

INSTITUTIONS OF DIRECT DEMOCRACY IN PEOPLE POWER IMPLEMENTATION MECHANISM IN THE REPUBLIC OF KAZAKHSTAN

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Abstract: This paper analyzes the situation in legislative governance and practice of the direct democracy institutions of citizens in the Republic of Kazakhstan (RK). Under the contemporary conditions, Kazakhstan is implementing a set of reforms acknowledging that at the civil society level administrative functions have been manifesting more and more to ensure local implementation of the political and economic policies of the government. No doubt that it should be considered as striving for the unity of the public power mechanism – such a trend is typical for traditional consolidated democracies. Despite wide public and scientific discussions on the prospects of direct democracy institutions development, no clear scientific view of the system of those institutions has been worked out yet. Such a view could enable to work out a science-based concept for the country's further democratic development. It seems imperative to show the sphere of people power to apply, to specify the core democratic institutions to implement it. The paper studies the democratic development of the Kazakhstan statehood in close relation to municipal democracy and establishment of the civil society. Historical, political and legal aspects of people power in the RK have been studied. The experience of democratic participation of people in administering the public life in the Russian Federation and Western countries has been reviewed. Attention was paid to mutually dependent nature of development of state, municipal and public people power. Democratic development of the Kazakhstan statehood is connected to municipal democracy and establishment of the civil society. A few conclusions are made to note the indirect advisory nature of the exercise of people power and the need to develop new forms of its implementation and formalization in the national law is rationalized.

Keywords: People power, collective applications, petitions, people's law-making initiative.

INTRODUCTION

Operation of democratic institutions of people power is a mandatory condition for evolutionary development of a state. Further democracy development prospects in the contemporary world are predetermined by the development of legal culture and civilization of various social strata in conjunction with rapidly developing information and communication technologies and social networks.

In that connection, attempts are made to create a model of democratic governance under which people as the sole source of state power will be efficiently

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using the right to make state decisions and be able to affect decision making by state authorities and exercise control over the execution of those decisions.

The reforms vector in the Republic of Kazakhstan acknowledges their compliance with the western democratic traditions in connection with solving the contemporary issues of development under globalization conditions coupled with acceptance of own experience of several centuries.

The scholars note that in the 18th, 19th and early 20th centuries, even under the conditions of the colonial policy of absolutist Tsarism, steppe democracy existed and developed in Kazakhstan. Local self-administration bodies were so affluent that even the Tsarist officials had to reckon with their heads – *aha-sultans*. Elections to self-administrations were extremely important, winning was a principal thing so that pre-election battles were turning into conflicts sometimes. However, despite quite understandable lack of civilized methods of political fight among nomad cattle-breeders, the steppe self-administration established a truly democratic type of political culture (Midelskiy 2014).

In the contemporary Kazakhstan, the basis parameters of democratic statehood are fixed in the Constitution adopted at the all-republic referendum on August 30, 1995 via nation-wide voting. It declares the Republic of Kazakhstan a democratic, secular, rule-of-law and social state employing as the highest values the human being, his/her life, rights and freedoms. The sole source of the state power is people.

The Constitution provides for a mechanism to realize people power: people realize their power via all-republic's referendum and free elections and delegate the exercising of their power to state authorities (Clause 2, Article 3). So, all the powers the state authorities are vested with are emerging from and concentrated on people power. The Constitution establishes the right of citizens to participate in administration of state affairs directly and via representatives, to apply personally, to send individual and collective applications to state authorities and local self-administrations (Clause 1, Article 33). Citizens are entitled to express their opinions via meetings, demonstrations, marches and picketing (Article 32).

The new quality of Kazakhstan statehood, as always in hard times, may be achieved solely with wide public potential. This is what participatory democracy is called to serve, having not a *probability* nature (for instance, a referendum as a *sleeping* institution) but a real procedurally supported social democracy. Direct participation of people is multifaceted. Its sources may be found in communal, class, corporate, popular assembly methods to administrate the common affairs. In the contemporary variant, participatory democracy in various countries has a lot of common features being instruments to affect the decision making process by citizens at respective levels. Those comprise commissions/committees of municipalities, attended by people's representatives along with deputies/advisors,

advisory and imperative referendums, neighbor councils to unite people (i.e., local community cells representing collective interests, having not only advisory but imperative powers).

Meantime, special importance is gained by the constitutional mechanism to exercise people power as a uniform constitutional institution in its aggregate understanding linked with public interests realized at all the levels of public power – republican, regional, municipal.

RESEARCH METHODS

The theoretical basis of the research comprises the works by Kazakhstan and foreign scholars in constitutional law, state administration, theory of law and state, municipal law.

