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LEGAL REGULATION OF DEMOCRATIC PROCEDURES

CASE-STUDIES : THE REPUBLIC OF BELARUS

Master's thesis

Supervisor: Professor Vlad Vernygora

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I declare I have written the master's thesis independently.

All works and major viewpoints of the other authors, data from other sources of literature and elsewhere used for writing this paper have been referenced.

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LIST OF LAWS

Law of 1988 – The law of the Republic of Belarus as of February 2, 1988. "About national discussion of important questions of the life of the people of The Republic of Belarus"

Law on the referendum of 1991 – The law of the Republic of Belarus as of June 13, 1991. "About the popular vote (referendum) in The Republic of Belarus"

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EC, EC of The Republic of Belarus – The electoral code of the Republic of Belarus as of February 11, 2000.

Constitution – The constitution of the Republic of Belarus 1994 (with changes and additions): It was accepted on a republican referendum on November 24, 1996, as an edition. Decisions from a republican referendum on October 17, 2004.

The central commission of elections – the Central commission of the Republic of Belarus holds elections and republican referendums.

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ABSTRACT

During the formation of a constitution for a democratic state in Belarus specific place is kept for the direct participation of citizens in finding solutions to public affairs.

In recent years, an expansion of political views of the Belarusian citizens reflects in the course of making of direct democracy. Optimization of legal regulations is impossible without deep analysis of influence of forms of direct democracy on the lives people in the state. It is necessary to investigate practice of elections for Parliament, local councils of deputies, republican referenda, the people's assemblies in interrelation with the new political, economic, social and cultural tendencies in the Belarusian society. Electoral process in The Republic of Belarus requires studying it, through the comparison of its standard model to the real model reflecting dynamics and dependence of the society and the government. At the same time there was an expansion of political views of the Belarusian citizens that is reflected in the course of making of the forms of a direct democracy. These circumstances define also need of the comparative analysis of application of elections, a referendum, a response of deputies.

Relevance of the research subject is also required because of the lack of complete complex scientific research on the forms of direct democracy in The Republic of Belarus. There isn't a lot of work from the previous time on this subject, generally it has separate articles, scientific and practical grants.

The research objective is for the disclosure of the maintenance of legal forms of direct democracy - elections, referendum, response, discussions - and their value for further development of democracy in the Republic of Belarus.

Key words: Demorcacy, Rule of Law, Soviet Union, Elections, Referendum, Response of the Deputy

Introduction

In Kazakhstan announced early presidential election. Who will win? N. Nazarbayev ruled there since 1989, in 1991, he became the first and only president of the republic. From April 2015 started his fifth and probably life term presidential term. I. Karimov in Uzbekistan - the last head of the Republican ComParty and the first, and till the single president. There are some of the examples of "non-replaceable presidents". In Tajikistan, E. Rahmon unchallenged ruled since 1994, father and son Aliyev in Azerbaijan - from 1993. In Belarus, Lukashenko was first elected as president in 1994 and was re-elected again and in 2015. All the republics of the former USSR, finding independence, announced their intention to build democracies in their countries. Commitment to democracy and the republican system with the corresponding provision of democratic rights and freedoms of citizens was universally enshrined in the constitutions of these countries. The appeal of democracy was so natural, that began to be perceived as the generally accepted norms and acquired a universal. The leaders of the young democracies states deliberately articulated openly liberal texts, so no one could doubt in the sincerity of their intentions.

But why should the development of Belarus and some other countries of the former USSR went in democratic on paper direction?

The fact that in the process of transition to democracy, there is a paradoxical aspect - this transition is inseparable from the election defeat and the loss of power by those who came to the power under the slogan of democracy. In this sense, for the establishment of democracy, most importantly, the inability to win in the struggle for power, and the ability to lose and recognize your defeat. As President of Belarus was elected in 1994 through the open procedure of democratic elections.

In the new texts of the Constitutions of the former USSR states maintained the democratic principle of separation of powers. In Belarus in the texts of Constitution have been amended that lengthen the presidential term, and in some States of the former USSR abolish the age limit for the president, and the number of possible terms of execution of presidential powers.

Establishment of the regime of personal power - the process isn't purely political, it has serious economic implications. In the early post-Soviet years, privatization of state property has become, in effect, to "carve-up" for their own, where the main operator of "distribution" was the supreme power. Naturally, it all happened with violations of the law. As a result, there was formed a new class of owners, loyal to a particular political regime and the specific supreme official. Nouveau riches had become not just support for the regime, but also its guardians, because coming to the power of the opposition could lead a revision of privatization results.

Another consideration. Regimes of on paper democracy, established in the former USSR are regimes with the general logic of functioning and development. This tends to like, instinctive "class solidarity" brings them together, makes creating interstate unions without a ideological perspective but in contrast to the "western" not acceptable to them democracy. They can't completely abandon of democratic rhetoric in which they are incurred. Lack of a clear ideological motivation to combine more or less adequate ideological language and a global perspective of interstate unions creates ideological simulators, such as the project "Eurasian Union" and derivatives political institutions from - "Eurasian Parliamentary Assembly", "Eurasian Union of Youth", etc.

However, the deep integration of the regimes of paper democracy is hardly could be realistic as personalistics power is indivisible. Therefore, the best and the most natural position for them is a political balancing act between "Eurasianism" and "Westernism" that will inevitably lead to a series of accusations and conflicts with partners from one or from the other side.

METHODOLOGY

Methodology and methods for conducting the conducted research. The methodological basis of research is made by through following system of ways, receptions, principles of studying the society, democracy, the state, their right in interrelations and interdependence.

The study of various aspects of the development of the democratical system is possible throughout the combination of various methodologies, with the greatest explanatory potential, "isomorphic" subject of the study and character of the source base. A variety of historical, social and legal reality, the complexity of the object of study requires the synthesis of a number of methodological principles of science, based on the application of these methods and interdisciplinary connections.

The problem of theoretical and methodological analysis of studies the political system of Belarus is to overcome in the already established in the native law stereotypes and traditions, as well as in the formation of new approaches. Along with common methods, which having widespread use, such as the systematic, historical and legal, comparative, axiological and others, modern science developed a methodology that allows to systematize the increasing amount of legal knowledge. They are: statistical methods, methods of classification and system-structural analysis, etc.. These methods can be regarded as a scientific tool elements with which the scientific plan is implemented.

During the describing of the legal reality the analysis has been used. Methods of analysis - are methods of gathering and processing information required to obtain information about any activity. The greater the volume of information, the more difficult its analysis.

To connect disparate facts in the magister work used the synthesis. This method of research consists in the knowledge of the object of study in the unity and the relationship of its parts.

In the study of the modernization of the judicial system in the text this work have been widely used comparative legal, formal-legal, historical, and structural and functional methods to treat the judiciary as a government agency having a specific organizational structure and a

set of external relations in the system. These approaches allow to analyze the forms, methods and results of the reform of the judicial system under certain conditions.

LITERATURE REVIEW

In the past 20 years it has grown the interest of researchers to the problems of democratization. And this is due primarily to the fact that the democratization becoming more and more poly-route process is under the influence of numerous factors. The nature, form, intensity and direction of democratic transition influence conditions of political, socio-cultural and socio-economic development. Moreover, it becomes low apparent universality of liberal democratization model that not always demonstrated its advantages over other systems of organization of power in the practical application in a number of nation-states. This occurred in recent decades in various parts of the world transitions from non-democratic forms of government are so individual that build up a general logic of transformation and reduce them to a single model is not possible. Speaking about the successful final and formation of consolidated democracy is quite difficult, because the democratization process is often incomplete.

There are different points of view to the problem of the relation of global and local factors in the democratization process. S. Huntington considers the transition to democracy as a global process in which each country is influenced by the general democratic movement.. Huntington notes that the democratization process becomes sinusoidal character, on the basis of what is considered an opportunity to reverse movement (anti-democratic, undemocratic tendencies) and the "fourth wave" of democratization. The idea of the inevitability of the establishment of a democratic order with a red line passes through all the work of S. Huntington. The unprecedented global growth of the 1960., a change in policy of the international scene forces (especially the European Community, the USA and the USSR), the demonstration effect of democratic change, strengthened by the new means of international communication, have played a catalytic role, and served as an attractive model for the subsequent transformation of the non-democratic regimes.

A. Melville focusing not on factors but at the dynamics of the internal components of democratization, notes that almost all modern democratic transits are mainly endogenous in nature and are, rather, the result of certain decisions and choices of political tactics and

strategies key political actors, although, of course, there is a certain external context of the democratization process.

In the research literature it decided to allocate two basic approaches to the analysis of the problems of democratization. The first approach is based on an analysis of the structural factors of democratic transitions, with the greatest importance is given to the study of cultural values and socio-economic conditions and preconditions that prevent or promote the establishment and consolidation of democratic norms and institutions. In the second approach, the researchers analyzed the procedural factors of the democratization process (features and the sequence of specific decisions and actions carried out by a limited circle of the initiators and participants of the process of democratization).

