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**POPULATION AND ITS REPRESENTATIVES IN THE GOVERNMENT:
EVOLUTION OF RELATIONS (HISTORICAL AND LEGAL ASPECTS)****V. P. Reutov**

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Introduction: the article is devoted to the analysis of legal aspects of relations between representatives of the population in the institutions of the state power and the population that elected the representatives from the historical perspective, as well as to the consideration of significance of these relations in modern conditions. **Purpose:** to analyze relations between the elected representatives of the population and electors, from antiquity till today, in terms of obligatoriness of mandates and the possibility to recall elects (imperative mandate) or to have no elects (free mandate); to evaluate the importance of these relations today. **Methods:** the research is based on historicism as an important component of the dialectical approach, the system method and the comparative legal method. **Results:** it has been discovered that in antique times the people's elect only had a responsibility of moral character, in medieval Europe and in Russia the representation of the population was very limited. It has been found out that the question of the juridical fixation of the mutual obligations of the people's representatives and the population has only become essential in modern times. **Conclusions:** the notions of the imperative and free mandates do not reflect the variety of real relations between the elect and electors. In real history, there has always been a combination of both, depending on specific conditions. In modern conditions, the elements of real accountability and the recall of a deputy can take place only at the level of local self-government.

Keywords: deputy status; imperative and free mandate; representation of the people; mandates for deputies; deputy recall

Information in Russian

НАСЕЛЕНИЕ И ЕГО ПРЕДСТАВИТЕЛИ ВО ВЛАСТИ: ЭВОЛЮЦИЯ ОТНОШЕНИЙ (ИСТОРИКО-ПРАВОВОЙ АСПЕКТ)

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Введение: статья посвящена анализу правовых аспектов взаимоотношений представителей народа в органах государственной власти и избравшего их населения в исторической перспективе и их значению в современных условиях. **Цель:** проанализировать отношения между избранными представителями населения и избирателями, начиная с античности и по сегодняшний день, с позиции обязательности наказов и возможности отзыва избранников (императивный мандат) или отсутствия таковых (свободный мандат). Оценить их значение для современности. **Методы:** основу данного исследования составил историзм как важная сторона диалектического подхода, а также системный и сравнительно-правовой методы. **Результаты:** установлено, что в античном мире ответственность народных избранников носила лишь моральный характер, что в средневековой Европе и России представительство населения имело крайне ограниченный характер. Выявлено, что вопрос о юридическом закреплении взаимных обязательств представителей народа и населения стал актуальным лишь в новейшее время. **Выводы:** понятия императивного и свободного мандатов не отражают богатства реальных отношений избранных и избирателей. В реальной истории всегда имело место сочетание того и другого в зависимости от конкретных условий. В современных условиях элементы реальной отчетности, отзыва депутатов могут иметь место лишь применительно к уровню местного самоуправления.

Ключевые слова: статус депутата; императивный и свободный мандат; народное представительство; наказы депутатам; отзыв депутатов

Introduction

The question of the legal status of persons elected by the population for participating in exercise of the state power has always been in the focus of philosophers, political experts, sociologists, historians and lawyers. It has been considered from different perspectives, in particular when analyzing the government forms and political regimes, people's sovereignty and separation of powers, parliamentary system and natural human rights theory. A lot of publications are devoted to the problem of the so-called imperative and free mandates of a deputy of a representative power body.

Studying all the aspects of the cooperation between the population and persons elected is an overwhelming task. Thus, there arises a question - which of the abovementioned aspects are of crucial importance? It appears that the problem of the imperative mandate and its antipode - the free man-

date of a deputy of a representative power body can play the leading role.

The mandate of a deputy of a representative power body is recognized as an element of the deputy's legal status that characterizes the legal relation between the deputy and the electors who authorized him to put the people's will in practice in the representative body [7, p.133].

In modern literature on constitutional law, European authors' position about the existence of the two types of mandates of the people's deputies is accepted (let us note that it is more precise to speak about two types of the deputy's legal status since besides characterizing connections with the electors a mandate also includes other elements of the deputy's legal status). As A.N. Didenko states, the criteria are "orders - reports - recall" [7, p.133]. If electors give their orders, these are obligatory for execution, and the deputy is to report to his electors on the implementation. If they are not fulfilled,

the deputy can be recalled prematurely in accordance with the established procedure. Correspondingly, a free mandate means relations characterized with the absence of these elements and the mechanism of their realization.

Modern researchers studying the problem within the framework of the Russian Federation constitutional law share these ideas. The issue is described to the fullest extent by S.A. Avakyan in his courses on the Russian Federation constitutional law. In particular, the author writes that an imperative mandate is characterized by the presence of mandatory orders, the deputy's accountability and possibility for the electors to recall the deputy. A free mandate means that the deputy is not bound with orders, the electors can get the necessary information but do not have the right to recall the deputy [1, p.441-443].