The methodology of this research is applying a universal dialectic method of cognition which allowed considering various institutions on the basis of comprehensive mechanism of people power exercising for the purposes to form the theoretical basis of the research.

The achievement of work results is ensured via comprehensive use of systematic, historical, logical, comparative legal, statistical, particular sociological methods of scientific cognition. Special comparative research covered the publications of national and foreign scholars devoted to evolution of the democracy institutions in the RK and offers on restructure of the legal governance of people power.

For the purposes of identification of the optimal mechanism, this paper comprises a legal research of constitutional basics of people power in the Republic of Kazakhstan and comparative legal analysis of the current law of foreign countries.

RESULTS

Public power is based on the principles of representative democracy, so a great portion of high decisions is made by the state authorities exercising power on behalf of people and for the interests of people. Nevertheless, efficient implementation of people power is possible only under the combination of direct and representative forms of democracy as via direct democracy representative form gains legal powers from people to exercise the state power, i.e., is constitutionalized (Kabyshev 2012). As opined by some researchers, "...direct democracy states devote more resources to collective goods policies while non-direct democracy states emphasize particularized benefits. This difference occurs because public preferences in direct democracy states are more closely aligned with policy priorities than is the case in states without direct democracy institutions" (Lewis, Schneider & Jacoby 2015).

In the direct democracy theory, there are institutions exercising direct power by people and institutions of public participation in exercising power.

In a direct democracy system, direct power institutions are referendums, direct elections, recalls of representatives by people while public participation institutions are people's law-making initiatives, collective applications of citizens, public hearings, advisory referendums, nation-wide discussion of draft regulations of state authorities or local self-administrations, citizens meetings, meetings, demonstrations.

In the first case, decisions of people as the source of power are imperative and do not need further confirmation by any state authorities. In the second case, direct democracy subjects – citizens and their unions – do not make final decisions but one way or another affect the mechanism of decision making by state authorities and local self-administrations. Institutions for citizens' participation in state administration, being a form of cooperation of citizens and authorities, are advisory.

Currently, the issue of direct democracy advisory institutions development in state administration is widely discussed in the law science. It is offered to make steps towards real exercising and implementation of people power and to govern particular institutions of people power at the constitutional level for that purpose (Avakyan 2012).

The highest forms of people power – referendums and elections are constitutionally fixed in all democratic states but the role of advisory institutions of people power in the mechanism of public decision making by state authorities is currently underestimated.

State and local self-administration authorities cannot neglect the will of the majority and make any decision contradictory to that will (Avakyan 2008).

As it is known, those institutions allow identifying real public needs for legal governance of some or other relationships, taking the group interests of citizens into account, stimulating legal activities of people (Vazhnov 2007).

Finally, they are the most important condition for development of the civil society (Vakhitov 2011) and an efficiency tool to ensure feedback between the authorities and the population.

V.V. Putin, being at that moment a candidate for presidency, supported advisory institutions of direct democracy in his program article: "...Free and far more uncensored availability of information on the state of affairs in the country in a natural way formulates the request for continuous but not 'during elections times only' participation of citizens in politics and administration. Democracy, as I opine, is in the fundamental right of people to elect authorities and to continuously affect the decision making by them. Therefore, democracy should have the mechanisms for continuous and direct actions, efficiency channels for dialogue, public control, communications and feedback" (Putin 2012).

The most important form of civil participation in state authorities operation is public (civil, societal) initiative underlying most direct democracy institutions.

Initiative (Latin – *initium* – beginning) is determined as the first step in any affair: internal urge to new forms of activities, business acumen, supervising role in any actions.

Initiative as a legal category characterizing social and political activity of a citizen is always a response to some public contradictions involving state power institutions needing settlement. Initiatives are not continuous; they are implemented in the course of applying to relevant state authorities or local self-administrations (Akhmetova 2014).

A direct initiative, being a means to exercise the political right to participation in state affairs administration, is manifested in various forms and, depending on the subject of initiative, may have both private and public nature.

We will consider forms to implement initiatives of public and private nature like collective applications (petitions) and law-making initiative of citizens.

The subject of collective application of citizens may be any matter to be settled not only via adoption of a regulation but via an individual administration enactment.

To initiate such an application, declaration of will of two and more individuals is enough. A special form of collective applications, more and more frequently used by citizens of developed countries, are so-called petitions (Akhmetova 2014).

The basic differences of petitions from other collective applications of citizens are related to mandatory public significance of the issue put for consideration. To initiate such an offer, initiators need to be duly registered and collect a certain number of votes of population supporting that initiative, while a petition is binding for any relevant authority. Upon receipt, that authority may not assign it to another body or official and has to include that issue in its agenda, consider it and make a resolution or bring the issue to the public vote (Avakyan 2008).