At the end of the 1950 Lipset hypothesized that the higher level of economic development of a country, the more favorable the conditions for democratic governance. But in the early 1990, he analyzed the democratization processes in 113 countries around the world, and comes to the conclusion that the high level of economic development under certain conditions, contribute to the democratization only of political institutions. Indeed, thanks to extensive research in this regard it can be noted that the high rates of economic growth may be the only prerequisite for democratization in terms of creating the social foundation of democratic reforms. For example, R. Inglehart, G. Almond, S. Verba were isolated the cultural and value terms as a basic factor of the democratic development. In their view, the most important prerequisite of democratization is the availability of values and attitudes in society, that are associated with civic culture (interpersonal trust, support of democratic institutions, political participation, responsibility, tolerance). Maintain and evolve democracy can only, by getting the development of this components of the broad mass of the public. Values and orientation of "civic culture" create a favorable climate for the formation of a stable, sustainable democracy and greatly facilitate democratic transition.

However, it is important to bear in mind that resources of national unity and identity, as well as a cultural component of democratization, is not homogeneous and structured once and for all. It consists of: psychological characteristics of the nation (some cultural traditions, historically formed peculiarities of the national consciousness, myths system, beliefs, etc.), personal potential political leader of the ruling elite's ability to formulate and disseminate

ideology in society, received by the main segments of the population and the favorable preservative regime order of things.

These components must be in a balanced state and to pursue common goals. And only in this case, you can count on a stable and sustainable democracy and the success of the democratic transformation.

From fundamentally different perspective to the analysis of the processes of democratization come supporters of the procedural approach. I. Schumpeter at the end of the 1940 considered democracy as a form of government based on electoral competition. Regular holding of free and fair elections, in his opinion, there is a minimum criterion of democracy and democratization factor. In this case, the only possible mechanism for achieving and confirmation of power resources, defining a clear framework for the activities of all elite groups, thus uniting the elite structure and creating effective communication and integration capabilities of government and society, are the electoral procedure. US transitologists Carl T. and F. Schmitter, considering variants of the democratic transition in the countries of Southern and Eastern Europe, Latin America, emphasized two main parameters as a basis for classification: predominant type of actors (elite or mass) and the main strategies to which they resort (power and compromise). And offers four models of transformation depending on the combination of actors and strategies: the pact, reform, revolution and the imposed transition.

Multidimensional nature of the democratization process updates the problem of analysis of structure-forming components of democratic transition, which allow to evaluate its effectiveness. Thus, the main indicator here would serve the political institutions and processes of their transformation, especially the trend of structuring the party system, a comprehensive analysis of the composition of public institutions and the electoral system.

Proceeding from the analysis of the Soviet electoral rights, the Constitution of the Republic of Belarus and other laws, the practice of realization of direct national will, features in a modern political situation, formation of the Republic of Belarus as democratic state, concludes the need of further improvement of the legal regulational forms of direct democracy in the context of active participation of the people in the political sector.

1. HISTORICAL, LEGAL AND THEORETICAL BASES OF DIRECT DEMOCRACY BEFORE DECLARATION OF THE INDEPENDENCE OF THE REPUBLIC OF BELARUS

1.1. Theoretical aspects of problems of direct democracy

The Republic of Belarus proclaims itself a democratic constitutional state. Such a situation predetermines need for the development and improvement of activities of various forms of implementations of the government for the state and defines the most optimum ways of interaction of subjects of the political system. The only source of the government and the carrier of sovereignty in The Republic of Belarus is its people (p.1 Art. 3 of the Constitution). This situation is starting point for fixing of the democratic nature of The Republic of Belarus. Recognition of the people as the only source of the power and the carriers of sovereignty is basic characteristic property of the democratic states with which the republican forms a government.

In p.1 Art. 3 of the Constitution also has two main forms of democracy in which Belarus is defined: direct implementation of the government by the people and through representative bodies.

The political rights of citizens to participate in the administration of the state legally provides realization of the principle of democracy, inclusion of citizens in the sphere of acceptance and implementation of state decisions helps with policies. The Constitution of the Russian Federation 1993 where only two forms of direct implementation of democracy are directly defined: referendum and elections (part. 3 of Article. 3: "The highest direct expression of power of the people is the referendum and free elections"), in the Constitution of the Republic of Belarus (Article. 37) along with these forms is the discussion of drafts of laws and questions of republican and local values.

The final stage in the development of the legislative regulations of forms of direct democracy (since 1991 up to now) is time during which the regulations of the Republic of Belarus including EC are adopted. After declaration of the independence of Belarus, laws on elections have been adopted.

Now the Law "About Republican and Local Meetings", acts as regulating questions

for the local government - first of all the Law "About Local Management and Self-government in The Republic of Belarus", and some other acts form a legal basis for the implementation of meetings of citizens.

1.2. Essence and value of elections in the modern society

Elections are one of the many forms of direct democracy.

Free and fair elections are an indispensable condition and an element of democracy in any country.

Elections represent the procedure regulated by rules which the people have put forward from the circle of representatives for performance of any public functions, for management of any organization (the state, volunteer society). Thus, through the procedure of elections citizens participate in the country's government.

By means of elections the power is delegated from one person to the other in a peaceful manner, through the will of citizens. Democratic society is that just because all citizens recognize and observe the Constitution, laws which define rules of political behavior including rules of elections. Successful elections are based on that there will be a recognition of their results by the society, this serves as one of the most important signs of democratic character of such a society. Elections help citizens to show support or disappointment concerning the present leadership. It is a real opportunity to declare the society's consent or disagreement with the pursued policy.

Elections also carry out control functions. If the power does not express the interests of voters, then the next elections will give the people the chance to replace the candidate. This dependence of power on voters forces candidates to change their policies under the pressure from voters so as to receive votes again in the next elections.

Elections effectively carry out their function only when the electoral rights such as the system of laws regulating procedure of elections works and also there is civil societies as a set of non-state elections (political parties, public organizations, clubs of voters etc.).

Standards of the suffrage defines the principles of an electoral right; requirements imposed on voters and candidates by the elective offices; an order of formation and activities

of the bodies which are directly carrying out the organization of the elections; The subjects of electoral processes - citizens and their associations, political parties; procedure of implementation of election campaigns and votes; order of definition of results of elections; ways to appeal for the revealed violations during an election campaign, and also protest of the results from the elections, etc.

They fix material and legal guarantees of selective rights subjectivity of the citizens, establish events and actions (the legal facts) with which the law connects emergence of concrete state legal relations and in which selective rights subjectivity of citizens is realized as the subjective rights.

Elections and responses are independent forms of direct democracy having different purposes, tasks and essence, they have similarity only in way, like in the principles of organization and of decision-making.

Elections of deputies to the House of Representatives, local councils of deputies in the Republic of Belarus will be organized on the majority uninominal system of absolute majority. However, their name is not used, that means:

1. elections are held on territorial grounds, one-mandatory constituency - one deputy (the p. 9 of the Article. 15 of the (EC) is elected from each district;
2. the winner is considered the candidate who has received more votes than other candidates and at the same time not less than 50% of number of voters participating in elections (absolute majority, i.e. 50% + 1 voice). The electee in the first tour of elections across the constituency is the candidate who has received more than a half of the votes which have taken part in the election (the part. 2 of the Article. 82 EC, the part. 2 of the Article. 89 EC) is considered.

If none of candidates collect this majority (occurs most of the time), then the second round is held (not later, then two weeks after the first) where the requirement of the relative majority has already been applied, that is for a victory it is necessary to get more votes. In the second round, the so-called second ballot is carried out: only two are brought in the bulletin.

3. the candidates who would have gathered the greatest poll of voters in the first round in comparison with other candidates;

4. elections are considered to have taken place if not less than 50% of the voters included in electoral lists have taken part in them. In the second round this percent is lowered to 25%.

The majority system is used in the Republic of Belarus and for Presidential elections of other countries. Presidential elections are held in all the constituencies included in the territory of The Republic of Belarus. Winner of the elections is considered as the candidate who has received more than half of the votes. Elections are considered to have taken place if not less than 50% of the voters on the lists have taken part in them. In the second round of the elections the candidate has to receive also absolute majority that is explained first of all by the importance of presidency.

An analysis of positive and negative sides of the electoral systems is carried out.

The advantage of a majority electoral system is that in this system candidates in parliament are chosen by rather large fractions of voters which provides stability of the country.

Besides, in this system of majority votes, it is possible to provide easily control of the course and results of elections it is simple and clear to all as votes are just counted and announced, so as, to strengthen trust of the voters. The majority system is always productive and simple in application. Besides, such a system in parliament gives an opportunity to non-party, independent candidates. Judging by the results of the last election campaign in the Republic of Belarus, in the House of Representatives the majority of places was received by such candidates.

The majority system also has a number of essential shortcomings, the fact that it doesn't reflect plurality of contradictory interests in society and the political forces representing them, On the basis that the votes given to the candidates who have got beaten are not considered, and the voters who have voted for them lose an opportunity to lead the representatives to electoral bodies.

The last shortcoming can have certain advantages when there is an unstable political situation in the state the part of voters can vote for extreme political (nationalist, etc.) currents, and the majority system will sympathize with the mass representation in legislature.

Now in the Republic of Belarus use of majority system is the most optimum method as in the country has many political institutes including political parties that are not developed sufficiently yet. Besides, most of the citizens prefer to vote for non-party candidates.

2. LEGAL SUPPORT OF DECISIVE FORMS OF DIRECT DEMOCRACY IN THE REPUBLIC OF BELARUS

2.1. A general characteristic of the principles of elections, a referendum and a response of the deputy in the Republic of Belarus

In view of the proximity of decisive forms of direct democracy on the decision-making mechanism (by vote), expediently to consider the general principles of realization of the specified forms - generality, equality, free participation, secret of vote.