What is noticeable, in both the course by S.A. Avakyan and the other book – a course by E.A. Kozlova and O.E. Kutafin on the Russian constitutional law – it is reasonably stated that in accordance with the current Russian legislation and the common practice, deputies of the State Duma must keep in touch with their electors, analyze complaints, letters and requests from the population, organize meetings with the population, inform people about the work completed [12, p.435].

Moreover, under definite conditions, the current Russian Federation legislation allows for recall of deputies of legislative bodies of the Russian Federation territorial entities and deputies of municipal bodies. In this context, a question arises if the presence of an imperative mandate or a free mandate is sufficient to fully cover the characteristics of relations between electors and their representatives in bodies of the state and municipal power? It looks like the answer is obvious.

The analysis of the relations between elected deputies of representative bodies and citizens only in terms of an imperative or a free mandate does not meet the today's requirements. They do not reflect the level of the democracy development in modern conditions, in particular, from the perspective of the development and improvement of the people's participation in exercise of the state power.

The modern researcher of power issues A.I. Horoshiltsev reasonably points out that recall of an elected people's representative is one of the forms of the direct people's governance, a neces-

sary way of providing a feedback connection between the state and the people. Through this feedback, the people, the society influence the state, evaluate the decisions and actions of the state bodies and officials. In case they are inadequate, the mistakes accumulate and the result is hard to predict [22, p.180-186].

In this connection, there is an interest in studying the development (or absence) of the institution for recalling elected representatives of the population from the historical retrospective.

The Status of Elected Representatives in Antique States

The specific features of the status of the people's elects can be most fully and clearly traced in the developed antique democracy that existed in some of Greek city states, in particular in the Athenian republic in the period of its prosperity. It is explained by the fact that it served as a kind of standard and by the fact that a sufficient quantity of authentic and convincing evidences survived to characterize it.

The analysis of the nature of the Athenian Republic's power has been performed in many researches. Let us refer to the quite well-known book "Theory of State" by V. Ivanov [11]. The Ecclesia, created in 462 B.C. as a meeting of all the citizens, had a great authority. All the free men, citizens of Athens, had equal rights to participate in the work of the Ecclesia, although the attendance was very low, and consequently some enforcement measures were used, and later a fee for participating in the meeting was introduced.

Beside Ecclesia, a lot of public positions were introduced filled in with a permanent rotation. There were also elective positions consisting exclusively of those with a high importance that required special preparation of the candidates (military leaders and treasurers).

V. Ivanov carefully describes the disputes between the ancient Greek thinkers (Plato, Aristotle), as well as between the European authors of the modern period (C. Montesquieu, J.J. Rousseau) right up to our contemporaries (I.V. Melanchenko, B. Manen) about which method is more democratic – the elections or the lottery [11, p.166-174]. We do not set the task to evaluate the conclusions by V. Ivanov that neither elected officials nor officials receiving their positions through a lottery were the true people's representatives as the people just recognized their power

and agreed to it [11, p.175]. For us, it is noteworthy that under this system, there was a vivid connection between the elected or the lottery-chosen officials and the society.

This in particular was manifested in the fact that the chosen candidates were checked for their civil ability and political reliability. In case it was discovered, for example, that they did not pay taxes, did not follow the accepted ethical principles, they were not allowed to take the position. The citizens could lay an accusation against the serving officials, temporarily suspend them from their positions till the court declares them not guilty or removes them from their positions.

In Athens, there were prohibitions to occupy some of the positions twice in succession, and for some of the positions – twice in a person's life. In the course of time, the relations between the bodies changed, the formal split of the supreme power took place between them, but the duty remained for everyone who occupied his position through a lottery – to give a report on his work done [11, p.171-174].

Summarizing the research on the role of elected representatives of the Athenians, V. Ivanov writes that in Athens there were conditions created for every willing citizen to participate in exercising the power, even though for a short period of time. That was contributed by the territory's size and limited number of citizens, developed culture and comparatively negligible social inequality, enough time for participating in the political life.

It should be especially noted, however, that the civil society of Athens did not include all the citizens of the state and even not all the free citizens. V. Ivanov calls this regime merocratical (originating from Greek μέρος – “part”) [11, p.177-179]. As for the guarantee of rights, in accordance with the information received by G. Jellinek, the political rights of the Athenians were guaranteed by a fairly developed legislation. The participation in the political life was vividly realized and acknowledged as legal rights, and these rights were protected by the court [9, p.310]. However, a more detailed description is not given.

