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SPECIFICITY OF LEGAL REGULATION OF FORMS OF DIRECT DEMOCRACY IN THE REPUBLIC OF KAZAKHSTAN

Abstract. To ensure the successful functioning of the system of direct democracy in General, and each Institute separately a big role for the means of legal regulation. Their task is to ensure that the development of direct democracy did not occur spontaneously and randomly, and experienced consciously-directing effect of the state and society.

Keywords: Constitution of Republic of Kazakhstan, direct democracy, representative democracy, regal regulation.

In the Message of the Constitutional Council of the Republic of KKazakhstan «About a Condition of the Constitutional Legality in RK» of June 16, 2016 is noted that further strengthening of the state independence of RK can be performed by means of a dynamic constitutsionalization of the legal environment and updating of the legislation in case of increase in efficiency of plans of lawmaking works, improvements of quality of drafts of laws, analytical and prognostic assessment of consequence of their acceptance, synchronization of the edition of legal acts [1].

In ensuring successful functioning of system of direct democracy in general and also each of its institute separately the big part is assigned to means of standard legal regulation. Their task is achievement of that development of direct democracy happened not spontaneously and disorderly, and experienced the conscious directing impact from the state and society. By means of precepts of law and other means of regulation it is possible and to fix, legalize, «stake out» optimum (from the point of view of the state) forms of managerial activity and amateur performance of the population; b) to deliver a barrier, to prevent, take a disapproving position or even an irreconcilable and negative line item to undesirable forms; c) to differentiate (taking into account state interests and in compliance with the changing situation) the relation to the forms which are intermediate between the specified two groups of forms. Standard and legal registration of institutes of direct democracy provides sufficient definiteness in such questions as subject structure of each of these institutes, the list of actions which is permitted, authorized, offered or snugged to make to subjects, their specific competences and legal obligations, consequences of non-compliance with an established procedure and allowed violations, methods of overcoming legal collisions, disputable situations, contradictions and the conflicts. Thereby the border of an institutionalization of direct democracy, its natural «built in» in the general mechanism of social activity of the state extends, and also coordination of the actions covered by it with all other forms of legal activities in society is provided.

And one more benefit of a standard and legal regulation of institutes of direct democracy consists of that in case of it is less violations of the rights and freedoms of the persons involved in implementation of the called institutes, than in case of its absence: its, as a rule, is followed by creation for these rights and freedoms of these or those guarantees of providing and protection.

In other words, possibilities of the standard-right regulation which the state has are wide, and their skillful use allows it to enter processes of functioning and development of direct democracy into the desirable course, in some limits freely to maneuver, introduce some amendments in actions of participants of the actions covered by its institutes. Certainly, results of the regulating impact on these processes happen both positive, and negative, and the task consists in that on the basis of anticipation to aim at achievement of the first and non-admission of the second.

Value of standard regulation of institutes of direct democracy increases in connection with declaration of a rate as the Republic of Kazakhstan on strengthening of the constitutional state and civil society, liberalization of a political regime in the country, democratization of the state and public life, development of national economy. Such orientation in itself can't be realized; as in general, and in each specific sphere of the relations it needs the conscious, first of all standard regulating, directing impact.

It is necessary to consider also the feature of legal regulation of institutes and procedures of direct democracy noted by V. A. Malinowski consisting that «internal is contradictory as in it the aspiration of the legislator firmly faces to fix these or those democratic forms (than to create them additional legal guarantees) with need to leave broad lands for an initiative of subjects of the appropriate rights and obligations» [2]. Outlining rather fully those essentially important procedures and models of direct democracy which are necessary for the state and shall be observed by subjects of the public relations, involved in them, legal regulation at the same time cares also for ensuring with the last some freedom of a discretion and possibility of the conscious voluntary choice of private procedures and models. Lack of a tough regulation of all types of functioning of direct democracy answers the nature and nature of the last.

The mechanism of legal regulation of processes of functioning and development of direct democracy is difficult, widely branched, include a number of links which are used in total. The majority of types of sources constitutional and some other industries of the right are involved in it.

The kernel of this mechanism, its main component is the constitutional provisions concerning direct democracy. Them can be a little by quantity and amount, but on the legal and political importance they anyway take the leading place in system of regulation of these relations. Let's take, for example, the Constitution of the Republic of Kazakhstan 1995. As the Fundamental law of the state it contains the initial regulations either which are directly fixing the status of direct democracy, or having this or that relation to it. It refers the solution of the most important issues of the state life to number of the fundamental principles of activities of the Republic of Kazakhstan by democratic methods, including vote on a republican referendum or in Parliament (point 2 of article 1). Under the Constitution the unique source of the government are the people who perform it directly through a republican referendum and free elections, and also delegate implementation of the power to state bodies (point 1 and 2 of article 3).

To two key institutes of direct democracy - to a referendum and elections - Constitution pays much attention. First of all, they are considered from the point of view of the rights and freedoms of citizens: it is about the right to participate in administration of the state directly and through the representatives and the right to choose and be elected to public authorities and local governments, and also to participate in a republican referendum (paragraphs 1 and 2 of article 33). Besides, powers of the major bodies and officials of the state regarding holding a referendum and elections are fixed - for example, power of the President to make the decision on holding a republican referendum, to appoint another and early elections in Parliament (paragraphs 2 and 10 of article 44), power of Parliament to show an initiative about purpose of a republican referendum (paragraph 3 of article 54), power of the Constitutional Council to resolve an issue of correctness of elections of the President, deputies of Parliament and holding a republican referendum (subparagraph 1 of paragraph 1 of article 72) in case of a dispute. A number of standards of the Constitution concern the principles, an order and terms of elections of the President, Parliament, Maslikhat (articles 41 and 51, paragraphs 2 and 3 of article 86).

Considering importance of such institute of direct democracy as public associations, the Constitution devotes it several starting provisions. Article 5 fixing a new rate of the states in relation to public associations is especially selected: recognizing ideological and political variety in the Republic of Kazakhstan, the Constitution however doesn't allow creation in state bodies of the organizations of political parties. Basic value has specifying about non-admission of illegal intervention of the state in affairs of public associations and public in affairs of the state, assignment on public associations of functions of state bodies. Under the same article creation and activities of public associations, the purposes and which actions are directed to violent change of the constitutional system, violation of integrity of the Republic, undermining safety of the state, kindling of social, racial, national, religious, class and patrimonial discord, and also creation unforeseen by the legislation of paramilitary forces are forbidden. In other aspect this question is considered in article 23: here it is about the right of citizens to freedom of associations and on regulation by the law of activities of public associations. Also the constitutional regulations on the right of citizens peacefully have some relation to direct democracy and without weapon to gather, to hold meetings, meetings and demonstrations, processions and picketing (article 32), and also to send individual and collective appeals to state bodies and local government bodies (point 1 of article 33) [3].

All these constitutional provisions reflect general approach to regulation of direct democracy, fix requirements of state policy to its institutes, depict its place in the mechanism of public administration by society, and show ways of its use to the modern period.

The specification, disaggregation and development of these constitutional provisions are performed by other regulatory legal acts of the state, first of all the constitutional and ordinary laws. So, some provisions of the law of January 23, 2001 «About local public administration and self-government in the Republic of Kazakhstan», concerning the status of deputies of Maslikhat are related to development of direct democracy. The law says that deputies express a will of the population of the corresponding administrative territorial units taking into account state interests that they are obliged to keep in this contact with voters, to regularly inform them on work of a Maslikhat, to consider the addresses of voters which arrived to them, to regularly conduct personal reception of citizens [4].