The principle of generality means the possibility of each full age capable citizen to participate in formation of representative government bodies, in adoption of important decisions on questions concerning the state and public life. This situation does not mean granting such an opportunity to all people living in the territory of the Republic of Belarus: there are general and special restrictions.

The general follows from provisions of Art. 23 of the Constitution providing the possibility of introduction of restrictions for the benefit of national security, public order, protection of morality, health of the population, the rights and freedoms of the people.

Special laws are enshrined in the relevant articles of the EC of the Republic of Belarus and some other acts regulating these forms of direct democracy. It is necessary to pay attention to fact that the second group of restrictions has to correspond to the general regulations provided in the Constitution and not to go beyond these limits.

The principle of generality belongs as to an active (the right to choose), and to a passive (the right to be elected) to an electoral right.

Proceeding from it, but not absolutely precisely, is the formulation in EC of the Republic of Belarus which reveals the content of this principle through the instructions like the right to elect ("the citizens of the Republic of Belarus who have reached 18 years" have the right choose the right), that is only on an active electoral right is used.

Part.1 of Article. 64 of the Constitution contains similar situations, however in the part. 3 of this article it indicates the existence of an age qualification for deputies and other

people elected to the state positions. Therefore, opening the principle of generality, the Constitution extends it to a passive electoral right. Moreover, EC of the Republic of Belarus in the name of Article. 4 - "Universal suffrage" refers generality and to the right to choose, and to the right to be elected.

Such elections from which people (citizens of the Republic of Belarus) who do not have an opportunity to consciously carry out these actions are debarred or directed, that is children and people with the diseases connected with frustration or a strong-willed sphere of mentality.

A person attains civil capacity when they have attained 18 years and reflects the emergence of the right to select and loss is always connected with loss of selective right subjectivity. Such situations work both for the referendum and for the possibility of participation in the procedure for a response of the deputy.

Occupation of any position in the government body irrespective of order of its formation is connected, as a rule must be a member of this nationality and of this state at the time of application for this post.

Electoral rights, the rights to participate in a referendum, to vote about a response, according to Article. 64, 72, 76 of the Constitution, foreigners living in the Republic of Belarus as "citizens of the Republic of Belarus" have the right to vote, but not to participate in a referendum.

A similar situation is enshrined also in the Article. 4 of the EC. The direct ban on the participation in elections contained in the Law "About Legal Status of Foreign Citizens and People Without Citizenship in the Republic of Belarus": foreign citizens and people without citizenship cannot elect or be elected to be electoral government bodies of the Republic of Belarus (Article. 18).

Holding the post of the President of the Republic of Belarus requires not only having the nationality, but also his being a citizen birth.

Under the Law "About Nationality of citizens of The Republic of Belarus" citizens of The Republic of Belarus are:

1) the people who had the citizenship of the Republic of Belarus on the date of registration of

this Law;

2) people who have gained citizenship of the Republic of Belarus according to this Law. The standard of Art. 12 specifies this law as one of the bases of the of acquisition of citizenship “citizenship by birth”. And the current Law on nationality opens the concept of citizens by birth: if the person was born within the modern territory of The Republic of Belarus, being citizens of the former USSR by birth automatically obtained citizenship of The Republic of Belarus before the reinforcement of the present Law (the part. 2 of Article. 8).

It is conventional to be consider as a citizen by birth for a person who was born on the territory of this state (the principle of "the right of the soil") and (or) parents (one of the parents) who are citizens of this state (the principle of "the right of blood"). Specific conditions of application and combination of these principles are defined by the legislation.

The document certifying nationality of a person in the Republic of Belarus according to the Law "About Nationality in The Republic of Belarus" (Article. 10), is the passport or other document containing the information about nationality in The Republic of Belarus.

The voting bulletin is given to the participant of a referendum, the voter who is member of the precinct electoral commission based on the list of citizens of the Republic of Belarus having the right to participate in a referendum and elections, upon presentation of their passport. Along with the passport, treatment documents upon presentation of which the bulletin is issued: the pension certificate (The photo should also be of the same person), the student ID card, the certificate of employment by a government body, the military ID (for the military personnel of conscription service).

According to the Article. 155 of the EC:

- a voter is a citizen of the Republic of Belarus possessing according to the Constitution and the EC of The Republic of Belarus, has the right to choose government bodies;
- the participant of a referendum - a citizen having voting rights.

Follows from the analysis of the Article. 4 EC that a citizen of the Republic of Belarus who has reached 18 years has the right to choose and be Included in the list of citizens having

the right to participate in elections, a referendum is traditional, a response is considered only as the formal basis of the realization by the citizen of the right for participation in the specified actions.

If to literally interpret the provisions concerning an opportunity of realization by citizens who will reach the age 18 on the voting day, then it turns out that they can't realize a number of competences. Lists of the citizens having the right to participate in elections are signed by the chairman and the secretary of the precinct election commission which is created 45 days prior to elections. However, according to the Article. 60 EC, promotion of candidates for presidency begins 80 days before and comes to an end in 50 days prior to the elections, as for candidates - in 70 days and 40 days respectively.

Therefore, if the voter - the person who has already reached 18 years, then the citizen who will turn 18 years of age on the voting day will acquire from this day the status of a voter (in this connection they also join the electoral registers), but won't be able to take part in the election stage at least because lists will have been approved before they turn 18.

Besides, the voting bulletin is given to the voter, the participant of a referendum or a response of the deputy on the basis of the list of citizens having the right to participate in vote, and the voter, the participant has the right to fill him ahead of schedule in the order provided by the Article. 53 EC.

Thus, on the one hand, inclusion on this list is confirmation of the existence of an electoral right, the right for participation in a referendum, a response, and, on the other hand, the people not only those who are on the list, but also who just reached 18 years can exercise the corresponding right.

Guaranteeing generality, EC of the Republic of Belarus allows people to participate in elections, a referendum, a response of the deputy to the citizens of The Republic of Belarus who are temporally living in other states or living in another territory of a foreign state in connection with private, office, business or a trip in the place of the stay.

Sites for votes outside the Republic of Belarus are formed by heads of diplomatic missions (consular establishments) of the Republic of Belarus operating in the territory of the foreign state.

For simplification of implementation of the suffrage by such citizens and for ensuring

a general respect for the law during elections, the resolution of the Central commission of elections concerning an order of participation of such citizens in elections is accepted.

The citizens recognized by the court as incapacitated and also the citizens who are contained under sentence of the court in places of detention can't choose and be elected in the Republic of Belarus.

Existence of any diseases, even constituting danger to the people around you, in itself is not the basis for restriction the right to vote, or to be elected as according to Article. 25 of the Law "About Public Service in The Republic of Belarus" medical certificate about the health state of an individual is provided only in the cases stated by the acts.

However, in the conditions of the competition and the use of illegal methods of carrying out election campaigns, it is impossible to exclude that the data of the diseases of the "compromising" candidate obtained in any way will be used to bring the rival out of fight, despite the declaration of secrecy of information on the state of health of the person. In this case it is possible to speak only about an ethical aspect, about the violation of the right for secrecy of someone's private life and about responsibility of those who have revealed the secret.

The people who are on treatment in any psych neurological medical institution cannot be also debarred from elections, a referendum, a response only on this basis.

At the same time the legislator coordinates restrictions on an electoral right to those who are serving a sentence in the form of imprisonment in places of detention, but not to a certain term of imprisonment or to concrete corpus delicti. Citizens who are contained in places of detention on the sentence of court which has been already enforced are understood, serving sentence in the form of imprisonment for their criminal offenses.

In this case it is possible to speak not about deprivation but only about suspension of electoral rights of citizens. It is known that for the specified category of people their capacity has a number of specific features, one of which is nonparticipation in elections. As soon as such person is released from places of detention (even if he hasn't served all of his sentence, for example, parole), an active electoral right, the rights for participation in a referendum, in a response of deputies are restored.

The passive electoral right will be restored only after removal or repayment of a

criminal record. According to the Article. 60 of the EC, candidates for president, and deputies are citizens who should not have according to the legislation of the Republic of Belarus to hold positions in government, any connection with existence of the criminal record which has not been removed and not been served in accordance with the established procedure they can't be nominated.

However it must be kept in mind that the criminal record of a person who is a repeated offender especially dangerous recurrences cannot be repaid (the part 3 of Article 97 of the Criminal code of The Republic of Belarus).

In Russia the question of need of introduction of a punishment measure for the committed crime of disfranchisement, along with the already fixed deprivation of the right to hold some positions or to be engaged in certain kinds of activity is discussed below.

In this regard restriction of the above-named rights it is necessary to pay attention to the fact that the concept of "place of detention" isn't identical to concept of "serving a sentence in the form of imprisonment"

The people condemned to arrest (part.1 Article. 58 of the Criminal and executive code of The Republic of Belarus), have to serve a sentence in the form of house arrests which so far aren't created therefore these people are left in pre-trial detention centers.

The criminal and executive code of the Republic of Belarus carries pre-trial detention centers under certain conditions to correctional facilities (to places of execution of the punishment in the form of imprisonment).

Moreover, according to the resolution of the Central commission on elections of September 3, 2001. "About an explanation of an order of participation of the citizens of the Republic of Belarus condemned to arrest" the citizens of the Republic of Belarus condemned to arrest, serving sentence in temporary detention centers, pre-trial detention centers, prisons, in the relevant offices of garrison guardrooms can take part in the votes in the places that they stay (item 1).