G. Jellinek also noted that in the developed Roman state, recognition of a citizen as a bearer of the claims that the state is to perform its functions and claims to participation in public life was the content of Roman juridical thought. Moreover, in G. Jellinek's opinion, the antiquity has directly in-

fluenced the modern states exactly through the Roman state [9, p.315-316].

Analyzing the general ideas of the people's representation by an elected body regarding both Hellas and Rome, he writes that when people can act on their own, there is no necessity to create a government. However, in cases when the people are not able to act all together due to natural reasons, in both Hellas and Rome, the actions of elected or lottery-chosen officials are the representation and are considered as actions of the people themselves, resulting in the rights and duties for the people. The elected person is granted with a public legal mandate that gives him the right to perform actions legally settled for him, at his own free discretion [9, p. 543-544]. Although, as it was mentioned above, they are to report on the work done when their service is completed.

Russian researchers on the problems of mandates for elected representatives actually write about the same, although in brief. For example, in the above-mentioned work by A.N. Didenko, it is noted that some features of imperativeness already existed in political systems of the ancient democracies [7, p.133]. A.V. Malko and V.N. Sinyukov also point out that in Athens officials were liable for violations and were to report on the work performed by the end of their service period. The liability for the improper fulfillment of the duties existed yet in Rome, where it was mostly of the political nature [15, p.13].

Thus, summarizing the main points concerning the character of the people's mandate in the conditions of the ancient democracy, one can say the following. In antique states, particularly in polises in the territory of Greece, there was no point in the issue of the character of mandates in bodies taking the most important decisions and resembling modern representative bodies of the state power, because all the adult free people could participate in the work of such bodies and they actually often did. Later, there were also no questions arising about the responsibilities and recall of members of bodies similar to the modern representative bodies, because the bodies themselves were formed not through the free elections and the question of the fate of these structures' members (e.g., the Roman Senate) was settled through the stand-up political struggle of warring factions, as well as the question of the officials' liabilities, as it was mentioned above.

This conclusion does not contradict G. Jellinek's idea given above about the dominating influence of the Roman experience onto the future. The author speaks exclusively about the juridical aspect, about expressing the people's absolute power in the legislation.

As for the status of elected or lottery-chosen officials, who can be compared with the modern representatives of the executive authority, the fact of their legitimation was of a democratic nature. In this sense, they were representatives of the Athenian people similar to representatives of the power bodies of the subsequent times. Their mandate, speaking the modern language, was neither free nor imperative. These terms just do not show the mandate's nature. Their liability was of a moral nature, it was not legally enshrined, although they were to report on the work done when their service was completed.

Ideas of the Representative Government in Medieval Europe and in Russia

In medieval Europe, feudal states were, first of all, an organized power of feudal lords and landowners. Besides, the states had deep contradictions inside the ruling class and between the state and ecclesiastical authority. Considering the problem in terms of the state legal structure, V. Ivanov reasonably points out that feudalism is closely connected with aristocracy and oligarchy, and is principally "the domination of the few above all the others" [11, p.218-219].

Characterizing the medieval feudal state, G. Jellinek sees it consisting of classes and being dualistic, which means that it never concentrated the public power in its hands, there were other authorities representing feudal organizations, organizations of definite classes, municipalities and church, often standing against the king or the key feudal lord [9, p.320-321]. A similar opinion can be found in the Soviet literature. In particular, authors of a chapter in the course on the state and law theory also write about the actual dependence of the monarch on the classes, leading to the establishment of the class-representing structures, which had nothing in common with the true representation of the people [16, p.218].

The study of literature available on the status of class representatives in representative bodies shows that these were formed with the use of different methods being quite far from the modern ideas about democratic elections. A significant part of the seats was granted on the grounds of the can-

didate's descent, affiliation with the aristocratic family line, church hierarchs, etc. This was also true for forming the English parliament, French States General and bodies of other countries.

In this context, it is hardly possible to speak about the nature and features of a mandate for a representative. However, according to some authors, the issue about a mandate for a representative (an elect) is appropriate in respect of the representative bodies of some of medieval cities and also for the arrangement of self-government at the level of extremely stable communities and colonies. V. Ivanov calls this phenomenon fragmentary "relapses" of the classic democracy [11, p.178].

Of course, in this case it is hardly possible to speak about the true account of the people's opinion, let alone expression of the people's will. However, the very idea of existence and assigning of power authorities to elected bodies of the people's representatives should be regarded as an achievement of medieval cities. Unfortunately, modern researchers give little information about the existence of the elements of imperativeness in the relations between the population and elected representatives in the self-government bodies of cities of that period.

For example, in the abovementioned work A.V. Malko and V.N. Sinyukov write that the institution of responsibility and recall of elected representatives appeared in European cities for officials and the judges elected by the population. They call it non-typical [15, p.13-14]. A.N. Didenko agrees with them, associating this institution with the struggle for power of the bourgeoisie class being formed [7, p.133].

