primarily, to represent the interests of the bearer of sovereignty and the only source of power in the state of the multinational people of Russia, who, in accordance with article 3 of the Constitution of the Russian Federation expresses its will through a referendum or elections. The definition of the Federal Assembly as the representative body means that he is in legal relations, especially relations of power, and represents the people of the Russian Federation, as the legitimate representative of the Constitution. Although actually quite difficult to achieve, especially in a country like the Russian Federation to the Parliament expressed the will of the people, as the Parliament in fact cannot be elected by a majority of eligible to vote citizens.

The representative character of Parliament is considered in relation to each region, but it is obvious that the representativeness of the interests of the regions expressed through the Federation Council.

In the context of article 11 of the Constitution of the Russian Federation the Federation Council is a representative body providing interaction of bodies of state power of subjects of the Russian Federation, formed by them independently in accordance with the constitutional system of the Russian Federation and the General principles of organization of representative and Executive bodies of state power (paragraph 1 of article 77 of the Constitution), public authorities of Russia.

The Russian Parliament, in turn, are included in the relationships covered by the concept of "parliamentarism". The parliamentary system is a unique phenomenon, whose contents can be viewed in different aspects. The parliamentary system is a complex phenomenon that incorporates many aspects of social life, and can be expressed in several forms.

From the point of view of political theory, the parliamentary system is a form of representative democracy. In this sense, it is actually identified with democratic values, developed over many centuries, such as the civil society with a high degree of legal culture; adoption of the idea of the rule of law; priority of rights of personality in relations with the state (it is the will of the people is decisive in the formation of state institutions); development of an appropriate scale of values, which would exclude the contradiction of public and private interests in exercising state power.

At the same time, it is obvious that the existence of the Parliament in the system of bodies of state power does not imply the existence of a parliamentary system. For parliamentarism requires that a body of popular representation was endowed with certain qualities, among which are: 1) the election of members of Parliament in free and fair General election, which is the main guarantee of a high level representation of the corresponding state body; 2) autonomy and independence in the system of separation of powers - Parliament forms the legislative branch of government; 3) high level of authority of Parliament in matters of governance (for example, the formation of the Executive power) and the availability of the decisive powers in the legislative process. The parliamentary system is the multidimensional phenomenon with complex internal structure, consisting of interrelated elements. He characterizes the organization of social life, the achieved level of human rights and freedoms duties of citizens, i.e. the degree of democratization of society. We define the parliamentary system of power relations based on the separation of powers, representation of diverse interests of various social groups of civil society, political pluralism, respecting the rights and freedoms of man and citizen.

Now we can say that the Russian Parliament is an integral part of mission and implements their will through its inherent forms and methods of influence. In the conditions of parliamentarism as the existing system of public administration, dominant in legislative functions, the power of Parliament increased. In this regard, of particular importance is the process of formation of chambers of Parliament, the choice of the optimal model of the electoral system for the election of deputies of the State Duma and the upper house of Parliament, the most optimal procedure of its formation.

And if this assertion be applied to the Federation Council, the real choice of state authority and the ability to

influence the country's fate in its most important constitutional powers will appear in the "upper" house of Parliament only if it is formed in exact accordance with the letter and spirit of the Constitution.

The important stabilizing role of the Russian Parliament plays as the initiator of socio-economic and political reforms. It was within the walls of this institution, you can discuss all possible options and points of view and to listen to different opinions and compare the arguments of competing parties, it is a compromise and its legal registration in the form of laws. Subsequently, the Parliament monitors the implementation of planned reforms. Even if the initiator and executor of the reforms of the Government of Russia, still the latter cannot do without Russian legislators.

Thus, in relation to the philosophical and legal foundations of the theory of parliamentarism we can draw the following conclusions. (M. V. Varlen. The order of formation of Council of Federation – the evolution of the Federal foundations of Russian statehood. M., 2016 no.3.P. 9-17).

1. As a multifunctional institution, the parliamentary system (representing the most significant ideas of representative democracy) on the one hand, allows the people to exercise their constitutional right to state power, and with another – acts as a structural and functional element of the mechanism of checks and balances, ensure control over the Executive branch of government and thereby prevent it from being absolute and possible abuse.

2. In theory, the parliamentary system is Central to the idea of combining representative and legislative functions of Parliament. This implies that the laws of normative legal acts which have higher legal force accepted the people's representatives. This ensures the implementation of General social interests or, at least, the interests of the most progressive sectors of society and increases the efficiency of functioning of society as a complex self-governing system. There is a dialectical relationship of the concept of parliamentarism with the constitutional principle of democracy, or rather, popular sovereignty, suggesting that "the bearer of sovereignty and the only source of power in the Russian Federation is its multinational people", who exercise their power; including through public authorities (article 3 of the Constitution).

3. Consideration of parliamentarism as a separate politico-legal category involves focusing on two senses. On the one hand, the term "parliamentarism" is used to refer to a system of popular representation, which represents the legal form of public participation in the political process. In a similar sense, parliamentarism is a condition, but a symptom of a democratic state. On the other hand, the parliamentary system is seen as instrumental component of the system of checks and balances that ensures the restriction of the activities of the state apparatus to prevent absolute power and abuse. And the Federation Council should be formed in such a way as to ensure the implementation of the principle of separation of powers and system of checks and balances, to implement the idea of federalism.

Thus, the two constitutional-legal Institute of parliamentarism and federalism are closely linked and evolve, influencing each other.