According to the Act of the RK of January 12, 2007 *On procedures of applications of natural persons and legal entities*, application is an individual or collective written, oral or electronic (certified with electronic digital signature) offer, message, claim, request or response, sent to a person considering applications or to an official (Clause 4, Article 1) (Bulletin of the Parliament of the Republic of Kazakhstan, 2007).

As we see, the said Act contains the list of kinds of applications, namely including an offer, along with a claim, a request and a response as the ways to express and protect private interests in administrative and legal form (Akhmetova 2014).

An offer is a recommendation of a person in connection with improvement of laws and regulations, activities of state authorities, development of public relations, improvement of socioeconomic and other spheres of the state and the public.

Thus, offers in that case are applications of citizens on any publically significant matter which may possibly require an adoption of a new law or regulation, amendments thereto and even cancellation and should be procedurally supported respectively. But, as follows from the said Act, the legislator did not provide for any special procedure to consider such applications.

Another kind of direct initiative is people's law-making initiative to be exercised by submission of a draft regulation made out by citizens directly to a relevant state authority. Meantime, the number of citizens entitled to support that initiative and the procedure to collect signatures for that draft's support are provided for (Akhmetova 2014).

People's law-making initiative institution is widely known in many countries and legally fixed at various levels of state administration.

On the state level that institution is fixed by Constitutions of Switzerland, Italy, Austria, Spain, Brazil, Kyrgyzstan, Belorussia, Latvia, etc.

People's law-making initiative is a real alternative to representative democracy at the local level in the USA. So, the institution of people's initiative here allows a great number of voters to bring for consideration by a local council a draft of some or other regulation. By a referendum, citizens are, to the contrary, entitled to cancel any regulation of the local council (within a particular term since its adoption). A referendum is required here to amend urban self-administration charters and to solve some other matters (for instance, borrowings, tax increase) (Sullivan 2001).

As a result of direct democracy reform in Germany, "... which granted voters rights to launch initiatives on local issues, but neither the right nor the responsibility of voting on the implied costs of these initiatives. An analysis of around 2,300 voter initiatives in the population of around 13,000 German municipalities from 2002 to 2009 demonstrates that in this sample – and in contrast to most of the Swiss and US evidence – direct democracy causes an expansion of local government size on average by around 8 % in annual per capita expenditure and revenue per initiative (on economic projects). This quite substantial increase in government size is financed by an increase in local taxes" (Asatryan, 2016).

The Russian legislature does not provide for direct participation of citizens in the law-making process at the general state level. At the federal level, law-making initiative as a stage of legislative process is a right of the initiator to directly introduce a draft bill into the State Duma *sui juris*. That right is granted to strictly fixed range of initiators (Part 1, Article 104 of the Constitution of the RF) not including citizens and their unions.

It is notable that this right may be exercised by citizens at the regional and self-administration levels. The legal basis for implementation of law-making initiative by citizens of Russia at the regional level is Federal Act of October 6, 1999 No. 184-FZ *On general principles of organization of legislative (representative)*

and executive authorities of the constituent entities of the Russian Federation (Collection of Legislation of the RF, 1999). In compliance with Clause 1, Article 6 of the said Federal Act, the right of law-making initiative may be granted by the constitution/charter of a constituent entity of the Russian Federation to public unions and citizens residing in the territory of such constituent entity of the Russian Federation.

Law-making initiative of citizens as a form of public participation in local self-administration was legally formalized in Article 26 of the Federal Act of October 6, 2003 *On general principles of organization of local self-administration in the Russian Federation* (Collection of Legislation of the RF, 2003).

The constitutional law of Kazakhstan does not contain any provisions in connection with people's law-making initiative either at the state's scale or at local self-administration level. However, as noted in the national science, it does not mean full rejection by the legislator of such political right of the Republic's citizens or inability to formalize it legally (Baymakhanova 2005).

In Kazakhstan, the right of law-making initiative belongs to a strictly limited range of persons: the President of the Republic, deputies of Parliament, Government (Clause 1, Article 61 of the Constitution). The constitutional Act of October 16, 1995 *On the Parliament of the Republic of Kazakhstan and status of its deputies* says that a law-making initiative is official introduction by a subject of the right to law-making initiative of the text of a draft act or other regulation of the Parliament mandatory to be considered by the Parliament (Bulletin of Supreme Council of the Republic of Kazakhstan, 1995).

Before amending the Charter of Mazhilis of the Parliament of the RK dated October 12, 2005, citizens and their unions were enjoying so-called indirect right of law-making initiative (Bulletin of the Parliament of the Republic of Kazakhstan, 2005).