Representatives elected by the population and exercising some power authorities also existed in Russian cities-republics Novgorod and Pskov, and even in some of the Russian Duchies. In particular, we are talking about wardens and sotskiys (peasants elected for a public role), and since the 16th century – about the sotskiy sworn-men ("the cross-kissers"), zemstvo judges, volost judges, guba foremen. However, the researchers recognize the fact that there is no extant information about the order and terms of elections and the responsibility of elects concerning an earlier period. It is an interesting fact that in case a warden did not exercise his functions in a proper way, the duty to compensate for the damage from theft and robbery to the victim was imposed on the population [21, p.225-227].

Legal historians researched in detail the problem within the framework of studying the guba reform and zemstvo reform in Russia of the 15-16th centuries. It is interesting that the elections were often jointly held with peasants, craftsmen and noblemen (of course, not peasant serfs but free state peasants are meant). The guba elections had in many respects the all-classes character. Later, the order changed – a number of officials were separately elected by peasants and craftsmen (townsmen). The heads were elected by all and as a rule – from noblemen. The elections were recognized as valid only in case the voting was unanimous. Here, like in the earlier period, activities of the elected guba establishments were reportable to a certain extent. In case of losses, officials were answerable to the victims and were to compensate for loss. In case of their insolvency, this duty was imposed on the population that had elected these officials [21, p.228-229].

There is no necessity to describe here the system of the guba and zemstvo self-government in Russia of that period, which is fairly well-researched. Let us mention once again that the zemstvo authorities were elected by all the classes except for the state service class people. The term of election was not limited, but the population had the right to recall, to “replace” the elects. Protocols of elections were sent to Moscow for approval. The zemstvo authorities were called to Moscow for swearing an oath. The authority of the zemstvo governors was, first of all, associated with economic, finance and court affairs. They were also responsible for collecting taxes and sending them to Moscow.

In the researchers' opinion, the zemstvo reform, as well as the guba reform that had preceded it, was planned as the country-wide reform. However, it was fully implemented only in the territories of the Russian North. The guba and zemstvo self-government remained incomplete and were replaced everywhere with the commanding voivode government. However, the introduction of this government did not fully destroy the self-government. The guba and zemstvo establishment continued to function in some territories at the times of voivodes, retaining their independence in some of the spheres [20, p. 109-110].

Therefore, as applied to the Russian state, representative bodies elected by the population of cities and settlements existed from the statehood establishment. Their authorities and the order of formation did not coincide with the modern ideas of democracy, but the fact of their existence deserves to be praised. It is rather problematic to speak about

the character of responsibility (the nature of the elects' mandate) for a number of reasons, but it is noteworthy that there were a kind of requests given to elects and even the elements of the elects' replacement in case they failed to fulfill their duties or fulfilled them improperly.

The situation with the local government was changed with the zemstvo reform of 1864. Literature on this topic is quite extensive, but most of the authors are unanimous in evaluating it as a reform that excluded the opportunity for the zemstvo bodies to influence any sphere of life except for the pure economic issues of local importance. In no way diminishing all the positive points, we must note that the elections' class and multistage nature, incomplete forming and removing a number of issues associated with the counter-reform of 1890 from the zemstvo control do not give grounds for a more detailed analysis and positive evaluations.

It is worth mentioning that the “Regulation on the Gubernial and District Zemstvo Establishment” of January 1, 1864 (published in the Collection of Laws of the Russian Empire, Section I, Vol. 39. No. 40457) contains Article 88, in accordance with which removal from a post is performed through closed (secret) ballot of the Zemstvo Meeting, and the final decision is taken by the Guberniya Zemstvo Meeting or the regulation of the Governing Senate - in accordance with Article 117. The regulation does not include elements associated with the punishment or responsibility of the Governing Senate.

The activities of the Zemsky Sobors (Assemblies of the Land) in Russia are among the most important and interesting material to be analyzed in this section of our work. Here, the above-cited book by V.I. Sergeevich and the monograph on the Russian law history edited by V.S. Nercessyants could be suitable guides and the actual data sources.

Let us say just a few words about the Council of Boyars, which can be called a predecessor of the elective bodies represented by the Zemsky Sobors in the 17th century.

The nature of the Council of Boyars (Tzar's Council) did not get a certain evaluation in literature on history. Even the term itself is disputed for having a mismatching meaning in different periods. From the 16th century, the “council” of the tzar with the “boyars” became permanent. The issues were discussed up to taking a unanimous decision. However, the Council did not limit the power of the tzar, it served as a consultative body, consisting of the well-born

dukes and boyars, on the one hand, and land representatives and the priesthood, on the other hand.