And since the Federation Council is designed to solve the most important issues of national importance: approval of changes of borders between constituent entities of the Russian Federation, the adoption of the decree of the President of the Russian Federation on the introduction of martial law; approval of the decree of the President of the Russian Federation about introduction of state of emergency; the decision of a question on possibility of use of Armed forces of the Russian Federation outside the territory of the Russian Federation and other matters that affect the interests of all Russian regions and can be solved only with their active participation, in this context, naturally raises the question of the representativeness of the Council of the Federation, of how to ensure that this body of representation of interests of subjects of the Russian Federation, as required by the Constitution of Russia.

This list can be supplemented by public associations and municipal councils. The municipal councils are institutions of public representation. Giving the municipalities the quality of compulsory and one of a kind actors at the regional level has an objective basis, aimed at protecting the rights of local self-government, however, the potential of such associations is not fully exploited.

Specificity of formation of the Russian popular representation because it is dominated by political representation, while other forms associated with the institutions of civil society, remain outside the framework of political and legal participation.

Political parties as institutional actors of popular representation is dualistic in nature, because, on the one hand, are intended to reflect the interests of the people, and on the other to seek power and participate in the bureaucratic structure, which complicates the conceptualization of the positions of political parties in the legal concepts, because they require uniqueness.

There is a proposal on the inclusion of public associations in the system of representation. The arguments are as follows: public unions participate in the implementation of some forms of direct democracy, initiate them, take part in preparation and carrying out. Public enterprises cooperate with the authorities in the process of implementation of decisions taken via direct democracy. (Komarova V. V. Public enterprises in the system of direct democracy. 2013. No. 12. P. 1523-1528).

According to the norms of the Federal law from 12.06.2002 "On basic guarantees of electoral rights and the right to participate in referendum of citizens of the Russian Federation", subjects of the election process may be the following associations: electoral Association (political party, regional branch or other structural division of a political party, which are in accordance with Federal law, the right to participate in elections of the appropriate level); public Association the Charter of which stipulates the participation in elections and which is created in the form of a public organization or public movement and registered at a level corresponding to level of elections, or at a higher level, or a corresponding structural unit of the specified public associations, but only in elections of deputies of representative bodies of municipal formations on one-mandatory and (or) multi-seat electoral districts, heads of municipal formations.

Currently, as the analysis of the legislation, a public Association entitled independently to nominate candidates only for the posts of heads of municipalities and deputies in one-mandatory and (or) multi-member constituencies in elections under the majoritarian electoral system.

If the contract between the political party (or its regional Department) and social organization on the establishment of an Association or Union to participate in municipal elections under the proportional electoral system can be shared with the political party nominating list of candidates (when mounted in appropriate contract conditions). In fact we are talking about the creation of election blocs, whose activities were banned in April 2004.

In turn, political parties are mandatory participants of the electoral process, except at the Federal level, the formation of elected bodies and officials of bodies of state power of subjects of the Russian Federation. The Federal legislator is obliged to form a representative body of the Federation not less than fifty percent under the proportional system, and since April 2013 secured the participation of political parties in the formation of the office of the higher official of the subject of the Russian Federation (head of higher Executive body of state power of a subject of the Russian Federation) by offering candidates for this position.

Note that this right does not possess all political parties, but only represented in the legislature. So, the proposal on the candidate to the President of the Russian Federation has the right to make political parties and lists of candidates of which were admitted to distribution of Deputy mandates in the current legislative (representative) body of state power of subject of the Federation; political parties, Federal lists of candidates are admitted to distribution of Deputy mandates of deputies of the State Duma of the Federal Assembly of the Russian Federation.

Associations are not only involved in the formation of the representative bodies and elected officials at the level of constituent entities of the Russian Federation, but also have the right to adjust their activities according to the interests of its members, by initiating the legislative process. (Varlen M. V. Parliamentary mandate in the Russian Federation: constitutional and legal framework. M., 2008, P.73).

So, according to the norms of the Federal law of 06.10.1999 N 184 "On General principles of organization of legislative (representative) and Executive state authorities of constituent entities of the Russian Federation" the right of legislative initiative in legislative (representative) body of state power of a subject of the Russian Federation may be granted to public associations. This right have used some of the subjects (for example, Bryansk and Belgorod region, Kabardino-Balkaria and Republic of Udmurtia).

Found fragmentary granting the right of legislative initiative of certain public associations. For example, the right of legislative initiative in the legislative body of the corresponding subject of the federation belongs to the Altai regional Council of trade unions, in the Arkhangelsk region - regional associations of trade unions on matters within their jurisdiction; in the Kursk regional Duma, public organization "Federation of trade Union organizations of the Kursk region"; in the Sakhalin region, the representative of the indigenous peoples of the North in the regional Duma on matters within their jurisdiction and the regional associations of trade unions on matters affecting labor and socio-economic rights and interests of the population of the Sakhalin region; in the Ulyanovsk region - Ulyanovsk regional branch of all-Russian public organization "Association of lawyers of Russia".

At the local government level the list of subjects of legislative initiative, according to the norms of the Federal law of 06.10.2003 "On General principles of organization of local self-government in the Russian Federation"

does not contain a public Association, but may be extended by the Charter of the municipality.

According to contemporary authors, which we share, the modern Russian system of legal representation is typical for corporatization; in addition to the institutions of political representation are the institutions of functional representation of interests (lobbyism, corporatism).

Today, territorial parliamentary representation loses its position, in virtue of the principles of creation and activity of political parties: with the support of various segments of the population they represent the electorate as a whole, and gain their political will irrespective of ethnic, gender, religious and other differences.

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