Earlier it was provided for that draft acts originated by state authorities, public unions and individual citizens, having no right to lawmaking initiative, could be introduced into Mazhilis only via bodies and persons entitled to law-making initiative.

However, the exercise of the indirect right to law-making initiative of the said subjects did not have procedural guarantees which evidenced the declarative nature of that provision (Putin 2012).

Exclusion of that wording from the text of the Charter of Mazhilis, as we opine, is not quite justified. Accounting for the right of parliamentarians to law-making initiative, a special procedure for considering by people's deputies of applications lodged by citizens and their unions could be formalized.

DISCUSSION

We opine that the issue of vesting citizens and their unions with the right of law-making initiative at the general state level is rather controversial; however, formalizing people's law-making initiative at the local self-administration level is imperative.

In the Act of January 23, 2001 *On local state administration and self-administration in the Republic of Kazakhstan* (Bulletin of the Parliament of the Republic of Kazakhstan, 2001), governing the procedure of local self-governance in Kazakhstan, the legislator confined itself to a simplified form of direct people's power, namely meeting of the local community, having limited the rights of people to exercise other more efficient forms of direct declaration of will.

Accounting for foreign experience of local self-administration, we opine that the list of its implementation forms should be expanded, including granting citizens of respective administrative/territorial community the right to directly apply to Maslikhat (representative body of local state administration and self-administration) with offers to adopt any regulation on local matters.

Not vesting citizens with the right to law-making initiative and excluding them from the list of law-making initiative right subjects, the legislator puts in doubt the efficiency of the basic principles of state power implementation.

We should be based on the main constitutional provision: the sole source of the state power is people (Clause 1, Article 3 of the Constitution of the RK), and, therefore, any gaps in constitutional and legal governance which concretize the issues of democracy are not always justified. A probable defect in the form of "conscious denial of constitutional and legal governance" (Avakyan 2008) in that case is not excluded either.

There are enough reasons to expand the democratic fundamentals in state administration. The idea that without participatory democracy (based on direct participation of people) "representative democracy alone is not sufficient" is more and more frequent (Kuryachaya, 2012). The local administration process via traditional forms of representative democracy is more and more supplemented by various mechanisms to consult people as the basis for decision making. Amendments to regulations on local administration are being made seeking to expand the forms of direct democracy, strengthening of glasnost in the activities of local authorities (including via Internet), scheduling regular meetings with mayors and local council members, creating telephone lines to connect to local administration, getting consumers involved in services providing and establishment of respective local standards (so-called interactive management) (Akhmetova 2014).

From that standpoint, the practice of applying by many democratic states of so-called crowdsourcing technologies in state administration deserves some attention.

The term “crowdsourcing” is made of *crowd* and *sourcing* meaning assignment of some production functions to an open range of persons under public offer without labor contract.

Various crowdsourcing modifications are successfully implemented by mass-media, commercial, bank, social spheres, legal practice (John 2006).

In state administration, the crowdsourcing technology is used as an innovative method to make public decisions ensuring maximal accounting for public opinion which is ensured through identification and use of intellectual potentials of citizens on the Internet.

In the Russian Federation, the use of such technologies in state administration became possible upon the adoption of a few regulations to establish and govern the procedure of public hearings on draft regulations covering the main directions of state policy in socioeconomic improvement of the Russian Federation developed by federal executive authorities (Collection of Legislation of the RF, 2011) and governing the procedure to consider public initiatives put by the citizens of the Russian Federation using the Internet resource *Russian Public Initiative* (Collection of Legislation of the RF, 2013).

Under overall legislative governance, it is crowdsourcing which may become a means to implement civil initiatives not only in the form of offers, ideas and concepts, but as direct people’s law-making initiatives introduced into representative authorities of any level.

CONCLUSION

Participation of citizens in exercise of power is first linked with direct democracy. Meantime, special significance is gained by the coverage by direct democracy of not only state and municipal but public affairs.

Direct democracy institutions are linked with referendums, municipal elections, citizens meetings, community meetings, territorial public self-administration, etc. (for instance, the right to hear reports by deputies and elected officials, the right to recall deputies and elected officials, the right to lodge petitions into local self-administrations, the right to take part in discussion of local and if required state significance via various unions of citizens locally and in mass media).

Elections and referendums are not linked with continuous participation of citizens in exercising of their rights to democratic participation.

Attention should be paid to the fact that the subject of direct democracy is mainly the civil society and population. Among the issues in civil participation, insufficient development of efficiency mechanisms and procedures to ensure public effect on approval of material interests are noted, causing domination of informative, advisory and consulting cooperation but not partnership.

The idea on combination of representative democracy and participatory democracy should be implemented not at the level of interconnectedness and consultations but at the political influence level – responsible and real.

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