The tzars' attempts to accept the support of the humble people resulted in the opposition of the boyar aristocracy. This led to changing the Council's composition, to creating of the "Close" or the "Secret" Council, etc. The composition of the Council was constantly enlarged with the noblemen, *okolnichie*, etc. The Council participated in discussing draft czar orders, in solving specific issues of the administration and court activities. The authorities of the Council can be compared with the authorities of representative bodies (with a stretch of imagination, of course). However, as for the subject of this work, it is enough to mention the fact that the Council studied complaints of individual persons, communities and population classes [20, p.92]. There is no other information in literature concerning the Council's relations with the population. That makes sense because the Council's composition and its formation were fully dependent on the czar's will, and the population was not involved.

As for the Zemsky Sobors in Russia, their history and legal status are well-researched in literature. The interesting fact is that Russian researches into the pre-revolutionary period (by V.I. Sergeevich, B.N. Chicherin) were performed with the use of the comparative method on the grounds of the analysis of the nature of the French States General and the English Parliament. The general conclusion made by V.I. Sergeevich is that the representative bodies of the three mentioned countries appeared due to similar causes and the conditions of their emerging were alike [21, p.123].

The analysis of the Zemsky Sobors' protocols performed by V.I. Sergeevich shows that the composition of the Sobors was formed in two ways – through the czar's invitation and through the elections [21, p.131]. The invitation was practiced for the supreme priesthood and a part of the military men. The lowest ranks of the priesthood and the lowest ranks of the military men were elected. Different ranks of the craftsmen (tradesmen and townsmen, and a part of the peasants being still free in 1613) were elected for the Zemsky Sobor. The number of elects, the scope of the representation and the order of elections were not stable and varied from one Sobor to another. The proposal for the elections on behalf of the czar was sent to voivodes or guba's foremen. It is an interesting fact that it was recommended to choose "good and clever" people who could

tell about the local needs and problems [21, p.135-138].

These facts prove that the elements of imperativeness already existed in the elects' mandates at that time. (Although it is hardly possible to speak about the mandate itself in its today's meaning). For example, it is known that the Code of 1649 was developed and adopted at the elected people's initiative, later the changes were introduced to the Code in the same way [21, p.158-159]. At the requests contained in complaints of elects, the most flagrant cases of the power misuse, of the officials' and the supreme priesthood's despotism and others were addressed [21, p.172]. This fact is also acknowledged by researchers of the Soviet period [20, p.99].

Thus, finishing the section devoted to the analysis of the status of population representatives in medieval Europe and Russia, we must note that despite peculiarities of the particular bodies at different period of the states' existence, there was something in common, typical of all. In particular, the order of the formation and functioning of the representative class bodies (the Parliament of England, the State General in France, the Council of Boyars and the Zemstvo meetings in Russia) exclude the very question about the nature of the representative mandate. When a significant part of the representatives originated from the high society or religious aristocracy or was appointed by the direct monarch's order, we can only speak about the moral or political responsibility (loss of trust).

However, these elements of dependence of elects on the population that elected them existed practically in all countries in the form of complaints and requests. However, they were mostly not of the legal but of the moral nature. There were also no clear procedural rules. Even the requirement of having this or that number of a town's or a settlement's representatives and the requests to send "good people" were not often followed. For example, for the Sobor of 1616 of Perm the Great it was proposed to send three "best, good and clever" townsmen. No one was sent. The czar just mourned about the fact. For the Sobor of 1651, the city of Arzamas was proposed to send two noblemen and two townsmen. Nobody was sent. The voivode arranged a formal reply to the czar's letter of request [21, p.136-138].

With the start of the absolutism era, either the activities of the nation-wide representative bodies were ceased or they actually lost their former status. However, the idea of public representation was still

alive, which was due in no small part to medieval cities-republics (Genoa, Venice, Florence and others in Europe, Novgorod the Great and Pskov in Russia) having representative bodies and elected officials. Their role could be different but the fact of their existence is of great importance.

The proper respect should also be given to bodies of the local self-government (municipalities in Europe, guba and zemstvo self-government in Russia). Having the limited authority, they nevertheless continued to develop the ideas of the representative power existence.

As for the character of the relations and, speaking in modern language, the nature of the mandate for representatives elected by the population, elects had practically no dependence on the electors. Only in rare cases, as it was mentioned above, the elements of obligation could be traced in fulfilling orders and managing complaints and requests sent through the representatives. These relations, as far as it could be judged by the information available, were not regulated with the legal acts and did not have a juridical character.

The Status of Representative Bodies' Members in the Modern Period

The above-given short review of the cooperation between representatives and the population that elected them hardly gives an impression that there was an imperative mandate in Europe and Russia during the period of the representative bodies' emerge and development, which allowed the classes to protect their interests [1, p.442]. The elements of protecting the interests occurred to take place as it was noted above. However, the opportunity to recall, being the most important manifestation of the imperative mandate, was very seldom practiced and is not described in the known scientific researches and documents. That is why it is difficult to agree with the statement that the imperative mandate got widespread in the Middle Ages [7, p.133].