However, such a measure of restraint isn't provided in the Code of criminal procedure of the Republic of Belarus (according to the part 2 of Article 116 of this Code, the specified measure of restraint is called a sentence).

Besides, similar sentences are absolutely reasonable. It is known that a person is held

in custody during preliminary investigation when guilt or innocence is only subject to establishment, this person can be acquitted by court, detention can be illegal owing to that the citizen has lost the constitutional right to participate in voting without sufficient bases.

Increased requirements concerning age are imposed to candidates that are connected first of all with the need for successful solutions to public affairs, the most important questions of the life of the society to have already certain life experience and knowledge.

So, Article 57 and 98 of the EC is provided that the President should be a citizen of not younger than 35 years can be elected, the deputy of the House of Representatives - the citizen who has reached 21 years and only for local councils of deputies is established a lower age - 18 years.

According to the EC of The Republic of Belarus for possession of a passive electoral right also other conditions are established.

According to part 1 Article 57 of the EC as the necessary requirement to the candidate for President, the person should have been a full-time resident in the territory of the Republic of Belarus for not less than ten years before the elections have taken place.

According to the part 2 of Article 92 of the Constitution, the citizen of the Republic of Belarus who has reached 30 years and lived in the territory of the respective area, the city of Minsk for not less than five years can become a member of council of the Republic.

The part 2 of the Article 57 of the EC contains the provision that the citizen who is permanently living in The Republic of Belarus can be the deputy of the House of Representatives. The citizens living or working in the territory of the relevant local council of deputies can be proposed as candidates of local councils of deputies.

EC of the Republic of Belarus not only is fixed by generality as one of the basic principles of the procedures, but also establishes organizational and legal guarantees of its real implementation.

It is possible to carry to them out: the order of drawing up electoral registers, of participants of a referendum, a response protected by the law; possibility of early voting; the organization and operating procedures of sites for voting; elections, a referendum, a response; the notification of voters, participants about day and the place of voting; the possibility of carrying out voting procedures on voting locations, participant.

By consideration of a passive electoral, right it is necessary to differentiate the general requirements imposed on candidates, containing conditions, additional in comparison with the active suffrage, and the special instructions about elections or incompatibility of positions connected with implementation of a certain activities or occupation of concrete positions.

Non electorate represents an exception or restriction of the opportunity to stand as a candidate, this means that certain officials can't propose to be candidates in elections until they have retired from the posts they hold (public servants of certain ranks, governors, judges, prosecutors, officers and generals and others).

In many cases it is required that such people retire beforehand - in six months prior to elections or even in a year. Distinguished non electorate (impossibility to stand in all constituencies) and relative non electorate (a ban to stand in certain constituencies). Violation of conditions of non-electorate in all cases attracts invalidity of the elections and deprivation of the mandate.

The legislation of the Republic of Belarus doesn't contain a ban on the opportunity to be registered as a candidate connected with any occupation of a certain state post: all citizens at the observance of the necessary conditions can be registered as candidates, and Presidents.

This situation follows, first from articles of the Constitution which does not contain any such ban.

Incompatibility of positions means a ban on the people receiving posts as a result of elections to hold certain positions during the whole term of office. Incompatibility - it will lock if you want to hold elective position and at the same time another state office.

It is directed to a more consecutive implementation of the principle of division of authority within the state, and in certain cases to providing legally equal opportunities of participation for candidates in the election campaign. The requirements of incompatibility of positions doesn't coordinate with the question of the reality of the results of the vote, it only means need of the choice between two positions which should be made either before, or after the elections.

Incompatibility doesn't exclude a possibility of election of a person holding a state position in a representative institution, and only the fact that in case of election, the person has to decide whether he keeps the state position or takes the deputy.

Incompatibility means also prohibition to hold any state position in the system of executive or judicial authority.

The constitution, of the EC of the Republic of Belarus defines incompatibility cases. So, according to Article 92 of the Constitution and the Article 59 of the EC, combination of duties of the deputy of the House of Representatives with simultaneous holding of the post of the President of the Republic of Belarus or the judge isn't allowed. One more constitutional principle is the principle of equality which is shown as a possibility of equal access to positions (to Article 39 of the Constitution: "Citizens of the Republic of Belarus according to the abilities, vocational training have the right of equal access to any positions in government bodies"), and an equal electoral right.

Equality in a broad sense means lack of any discrimination irrespective of race, skin colors, language, religion, political and other convictions, a national, ethnic or social origin, property status and an opportunity in the presence of the necessary conditions (generally the concerning professional knowledge, experience) to receive a position in a representative body.

The equal rights in these procedures are the equal opportunities of the voter, participant of a referendum, a response of the deputy established by the law to influence results of elections, a referendum, a response of the deputy with identical opportunities to be elected according to the law and conditions. The rights are equal if: each voter, the participant of a referendum, a response of the deputy has an equal poll (Article 66 of the Constitution) - one voice.

When the voter, the participant has one voice, inevitably it means also that he can't be included in more, than in one electoral register, participants of a referendum, a response of the deputy and votes personally; all voters and participants aren't divided into social or other groups with unequal representation.

The provision that the deputy is elected from equal number of voters means that in the territory of the Republic of Belarus constituencies, equal on population, will be organized according to the norms provided by electoral laws.

The deviation of number of voters in the constituency cannot exceed 10%. Formation of constituencies from the territories that are not adjoining among themselves is not allowed; the law imposes identical requirements to a nomination procedure, conducting propaganda

and definition of results of elections, referendum, and responses.

The standard part 1 of the Article 46 of the EC provides that candidates for president, in deputies of the House of Representatives, local councils of deputies, political parties, other public associations, and labor collectives, the citizens who have proposed candidates since registration of candidates on equal terms use the state media.

EC of the Republic of Belarus doesn't contain the sufficient volume of the precepts of law regulating participation of journalists in electoral campaigns, procedure of a referendum, and responses.

There are no provisions concerning activity of non-state mass media. Laws don't eliminate this gap and acts of the Central commission on elections is directed to an explanation of the use of public funds for information.

The combination of public financing of election campaigns, campaigns for holding a referendum, or responses for opportunities to use of non-state means also is one of manifestations of the principle of equality of the considered rights.

The provision for the expenses of preparing elections for the President, deputies of the House of Representatives, members of council of the Republic, deputies of local councils of deputies, republican referendum, a response of the deputy of the House of Representatives, the member of council of the Republic can be carried out at the expense of the organizations, public associations and citizens of the Republic of Belarus who deposit money in the off-budget fund created by the Central commission of elections for additional financing is enshrined in the Article 48 of the EC.

Transfer of budgetary funds in this fund isn't allowed.

Funds are used for payment of production of additional number of pre-election posters of candidates, on production of selective documents and other all-republican expenses, on acquisition by the commissions of ballot, boxes for vote and other necessary equipment and stationery.

Thus, in the Republic of Belarus the off-budget fund is created for additional financing of all expenses connected with elections, referendums, responses of the deputy and not just for covering of expenses of candidates but for promotion of the ideas.

In the Republic of Belarus, the Central commission of elections after the termination

of the term of registration of candidates (in the process of receiving of money in the off-budget fund) distributes these funds for additional financing of electoral commissions.

The principle of equal assignment for each candidate, and for other expenses to the commissions is used, and also money transfers to regional financial managers of Minsk city executive committees.

The legislation of the Republic of Belarus has not provided creation of individual, funds for the financing of candidates. The funds allocated from the budget and off-budget fund are distributed equally between all the candidates and spent according to their requirement in the order established by the Central commission on elections. The anonymous donations are not allowed. After elections each candidate is obliged to submit the report on use of the received money, and the Central commission of elections takes into account these reports and publishes the report as an expenditure of the off-budget fund.

The list of subjects from whom donations of the off-budget fund are from is kept private enshrined in the part 10 of the Article 48 of the EC: foreign states, organizations and citizens; the enterprises of the Republic of Belarus together with foreign investments; international organizations and international public associations.

One of the important principles of elections, referendums, responses of the deputy by election commissions, the commissions of a referendum, on carrying out a response and participation of the population in electoral campaigns, campaigns for a referendum or for a response.

This principle means that for the organizations and elections, referendums, responses of all non-governmental bodies (though they also carry out a number of important functions), and the public commissions by their nature also bear responsibility.

It is called the Central commission of elections, territorial, district and precinct election commissions. A number of members of the commissions carry out the functions in the commission as their main work. For the others two options are available: performance of functions in the commission without release from daily performance of official duties on the primary place of employment; according to the decision of the commission certain members can be exempted during preparation of elections from performance of their official duties.

In the existing regulations (chapter 7-9 of the EC, the resolution of the Central

commission of elections) questions the organizations, the rights and duties, in order to regulate the activities of the commissions in detail.

EC of the Republic of Belarus allows all citizens of the Republic of Belarus to participate actively in preparations and elections, referendums, responses of the deputy to all possessing selective rights, subjectivity and their in associations, namely:

- promotion of candidates for president and deputies and petition of citizens in their support, and also in support of a referendum, responses of the deputy;
- free, but with observance of requirements of the law, propaganda for or against the candidate, the recalled deputy, the questions submitted for a referendum, in the form of a petition, officially - from the legislation.

According to the Article 45 of the EC... citizens of The Republic of Belarus, the initiative group on promotion of the candidate, on holding a referendum, a response of the deputy, political parties, public associations and labor collectives has the right in any forms allowed by the law and lawful methods to freely carry out propaganda.