The statements that the free mandate started its "victory march" as a result of the bourgeois revolutions in the New World and the Old World states, are also not quite reasoned [7, p.133]. Analyzing the disputes about the character of the relations between electors and deputies in France in the late 18th century, we can see a wide range of opinions. This analysis is included into a detailed article by A.I. Groisberg [4, p.10-13].

In particular, the author notes that contrary to Rousseau's stance, representatives of democratic groups defended the idea of the representative power. The successive supporter of the idea of representative power was Robespierre. He thought that public elects should publish precise and detailed reports on their activities. The temporary chairman of the Convention and Chairman of the Directoire H.-J. Herault de Sechelles along with other dignitaries supported the idea of the responsibility of deputies to their electors. The group of opponents included, for example, the future foreign minister of France – Talleyrand [4, p.10-13].

A.I. Groisberg gives several typical quotations concerning the deputy status. They belong to the French revolution prominent figures and thinkers. For example, Mably was sure that electors should have the right to divest their representative of authority [17, p.244]. However, Mornet warned that when the theory comes to practice, public representativeness can result in the despotic democracy [18, p.95].

As is known, in the subsequent development of the parliamentarism in Europe, the idea of the so-called free mandate won. However, the fact that it was far from being self-sufficient during the French Revolution, requires evaluation. One can venture to suppose that it could have been connected with a specific character of this revolution. According to a well-known statement by Marx, it was most consistent and vigorously got rid of feudalism. It is possible that the very acute character of the contradictions, including these inside the bourgeois class, resulted in such contradictory approaches. Conspicuous is the fact that the most radical figures acted as supporters of the idea about deputies' reporting and recall at the edge of the political struggle.

France appeared to be the platform for returning to the idea of reporting and recall of the elected deputies in the 19th century. This refers to the Paris Commune of 1871. In the abovementioned work by A.V. Malko and V.N. Sinyukov, the authors write that the ideas of the mandates' obligatory character are restored in the period of harsh collisions between political groups and confrontation of social forces [15, p.14]. A.N. Didenko agrees with them [7, p.133].

Despite agreeing with this, it is difficult to support the idea of A.V. Malko and A.N. Sinyukov that the right to recall is a principal component of some other kind of political authority, opposite to the liberal state of Locke and Montesquieu [15, p.17]. As

it was mentioned above, during the period of the French Revolution at the end of the 18th century, many supporters of the bourgeois statehood were by no means against reporting of deputies and their recall.

It is more likely that the ideas of reports and recall were used in acute political struggle by the supporters of different political trends, sometimes having opposing class interests. Obviously, it helped (or could help) in attracting electors due to the known democratic potential through declaring the direct dependence of the deputy activities on the will of the electors. However, no one has ever tried to realize this principle in practice (including the USSR). Indeed, it could hardly be realized, at least in respect of the deputies of the country-wide representative body. Among all the other factors necessary for recalling a deputy, a definite level of the electors' general and legal culture is needed, which has always been insufficient.

Let us turn to the experience of the Russian parliamentarism establishment at the beginning of the 20th century. As is well-known, at that time the population of the Russian Empire was about 126 million people, including approximately 100 million of peasants. More than a half of the peasants were illiterate [8, p.51]. Could they organize themselves and call back a deputy from the State Duma with the multi-stage unequal elections? The answer is obvious.

Seemingly, it is better to start with another thing. The history of the parliament establishment and the creation of the people representation in the form of the State Duma have been well-researched. Moreover, the established system of elections and the status of the State Duma's deputies of all the convocations do not contain any reference on the responsibility of the deputies to the electors and on the possibility to recall the State Duma deputies.

One of the famous modern researchers of this problem I.A. Kravets writes on this subject that failure to fulfill pre-election promises and duties of the deputies were blamed by the political morality [14, p. 260-261]. However, even this is doubtful, because it is difficult to combine the moral liability of the social-democrats and socialists-revolutionaries, who were elected as supporters of the land reform, mostly atheists, having given the oath before the God of their loyalty to the Emperor before the Duma's work started, with their actions on voting the reform down [14, p.261].

Researchers of that period dubiously viewed the absence of the dependence of the deputies on

the people's representatives that elected them, and the absence of the possibility to recall a deputy in the legislation of the Tsarist Russia in the early 20th century. Not having the task of a deep problem analysis, let us only give two statements. A.A. Zhizhilenko was sure that the people's representatives will properly fulfill their functions exclusively in cases when they feel free, when they report only to themselves and their conscience [10, p.21].

On the contrary, the famous scientist V.M. Gessen, acknowledging the fact that in accordance with the constitutions of the states of the beginning of the 20th century every deputy could not be bound with an order or a mandate of his electors, disputed and criticized the statement. In his opinion, the electoral law in Russia of 1905 had two drawbacks: recognizing a deputy as the representative of all the people does not rule out the fact that he will really protect the interests of his electors, and besides, these interests can have an artificial or a random character and can constantly change [3, p.192-194]. It is obviously not without the influence of Rousseau ideas that the reputable scientist notices the fact that acknowledging the sovereignty of the representative power and the absence of the deputy dependence on the population that elected him means people's incapability and negation of the people's dominion [3, p.141].

In general, one can say that by the early 20th century, the ideas of deputies' dependence on electors, their responsibility for fulfillment of the pre-election promises and the possibility to recall the deputies were finally buried. In literature, to the extent it was possible to discover, there are no references to the deputy responsibility and recall at the level of the municipal authorities.

However, this idea and, in a sense, the practice based on it, were restored during the Russian revolution of 1917. However, while the convening of the Constituent Assembly and the start of its work in November of 1917 were not directly associated with the realization of the mandatory character of orders and the possibility of their recall, the activities of the Bolshevik government created after the first congresses of Soviets started with the attempt to introduce the possibility to recall the deputies of the representative bodies.

During the preparation for the Constituent Assembly convocation, the election to which were held after the Soviet government establishment, the Bolshevik party tried to change the composition of the Constituent Assembly deputies. This was connected with the fact that

that the rolls of candidates were developed before October, 1917, and showed the correlation of the political forces after the revolution in February of 1917.

The point is more likely not in that "...Bolsheviks tried to implement the experience of the Paris Commune with enviable insistence" [7, p.133-134] but in the specific conditions of the intense political struggle and the change of the very social basement of the government after November of 1917. In those conditions, the Decree of the All-Russian Central Executive Committee "About the Right to Recall the Delegates" was adopted, where it was directly said that the change in the correlation between the class forces and the electors' attitude for the parties requires re-election in a specific electoral district where the discrepancy between the team of elects and the electors is vivid. Contrary to the statement of L.G. Protasov, the Decree granted the right to recall not to the Soviets [19, p.368] but to the electors themselves. The text of the Decree settles that, having the grounds, the Congress of Soviets of any electoral district has the right to call re-elections to all the representative bodies including the Constituent Assembly. The re-elections themselves are held in the usual way [5, p.47].

It is an interesting fact that the idea of the necessity to have the composition of the representative body in compliance with the specific correlation of the political forces at the moment, and the necessity to take the corresponding decisions, is also contained in the RSFSR All-Russian Central Executive Committee's Decree "About the Dissolving of the Constituent Assembly", where it is directly pointed out that the Constituent Assembly "became the reflection of the old correlation between the political forces, when the compromisers and the Kadets held the power" [6, Art.216].

However, as the Soviet power got stronger, at the beginning of 1918 the problem of the deputy recall was not so urgent, and the Constitution of the RSFSR adopted by the All-Russian Congress of Soviets on June 10, 1918 contained only article 78 which stated that the electors sending a deputy to the Soviet, have the right to recall him and hold new elections in accordance with the general provision [13].

Evaluating the attempts to restore the approach according to which the social layers, classes and groups could protect their interests through the representatives elected to the state power bodies, one should confess there is nothing anti-democratic in

this approach itself. However, as is already mentioned, it was never fully realized. Even at the period, when its elements were treated seriously, it was not prevailing and was used together with the approach called "free mandate".

Evaluating this, G. Jellinek writes that in England of the Tudors epoch (late 15th – early 17th centuries), the order according to which the elect received the instruction from the electors and was to report to them disappears. The elects were considered to be representatives of the whole nation. The same metamorphosis, but a bit later, occurred in France, where orders, although kept for some time, did not have the real meaning [9, p.546-550].

It is natural that the author actually avoids the analysis of the reasons that resulted in these changes, his world view could hardly allow him to do that. As it was noted earlier, the main reason is the intense political competition and power contest. The bourgeoisie and its representatives, aiming at the power and the domination in the representative body, did it first of all through the reforms in the status of the elects. The Bolsheviks in Russia in 1917-1918 achieved it through removing the ruling class representatives from the electorate, and secondarily – through the implementation of the deputy recall mechanism. The difference is noticeable but, in fact, the result is the same.

Here we should mention one more circumstance described by G. Jellinek. The author writes that the work of representative bodies based on the electors' instructions does not allow for the effective discussion and sorting out issues. The emergence of new problems that could be omitted in the orders results in most general character of the orders. In this form, they become needless [9, p.547-549].