Proceeding from literal interpretation of the part 4 of the Article 45 EC... propaganda against a participant in a referendum is not allowed, however appeals to a referendum (as well as any other propaganda) are directly forbidden only on the voting day.

According to the Article 155 of the EC defining the main terms propaganda aims to induce participants to carry out or refuse holding a referendum, to vote for or against the questions submitted for a referendum.

A violent propaganda that appeals for a violent change of the constitutional system, violation of territorial integrity, insults and slander concerning officials is not allowed.

Promotion or propaganda of social, racial, national, religious or language superiority, release and distribution of these messages and materials exciting social, racial, race or religious strife is forbidden (in our opinion, it is enough only to release or distribute, otherwise, it is necessary to introduce amendments in the formulation "release and (or) distribution").

Propaganda comes to an end at midnight local time on the eve of the day preceding the day of elections, referendum, or a response. The propaganda in the form of printed materials which are earlier hung in rooms for voting remain on their former places.

Publication of the results of public opinion connected with elections, referendums, or a response: the forecast of the results isn't allowed at least 10 days after the elections, referendum, or a response.

Propaganda can be carried out through mass media; can be carried out using various actions (meetings and meetings with citizens, public debates and discussions, meetings, processions, demonstrations); by release and distribution of printed material, audio, visual and other propaganda materials.

Carrying out of propaganda is accompanied by granting citizens free access to favorable terms goods and services (except the propaganda printed materials which are made especially for holding a referendum), securities, and also payment of money is forbidden.

All propaganda printed materials have to contain information of the organizations or of the people responsible for their release. Distribution of anonymous propaganda materials is forbidden.

The state media which are also partially financed from the state budget or one of founders which are government bodies or organizations, are obliged to provide equal opportunities for propaganda for or against the questions submitted for a republican referendum.

The problem of carrying out honest election campaigns remains unresolved, campaigns for holding a referendum, a response of the deputy. In the Republic of Belarus, the largest volume is in "black market technologies", frauds and manipulations of the public opinion can occur occupied the by the actions connected with distribution of information on papers that is through leaflets, unregistered printed materials containing false, discrediting statements and advantageous information about candidates.

The fact of inclusion of the rating of little-known candidates or political parties increases their chance on elections as potential voters thus know them. Prevention of dishonest pre-election campaign requires modern legal regulation of the questions concerning the maintenance of the Internet.

In The Republic of Belarus the control over observance of an order and rules of carrying out pre-election campaigns in mass media for elections is done by the supervisory boards at the Central commission of elections. The supervisory board has the right:

- to consider the disputes which have arisen when using mass media during preparation of elections and elections;
- within the competence to make the recommendations, the conclusions which are subject to obligatory and immediate consideration by heads of mass media;
- to make enquiries to the heads of mass media and to receive from them the necessary data.

In Article 38 of the Constitution the right to choose and be freely elected to government bodies, that is the principle of free participation that is affirmed belongs to an active, and passive electoral right.

In a broad sense, this situation has shown that nobody can be forced to perform any work, except for the cases determined by a sentence of court or according to the law on the extraordinary and martial law. Therefore, the written statement of the candidate about his consent to take this position, always has to be attached to the documents of the promotion of candidates sent to election commissions. Nobody has the right to make impact on any citizen with the purpose to force him to participate or not participate in elections, referendum, a response, and also on his free will, for whom or what to vote.

As such influence can be direct and indirect, EC of the Republic of Belarus contains bans on some of the possible options. Candidates and their authorized representatives, the organizations and the supervising people have no right to distribute or promise to give to citizens money, gifts and other material values, to carry out preferential sale of goods, to provide services free of charge and goods; participation of administration of the organization in petition, and also coercion or remuneration of voters, participants of a referendum, a response of the deputy for introduction of the signature.

Creation of additional opportunities to take part in voting also belongs to similar measures (introduction of institute of early voting, on the location of the voter).

The secrecy of voting acts as one of the general principles that is considered forms of direct democracy: any control of the will of voters, participants of a referendum, a response of the deputy in a voting process is forbidden:

- 1) Ballots are provided with a number of legislative measures and procedures
- 2) Each voter, the participant of a referendum, response of the deputy votes personally,

voting for others isn't allowed (Article 52, 141 of the EC);

3) Ballots are filled in a cabin or a room for voting in which no one is present, except the voter, the participant isn't allowed (Article. 52, 141 of the EC);

4) For some cases votes can be done in a special room (i.e. for votes of voters who for health reasons or other good reason can't get to the polling place) EC of the Republic of Belarus provides such an organization and carrying out which excludes violation of the secrecy of voters or distortion of their will (Article 54, 141 of the EC)

2.2. A response of the deputy as one of the forms of direct democracy in the Republic of Belarus: legal aspects

The response of the deputy as any of forms of direct democracy caused and causes rough disputes as in the countries where it is not applied at the nation-wide level so far, and in the states, electoral laws (or separate special laws) which contains the norms regulating a response.

Orders of voters and responsibility of deputies to them and are not provided in constitutions of Italy, Portugal, and Denmark.

Response of the deputy, representing a form of realization of a constitutional right of citizens on participation in administration of the state, in implementation of the government, at due legislative settlement plays a positive role in the state and does not cause violation of stability of results of elections. Existence of a possibility of a response of the elected representatives increases the responsibility of these people to voters, expands probability of formation of capable structure of parliament as citizens are permanently included in activity of a representative body of the power (at least, the elected person will aspire under threat to be withdrawn to be on meetings of a representative body and to participate in his work) and allows to protect voters and authorities from people who are incidentally elected and don't work.

According to the Article 129 of the EC, there can be withdrawal of a deputy who has not justified the trust of voters expressed in non-performance of the deputy duties provided by the law, violation of the Constitution, laws, acts of the President, commission of the actions

discrediting the deputy. It is one of the major provisions as it contains the bases of the early termination of power.

The political party proposing the candidate is interested in his active effective work in a representative body therefore it has to have an opportunity to start a question of a response of this deputy in case of non-performance of the deputy in his duties. For the prevention of a possibility of abuses on the basis of the similar right granted to party (for example in case the political party wants "to get rid" of the political opponent working in a representative body or just to draw even short-term public attention to itself that finally can affect results of the following elections) it is necessary to provide certain guarantees.

In EC of the Republic of Belarus there is an article which is specially devoted to guarantees of the rights of the deputy by consideration of the offer on a response of the deputy.

Initiators of convocation of meeting of voters no later than 10 days before carrying out the meeting are obliged to notify in writing the deputy concerning whom they intend to start a question of a response, and respectively the House of Representatives or local council of deputies which of structure it is supposed to recall the deputy, about date, the venue of meeting and motives which have formed the basis for statement of such a question. This situation serves one of guarantees of protection of the rights of the recalled person who during this term has an opportunity to be prepared for explanations concerning all arisen cases. In addition, the right of such deputy to furnish the explanations at meeting of voters as in an oral, and written form, and explanations have to be reflected in the protocol of meeting is among the guarantees. The law does not provide any restrictions for speech of the deputy therefore the last can give the arguments irrespective of whether explanations in writing have been submitted by him. The deputy concerning whom the question of a response is written has the right to no later than seven days to setting a date of meeting in the presence of a good reason to petition before initiators or the bodies making the decision on convocation of meeting, on transfer of date of meeting. However, repeated transferring of date is not allowed.

Considering procedure of a response, it is necessary to pay attention and to norms on results of vote on a response of the national representative and the related summing up.

In the Republic of Belarus withdrawn is considered by the deputy for those whose

response is more than a half of the voters of the district who have taken part in the vote (the part 2 of the Article 141 of the EC) has voted.

2.3. Legal support of a referendum in the Republic of Belarus

Referendum - a form of direct will of citizens on the most important questions of the state and local value for the decision-making, which is carried out by means of voting of the citizens having rights for participation in a referendum.

In the Republic of Belarus, the concept of a referendum is identified with concept of national voting (chapter 2 of the section III of the Constitution).

EC of The Republic of Belarus is considered by the referendum as a way of acceptance by citizens of our state of decisions on the most important questions of the state and public life (part 1 Article 111).

In essence, the concept of a referendum used in world practice when the referendum is considered not only as a solution of the most important questions of life of society, but also identification of public opinion is enshrined in the Belarusian legislation.

From the socio-political point of view, the referendum has the dual nature. On the one hand, he demands a certain level of political and legal culture, the developed civil consciousness, with another - participation in a referendum promotes development of democratic tendencies, growth of political activity of people, emergence of feeling of participation in permission of important state and public problems. Increase of political and legal culture is especially observed when holding referenda at the local level.

Obligatory referenda in the international practice (including in the Republic of Belarus) are most often provided in the relation of fundamental constitutional reforms and the constitutional amendments that in itself is defined by value for all society and the state of holding such referendum.

According to Article 74 of the Constitution... the Article 113 of the EC the President, the House of Representatives and Council of the Republic, citizens of The Republic of Belarus have the right of an initiative for holding a republican referendum.

The organization of a referendum is similar to the organization of elections (electoral

registers, the commissions on a referendum, propaganda, vote).

Important question is the order of activity of observers during a referenda. Powers of these subjects do not differ from the volume of the rights and duties, which observers have during elections, and are regulated by articles from the general part of the EC (Article 13).

One of the most responsible stages in a referendum and its legislative regulation is summing up. The referendum is considered to have taken place if more than a half of the citizens entered in lists having the right to participate in a referendum has taken part in vote.

The President signs the decision made on a referendum, and after signing, it is subject to immediate official publication.

The requirement of a permanent residence in a certain territory is required in relation with the realization of the right of an initiative to holding a local referendum. To participate in vote on the question submitted for a local referendum it is possible and to live temporarily in the respective territory that will not be coordinated with order of realization of the right for local meetings in which the citizens having voting rights and permanently living in the respective territory participate. Thus, for participation in a local referendum it is enough to live in the territory, it is temporary, and in local meeting - it is only permanent.

The head of the appropriate local executive and administrative organ signs the decisions made on a local referendum. Local referenda are obligatory on force of the made decisions therefore the decision made on it possesses validity in the territory of an administrative and territorial unit, doesn't need any statement and it is obligatory for execution in the respective territory. The decision made on a local referendum can be cancelled or changed precisely by decision-making on a new referendum.

3. LEGAL PROBLEMS OF REALIZATION OF OTHER FORMS OF DIRECT DEMOCRACY IN THE REPUBLIC OF BELARUS

3.1. Essence and value of discussions as one of forms of direct democracy

Imperative forms of direct democracy are supplemented with advisory forms. However, based on legislative practice of The Republic of Belarus, it is difficult to carry out such classification.

In 1993 in relation to Russia the offer that it is necessary to enter a possibility of holding advisory referenda into the federal legislation expressed and at the same time to adopt the act "on regulation of a question of national discussions which have to precede national votes". A. V. Ivanchenko introduced the similar idea also: "the stage of their extensive national discussion without fail has to precede removal at national vote of the constitutional provisions". Thus, coexistence of advisory referenda and national discussions is supposed, at the same time discussions are considered only as a stage of adoption of important acts, but not as well as an independent form of direct democracy.

The proximity of these forms has shown that the referendum and discussions are connected with a wide range of questions of democracy: development of democratic principles and activities of representative bodies, expansion of forms of direct implementation of democracy, increase in volume and degree of the political rights of citizens.

The concept of national discussions and referenda assumes consideration of their political conditionality following from direct participation of citizens in implementation of democracy, their place in the democratic process, contents and the mechanism of realization.

Differentiation of a referendum and discussions follows also from Art. 37 of the Constitution defining independence of these forms.

The referendum and discussions of drafts of laws and questions of republican and local value differ also in a participation form: during the vote on a referendum for citizens an opportunity to enter in the bulletin the judgment or other offer on a vote subject as only two

options are specified in him is excluded: pros and cons. However, in this occasion there are opposite opinions. For example, G. A. Vasilevich has stated judgment that "when holding a referendum nobody can forbid the citizen to make on the bulletin any record, ballot".

In essence, national discussions of drafts of laws and questions of republican and local value carry out information function, a role of "national examination" and connects a popular initiative which contains a certain assessment of the prepared drafts of decisions on important questions, and adoption of these decisions by appropriate authorities.

However, in recent years, not only drafts of acts, programs, but also interstate agreements are submitted for national discussions. According to the Memorandum of understanding between The Republic of Belarus and the Russian Federation on the issue of completion and adoption of the Charter of the Union of Belarus and Russia until May 15, 1997 the developed draft of the Charter was submitted for national discussion. The procedural party included: the creation of the a joint commission to which the solution of organizational issues was assigned, generalization of results and summing up discussions which structure was defined by the Decree of the President of The Republic of Belarus (from the Belarusian side M. V. Myasnecovich was appointed the cochairman) and the Decree of the President of the Russian Federation; publication of the draft of the Charter in official printing publications of the parties in a 10-day time from the moment of signing of the Memorandum; determination of term of national discussion; representation by the joint commission of the generalized results of discussion to presidents of Belarus and Russia. It is provided by the federal constitutional law "About a Referendum of the Russian Federation" (item 12 of Article 16) removal at national discussions not only the bill, but also the current law, that is a possibility of post-legislative discussion. Need of adoption of the independent Federal law on national discussions page 67 is mentioned in the initiative draft of the Federal law "Laws and other normative legal acts of the Russian Federation".

Many Russian scientists support existence of such form of direct democracy along with a referendum also. In particular, the offer "resume practice of the national and regional discussions of the most important which are of considerable public interest of bills which was widely used in last years and I promoted not only to improvement of quality of laws, but also growth of sense of justice of citizens" expresses. At the same time, it is noted, "addition of

referenda with national discussions will provide realization of the principles of publicity and openness in legislative process".

National discussions promote also legitimation of the government, which is understood as the positive relation of the population of the country, his big groups, and public opinion to the operating institutes of the government.

By means of the national discussions acting as a form of direct democracy participation of citizens in administration of the state and society is realized, the public opinion becomes known, control of activity of bodies is exercised.

The national discussions enshrined in part 2 of Article 37 of the Constitution originally have found the definition in the Law of 1988 adopted in development of this form of direct democracy. This Law is analog accepted on June 30, 1987. The law USSR "About national discussion of important questions of the state life". These laws have been urged to promote development of participation of citizens in development of decisions on important questions of the state and public life based on comparison of various opinions and offers. Unfortunately, this Law has been adopted during existence of BSSR proceeding from what becomes obvious that his provisions do not reflect features and specifics of formation of the Belarusian statehood, development of Belarus since the announcement of independence. Establishment of institute of presidency, formation of a two-chamber parliament causes the necessity of modification and additions in the Law of 1988.

3.2. Legal regulation of different types of national discussions in the Republic of Belarus

The design of discussions of drafts of laws and questions of republican and local value includes nature of discussions, which their level influences; circle of subjects and their legal status (initiators, organizers, citizens and their associations); subject of such discussions.

Taking into account the existing of practice of the Law of 1988 has issued two types of participation of citizens in such discussion: collective and individual. Individual assumes the direction the citizen or group of citizens in competent instances of the offers and remarks on the discussed project. The importance of individual participation consists that each citizen

on the personal initiative, being interested in the problem put for discussion, makes the offer, thereby personally expressing the participation in public and public affairs. However, in order that activity of citizens was real, it is necessary to enshrine in the law of a condition of free expression by citizens of the opinion: there should not be negative consequences for the made offer, the opinion should not be exposed to censorship and be corrected.

Collective forms are defined in the part 3 of Article 13 of the Law of the year 1988: sessions of Councils of deputies, meetings of their bodies, deputy groups, meetings of public organizations, labor collectives, citizens at the place of residence. Unfortunately, the part 3 of Article 37 of the Constitution contains the reference only to one form of discussions - meetings of citizens in which development the Law on meetings of the year 2000 has been adopted. Thus, now it is legislatively settled only one of types of this form of direct democracy that considerably reduces a possibility of realization of national discussions. In practice even before adoption of this statutory act (in the year 1997 at discussion of the draft of the Charter of the Union of Belarus and Russia) different types of national discussions - a reception of citizens, direct phone lines, faxes, various round tables, teleconferences were applied. All this only emphasizes need of adoption of the uniform act regulating questions of realization of institutes of discussions.

Now gains the importance a problem of what questions need to be submitted for republican and local discussions what - it is expedient and what - to leave for consideration of government bodies. Proceeding from practice of carrying out discussions during existence of BSSR, from the analysis of the Law of 1988, the Law "About Local Management and Self-government in The Republic of Belarus", carrying out three republican meetings, the solution of the questions connected with social and economic development of the state large-scale scientific, social, environmental problems which demand use of considerable resources strengthening of a law and order have to be accepted only after their discussion by citizens (Article 11 of the Law of the year 1988).

According to Article 37 of the Constitution drafts of laws, but not resolutions, decrees, decrees are submitted for discussion. The law on meetings of the year 2000 does not open this situation and contains the reference only to "questions of the state and public life". The law of the year 1988 expands a subject, mentioning not only laws, but also decisions (at the same

time it is not specified that it is necessary to understand as these acts). According to Article 17 of the Law "About Local Management and Self-government in the Republic of Belarus" local councils of deputies make decisions, but such decisions are rather a subject of discussions in the territory of this administrative unit, than republican discussions. Thus, it is necessary to specify provisions of the Law on the meetings of the year 2000.

Discussion of drafts of laws and other questions it can be issued as political and legal institute only when it is organized officially. National discussions are carried out if competent authorities take out drafts of laws and other most important questions of republican and local value. It is not told also about such important organizational point as the right and at the same time an obligation for convocation of republican meetings (in particular, initiators are not specified).

It agrees part 1 of Article 74 of the Constitution the citizens of The Republic of Belarus having voting rights in number of not less than four hundred thousand, including not less than thirty thousand citizens from each of areas and the city of Minsk can initiate holding a republican referendum. In part 1 Article 99 of the Constitution the right of a legislative initiative also is reserved for the citizens having voting rights in number of not less than fifty thousand people. The question of change and addition of the Constitution is considered by chambers of Parliament at the initiative of the President or not less than hundred thousand citizens of the Republic of Belarus having voting rights (Article 138). Thus, if citizens can initiate such serious procedures, then, it is necessary to provide to citizens of the Republic of Belarus in a certain quantity and the right to make offers on need of carrying out republican meeting, obligatory for consideration.

By initiators of carrying out also the permanent commissions of Parliament, a certain number of deputies, members of council of the Republic, the Government have to be called.