It is more likely that this circumstance influenced also the fate of the deputy recall institution in USSR. After the mentioned RSFSR Constitution of 1918, the right to recall a deputy of the representative body was recorded in all the USSR and RSFSR Constitutions, and the Constitutions of other Union republics. The meaningful fact is that although the Constitution of 1936 contained provisions for the recall, the corresponding laws setting the order of the deputy recall were adopted only in 1959. The same happened to the constitution of 1977, retaining the deputy recall provisions. Here,

the corresponding laws were also adopted many years later. And the cases of their actual application were singular events [15, p.20-21].

In the Russian Federation Constitution of 1993, there are no references to the orders for deputies and the possibility of their recall by the electors. There are either no corresponding norms in RF Federal Law "About the Status of the Federation Council Members and the Status of the Deputy of the State Duma of the RF Federal Assembly" of May 8, 1994. The Constitutional Court of the Russian Federation, in its Regulation of April 12, 2002 No. 9-P, gave its official interpretation of this fact stating that the absence of the corresponding norms means that the deputies should be guided by the RF Constitution and their conscience. It is well-researched in modern literature [7, p.134].

Essential differences characterize the legal status of the deputies of the representative bodies of the Russian Federation constituent territories and the deputies of the local self-government. In a number of the constituent territories, the laws on recalling the deputies of the state and local representative bodies, and in some places – on the electors' orders and the deputy reporting are adopted. However, the researchers of these problems reasonably notice that both the content of these laws and their application in practice do not give the grounds for evaluating the modern conditions as the conditions of the free mandate with the imperative elements or a half-free mandate [7, p.134].

However, the deputies of the State Duma and the members of the Council of Federation of the Russian Federation Federal Assembly have the known elements of the imperative mandate. This is the mandatory character of the reports (at least of the informative character) to the electors. Changing of the order of the State Duma formation and electing half of the deputies as per the party lists mean actual recall of the deputy in case he has left the party fraction with which he was elected. With this, a special notion and the corresponding term are proposed to be introduced – the "party imperative mandate" [2, p.19-22].

We do not want to dispute the authors' rights to assigning new terms to define new phenomena and corresponding notions. But it appears that, together with free and imperative mandates, there are imperative mandates with elements of free mandates, there are free mandates with elements of imperative mandates and, finally, - imperative party mandates. Just a half-imperative party mandate is missing. With this, the authors, proposing the cor-

responding notions, do not bother themselves with the attempts to formulate the definitions for these notions.

It conveys the suggestion that it is better to keep the terms of free and imperative mandates as abstract notions to define the phenomena that have never existed in their pure form in history. And they hardly can exist in principle. As our short historical journey shows, the legal status of the population elects' always has elements of both free and imperative mandates, with one of the approaches prevailing.

It goes without saying that the study of the problem nature of the "deputy - population" relations needs to be continued in the social and legal aspects within the framework of both the general theory of law and constitutional and municipal law and other scientific trends, not limiting oneself to a free, imperative mandate or any other stereotype.

Conclusions

The fact that particular conclusions are contained in every section of the paper allows the author not to repeat them. It is only necessary to underline that a special attention should be given to two statements. The first is: the attempt to limit the analysis of the population relations with the elected representatives who are to participate in exercising the state power, to researching the imperative and the free mandate nature, is not fruitful. The two mentioned types are just the notions demonstrating theoretical constructions. In real life, at all times, there have been combinations of features typical of these kinds of mandates in the relations of the electors and the deputies representing them or other persons.

At some phases of history, there could be these or those features prevailing in the "electors - deputies" relations. This depends on the specific historical circumstances and occurs, first of all, when the social and economical nature (type) of the state changes.

And the second is: in the conditions of modern Russia, the question of implementing the elements of the so-called imperative mandate (mandatory orders and the opportunity for a deputy recall) is not practical both at the federal and the constituent territory level. This can only lead to intensifying the economical, social and political contradictions and disorganize the work of the representative bodies. This is technically and organizationally difficult and will not give any guarantee of discovering the true will of the electors, in particular, due to the insufficient political and legal culture of the population.

As for the recall of deputies elected as per the party lists, here it is more practical to solve the problems at the level of the corporative norms contained in the Charters of the parties or in other documents.

In any case, the deputies of the Federal Assembly (the deputies of the State Duma and the members of the Federation Council) and the deputies of the representative bodies of the RF constituent territories are obligated to inform the electors about their work through the mass media.

The elects and local self-government bodies are in a different situation. Their work is “visible” for the population. The possibility of recall in case of improper fulfillment of their obligations is obvious, as provided for in many RF territories. Only the recall in case of failure to fulfill the order is doubtful because it often depends not exclusively on the activities of deputies themselves.

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