The law of the year 1988 does not contain the norm defining the rights of participants of discussions. The law on meetings of the year 2000 lists some of them: with the permission of the chairman to participate in discussion, to ask questions, to give references, to transfer texts of the performances and other materials to the secretariat of meeting, to participate in decision-making of meeting (Article 8). It is necessary to enter the independent article establishing the rights, having added listed: the right to full information on the taken-out

question; the right for the address through mass media; the right to the answer to the made offer; right to information on results of discussion

After making decision on removal of a question for discussion the bill no later than ten days is officially published, at the same time the body which has made such decision determines the term and an order of the organization of work on consideration of the offers and remarks arriving during discussion (it is assigned to the permanent commissions of the House of Representatives or to the created special commissions).

For increase of activity of the population, first of all, mass media have to publish, broadcast, to television not only drafts of decisions, but also comments to them competent authorities, the remark and the proposal of citizens, the message to the population about the course of their consideration. Unfortunately, not only in the Republic of Belarus, but also in other states where such form of direct democracy has remained, practice of the previous publications of drafts of decisions on the most important questions is very limited.

For all the time of existence of institute of presidency in the Republic of Belarus in our country three meetings - Vsebelorussky people's assembly in the city of Minsk which purpose was a discussion of basic provisions of the Program of social and economic development of the republic, the draft constitution of the Republic of Belarus with changes and additions and the questions offered by the President on a republican referendum, and Vsebelorussky people's assembly for discussion of questions of the program of social and economic development of the Republic of Belarus for 2001-2005 have been held on October 19-20, 1996. According to the Decree of the President of the Republic of Belarus of January 12, 2006 No. 21 2-3 of March, 2006 the third Vsebelorussky people's assembly on questions of results of implementation of the Program of social and economic development for 2001-2005 and has been held on the draft of the Program of development for 2006-2010.

The law on meetings of 2000 contains only referential article defining rates of representation and order of election of representatives to participate in republican meeting, there is also no fixing of procedure of direct carrying out republican meeting, procedure of decision-making, registration with his resolution that reduces regulatory effect of this act.

In the Law on meetings of the year 2000 is expedient to define procedure of convocation of republican and local meetings depending on initiators of their carrying out. If

to recognize from the fact that as initiators of carrying out republican meeting also citizens of The Republic of Belarus can act, then originally they have to form initiative group at the meeting, define the purposes and questions submitted for republican meeting, rates of representation to elect the chairperson of initiative group and representatives on areas. These documents go to the President of the Republic of Belarus (and if to take provisions which have been fixed during existence of BSSR into account that the legislature also has the right to appoint national discussions, moreover, such practice exists also in Russia, - that and to National assembly), who can reject or approve a request for need of carrying out republican meeting. In case of a deviation it is possible or coordination (if refusal in carrying out has been proved by disagreement with questions or rates of representation), or the repeated offer on carrying out republican meeting on the same questions not earlier than a year from the date of a request deviation. As solutions of meetings have advisory nature and in practice can't lead to opposition of the authorities, in our opinion, it is possible to provide a possibility of the address with a request for need of carrying out republican meeting on the same question, after her deviation by the President, to Parliament and vice versa.

The president of the Republic of Belarus can approve the offer as the decree, and National assembly - the resolution in which date of republican meeting is defined (for example, not earlier than 45 days from the date of the publication of the decree or the resolution), approves the offered rates of representation.

Further, the initiative group together with local executive and administrative organs informs the population and forms republican (20-30 people) and territorial (10-15 people) organizing committees, which will register representatives on republican meetings. Appointment as the member of committees can be carried out by the date receiving of the application from this person based on the decision on his promotion in members of the committee.

In part 1 Article 8 of the Law on meetings of the year 2000 is established that participants of republican meeting are elected by labor collectives, citizens at meetings at the place of residence, studies or services, the supreme bodies of political parties, labor unions, the religious organizations, other public associations representing all administrative and territorial units of the Republic of Belarus. In Vsebelorussky people's assembly of 1996 4740,

participants have been elected.

According to the Decree of the President of the Republic of Belarus of February 16, 2001 No. 80 and of January 12, 2006 No. 21 for preparation and carrying out Vsebelorussky meeting organizing committees which organized in common work on nomination of candidates and election of participants of meeting were created republican and territorial (representatives of government bodies, local governments, public associations, mass media, regional executive committees, Mingorispolkom enter).

There is no legislative fixing and procedure of formation of working bodies of republican meetings - Article 9 of this Law is limited only to transfer of these bodies (the chairman, presidium, the secretariat, the mandatory, editorial and calculating commissions). Participants of republican meeting then each can offer candidates for this post candidate has the right to act with the opinion on this matter.

Solutions of republican and local meetings don't possess obligatory validity, and oblige bodies which competence directly includes permission of the questions discussed at these meetings, in due time (decisions on the resolution of republican meeting it has to be accepted in three-months' time from the date of her receipt in Presidential Administration) to consider them and to make the decision (it not necessarily has to contain basic provisions of solutions of the specified meetings), which is brought to the attention of citizens. Unfortunately, the Law on meetings of the year 2000 does not provide terms of consideration of solutions of local meetings.

The problem of bringing data of the population and results of consideration requires attention also: acceptances or rejections of this or that offer, addition, the remark at realization of any of forms of discussions. It is desirable that the citizen who has individually made the offer on the discussed project received the answer about that, it is accepted or it is rejected, also individually. For simplification of this process in advance prepared forms where only the surname of the citizen and a definite answer concerning the made offer are brought could be used.

1) Proceeding from above, it is possible to draw certain conclusions.

2) In the Republic of Belarus preservation of such form of direct democracy as discussion of questions of the state and public life of republican and local value is positive. However, it is necessary to specify her place in system of other forms of direct democracy and his ratio with an advisory referendum.

3) Adoption of the uniform act regulating questions of practical realization of different types (both individual, and collective) discussions of questions of the state and public life of republican and local value is required.

4) The act regulating this form of direct democracy has to contain a list of questions which permission is possible only after their preliminary discussion with the population (especially it concerns questions of local value).

5) Procedure of carrying out meetings and other forms of discussions of questions needs a detailed regulation. Such requirement concerns as need of definition of subjects of excitement of an initiative of convocation of meeting, the subjects having the right to make similar decisions, and the rights of participants of meetings, procedure of realization of an initiative, formation of bodies of meeting, decision-making for technical questions.

3.3. Features of carrying out local meetings in the Republic of Belarus

Many gaps in the legislation exist also concerning definition of an order of convocation, creation of initiative groups, organizing committees, carrying out, procedure of decision-making and local meetings.

Questions of formation of territorial public self-government, elections of bodies of territorial public self-government, adoption of the provision (charter) of territorial public self-government, hearing of reports on work of bodies of territorial public self-government,

adoption of decisions on them, decisions on voluntary fund raising of the population for realization of questions of local value in general have to be within the exclusive competence of local meetings.

According to Article about Local councils of deputies, executive and administrative organs or bodies of territorial public self-government on the initiative or at the initiative of not less than 10% of the citizens who are permanently living in the respective territory convoke 11 of the Law on meetings of the year 2000 local meetings. Proceeding from the fact that this Law does not establish body, which is obliged to call local meeting at the initiative of citizens initiators - citizens have the right to address to one of the bodies, listed in Article 11, and refusal of one of these bodies doesn't interfere with the address of citizens with the requirement to call local meeting to two others.

In a manifestation form, the initiative can be stated as a wish about need to discuss this or that project or a question and as the initiative prepared project, and from practitioners or scientists. It would be necessary to fix a possibility of initiation of carrying out local meetings by public associations and other legal entities (for example, about drafts of the laws regulating taxation questions).

The law on meetings of the year 2000 does not contain the instruction on body, which is engaged in preparation and carrying out local meetings. It is defined only that for their preparation local councils of deputies, executive and administrative organs, bodies of territorial public self-government and citizens can create initiative groups or organizing committees. In our opinion, it would be expedient to fix the rule that preparation and carrying out local meetings of citizens are provided by appropriate authorities of local government, executive and administrative organs if they were initiators of convocation of such meeting, and bodies of territorial public self-government. Such direct fixing in the law of the rule will help to overcome a gap in a case, for example, when the initiative group or organizing committee is not created.

It is necessary to fix legislatively, terms for collecting signatures in support of carrying out local meeting as at an excessive tightening of this process relevance of the brought-up question can decrease, and the people who have given the votes in the first days of petition can quite not support this idea on the expiration of long term.

Local meetings can be held or by direct participation in them of the citizens who are permanently living in the respective territory or through the representatives. Rates of representation and an order of election of representatives for participation in local meeting are established by "the initiator of meeting" (Article 11 of the Law on meetings of the year the 2000). If bodies act as such initiators, then this situation is easily feasible. It is more difficult to realize this norm at initiation of local meetings by citizens as it is quite difficult to interrogate and consider opinion of several thousand citizens who act as initiators. In this case, initiative group at the meeting defines rates of representation and an order of election of representatives. After collecting necessary number of signatures at a meeting of initiative group the decision on need of carrying out local meeting is made, the question submitted for meeting is formulated is established, meeting by direct participation of citizens or through their representatives (in this case define rates of representation) will be held, date of meeting is defined, the chairman of initiative group is elected. This decision is made out by the protocol and together with materials (signatures) goes to bodies, which have the right to convoke local meetings. Materials of initiative group has to be are considered and on them the decision no later than 10 days is made (similar to the term established in the Law "About Addresses of Citizens").

If the initiative group made the decision that meeting will be held by direct participation of citizens, then it will organize informing the population and carrying out meeting in a certain date if - through representatives, then the initiative group together with body, which made the decision on convocation of such meeting, organizes informing the population, and forms organizing committee. Labor collectives, public organizations, citizens discuss the question submitted for meeting and independently solve whether to nominate him the representative to this meeting. The organizing committee registers the nominated representatives. Information on carrying out local meeting is brought to the attention of the citizens living in this territory no later than fifteen days before the day of being carried out. In case meeting is held through representatives, this term has to be extended.

Follows from the part 3 of Article 11 of the specified Law that local councils of deputies, by executive and administrative organs, bodies of territorial public self-government the organizing committee "can" be created, but should not be. The formulation of the situation

enshrined in the part 5 of this article is unsuccessful: "decision on convocation of local meeting... it is made out by the minutes of organizing committee or initiative group". First, the initiative group, for example, of citizens does not make the decision on convocation of local meeting (proceeding from literal interpretation of this article). Secondly, as the bodies having the right of convocation the local council of deputies, an executive and administrative organ, but not their organizing committees are called. Therefore, about convocation of local collections of the decision of these bodies have to be made out not by protocols, and, according to the Law "About Local Management and Self-government in the Republic of Belarus", decisions of these bodies (Articles 9 and 170). Only acts of bodies of territorial public self-government are made out by protocols, except for individual bodies. Heads of rural settlements, being body of territorial public self-government, make decisions (oral and written), instructions and instructions. Proceeding from it, the head will make the written decision on convocation of local meeting, but not to make out him the protocol.

At meetings along with a question of convocation of local meeting are considered also an order of the organization of carrying out such meeting whether meeting will be held through representatives of citizens or directly, date, about formation of organizing committee (depending on the level of body such committee cannot be formed, and to be engaged in registration of representative's body).

Local meeting is competent if not less than 25% of the citizens who have reached 18 years and permanently living in the respective territory take part in it, or not less than 2/3 representatives to participate in local meeting. With the right of advisory vote representatives of government bodies, enterprises, organizations and establishments can participate in meeting.

After opening of local meeting, his bodies are elected. It is thought that the chairman of local meeting has to be elected, as well as other working bodies (counting board, presidium, the secretary), by secret or open voting, but not to be appointed automatically (according to the part 3 of Article 12 of the Law on meetings of the year 2000 the chairman of organizing committee is also the chairman of meeting). The specified Law doesn't call as body of local meeting presidium, but for more successful carrying out local meeting at the level of, for example, small settlement when meeting is held by direct participation of its

inhabitants, it is expedient to organize such body, as a part of, for example, chairman, the secretary and two-four people.

The agenda and the regulations are approved by local meeting and are considered accepted if more than a half from number of attendees has voted for them.

At meeting of citizens or representatives the protocol in which date and a venue of local meeting, number of the citizens who are living in the respective territory and having the right to participate in meeting (if meeting is held directly) or the number of the registered representatives, the number of the registered participants of meeting, structure of working bodies, the agenda, content of performances, the made decisions are specified is kept.

The protocol is signed by the chairperson and the secretary of local meeting and is reported to appropriate authorities.

The solution of local meeting is accepted by a simple majority vote its participants. However, such decisions are obligatory only for consideration by their appropriate competent authorities and acceptance on them the decision, but not execution. Though some acts also fix provisions according to which bodies provide implementation of the solution of local meetings (the local administration provides implementation of solutions of local meetings (Article 11 of the Law "About Local Management and Self-government in the Republic of Belarus"), it is necessary to enter the norm containing guarantees of implementation of solutions of local meetings and responsibility for not execution into the Law on meetings of the year 2000. Fixing of provision that solutions of meetings, on an equal basis with the direct direction in bodies within which competence the matter is are subject to registration in executive and administrative organs of the corresponding administrative and territorial unit is for this purpose possible.

Based on stated, it is possible to formulate the following conclusions and offers.

Demands legislative definition the concept "question of local value" for carrying out local meetings. It is expedient to expand a circle of the subjects having the right to initiate a question of convocation of local meetings, having included the commercial and noncommercial legal entities having the legal address in the territory of this administrative and territorial unit in their number. Procedure of making decision on convocation of local meeting by competent authorities, terms for petition of citizens in support of an initiative

about convocation of local meeting need specification.

CONCLUSION

The conducted research directed to system studying of the major forms of direct democracy, judgment and realization of a number of provisions of articles of the Constitution of The Republic of Belarus has led to the following main conclusions:

Considerable achievement in legislative technology of regulation of some forms of direct democracy is codification in The Republic of Belarus of electoral rules, the norms defining an order of holding referenda, a response of deputies of the House of Representatives of National assembly, local councils of deputies. However, there is actual modification and additions in a row of the provisions concerning as the general beginnings of the specified forms of direct democracy (concept, the main terms) and providing efficiency of realization of already consolidated ideas. A variety of types and institutes of discussions generates need of adoption of the uniform act which would incorporate the norms regulating collective and individual institutes of discussions, having generalized already available norms which are contained in various acts for the purpose of definition of bases of realization of constitutional rights of citizens including the rights for participation in discussion of drafts of laws and questions of republican and local value.

Elections in The Republic of Belarus were and remain one of the most important forms of the direct democracy settled in the legislation. Practice of carrying out election campaigns in representative bodies in Belarus demonstrates that candidates who were proposed as citizens by petition or labor collectives and are non-parties take the majority of places in Parliament. This fact proves that the majority electoral system operating now in our state is optimum and effective, and transition to the mixed or proportional electoral system would be unjustified and premature.

As the basic principles of an electoral right, a referendum and a response of elected officials generality, equality, freedom of participation, ballot are called. However, despite quite long history of fixing of these fundamental beginnings, still there are not settled or disputable some moments.

Election campaign - one of stages of electoral process on which the result of vote in

many respects depends. Legal support of her implementation so far is insufficient. Manipulation problems of the public opinion, fraud of information always has new forms. Use of the Internet as one of sources of distribution of information, including about candidates, about the questions submitted for a referendum of the recalled deputies, requires close attention, first of all for settlement and ensuring protection of the right to reliable information. Election campaign is quite expensive action which financing only from the state would result in lack of attractive campaigns because of a lack of means or to considerable budgetary costs of all electoral process. For relief of burden of expenses of the state possibility of financing of elections at the expense of donations is entered. However, the operating procedure of financial support of candidates is imperfect in this connection needs additional legal regulation.

Despite discrepancy and negative historical examples, preservation in the Belarusian legislation of such form of direct democracy as a response of the deputy is positive. At the same time as a priority fixing in the main regulatory legal act regulating procedure of a response, definition of the concept of a response acts. In this regard expediently ("The main terms used in the present Code") to add Article 155 of the IC of the Republic of Belarus with situation: the response of the deputy is the procedure of the early termination of deputy powers which is carried out by vote of voters of the district from which this deputy is elected. It is necessary to improve also procedure of a response, on the one hand, by simplification of stages (stages) of her carrying out (due to reduction of terms on decision-making, specification of powers of participants, elimination of obligation of some actions having "technical" character), and with another - establishments of an accurate framework which observance is necessary for recognition of the deputy, withdrawn by voters.

For prevention of transformation of procedure of a response into the instrument of fight against "undesirable" people's deputies in the EC of the Republic of Belarus it is necessary to define the bodies obliged to draw the conclusion about existence of circumstances which can form the basis for a response, and a stage at which initiators of a response have to present such conclusion to appropriate authorities.

SUMMARY

The term "democracy" is world-wide known and famous, it could be interpreted in a various aspects. Democracy is characterized by declaration and full recognition of the rights and freedoms of the person; decision-making by the majority; selectivity of state governing bodies, officials to the voters; publicity in activity of the state.

The direct democracy is form of the political organization of society where the main decisions both move forward, and are accepted, executed directly by citizens. It should be noted that this form of the organization of society provides effective control over political institutes and officials. Also it is necessary to notice the fact that at direct democracy political activity of the population grows, there are opportunities for free will of the people, and also there is a self-realization and self-affirmation of the personality as a part of political system.. But there is an negative aspect as well. First, hardly possible to involve most of citizens in active participation in political life of the country without coercion as many citizens don't wish to politicize voluntarily. The opinion of the majority easily comes under influence, and often it can end with the fact that the power will fall into hands of demagogues. Still it is worth noticing that the wide spacing of opinions prevents selection of the uniform decision.

The representative democracy is political form of the organization of people where the people are a source of the power, but representative bodies which have been chosen by citizens of the country operate the state. Considering the positive moments of this form of democracy, it is necessary to tell that the representative democracy at discussion in parliament gives the chance to reach balance of interests. Negative aspect is that in this form of democracy the people actually lose power, except for time when there are elections of public authorities. Also at such sort of democracy there is a bureaucratization of the power. But if we consider society in general, then we understand that at this form of democracy people are deprived of the real power and a possibility of influence.

Summing up the results, I come to the conclusion that the democracy is an example of such political regime where interests, views and positions of all citizens of the country are observed. However on light there is nothing ideal, and the democracy in general can't be referred as a perfect and unified model for every state. The system of human society is too

difficult and many-sided, it has different historical background and economic perspective, the opinion of different people on the question of democracy will never coincide.

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