SECTION 3
CONSTITUTIONAL AND LEGAL PRINCIPLES OF ORGANIZATION OF ACTIVITY OF STATE AUTHORITIES AND LOCAL GOVERNMENT

THE INSTITUTION OF POPULAR VETO:
EXPERIENCE OF SELECTED FOREIGN COUNTRIES

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Summary

This article examines the legislation of foreign countries regarding mechanisms of direct democracy, particularly the institution of popular veto. A historical analysis of the development of this instrument in European law has been conducted.

The methodological basis of the publication consists of scientific methods based on the requirements of objective and comprehensive analysis of socio-political and legal phenomena, which include direct democracy in foreign countries. The research methodology is founded on general theoretical principles and approaches to determining the initial parameters of the formation and development of popular veto as a form of direct democracy. To achieve scientific objectivity in the results, the author used a full range of general scientific and special research methods widely applied in the modern science of constitutional law.

It has been established that although modern forms of direct democracy emerged relatively recently, the concept of popular veto has roots in ancient civilizations as a means of limiting the abuse of power. Initially, the right of veto was exercised not directly by citizens, but by authorized persons on behalf of the people, who could reject laws that contradicted fundamental norms.

It is argued that although popular veto was first enshrined in French constitutional law, Switzerland is considered its birthplace, where this institution received genuine development and was first implemented in practice in 1831. The evolution of popular veto is closely linked to the development of Swiss statehood; however, the immediate impetus for its implementation was granting citizens direct voting rights and the right to participate in referendums. Initially, popular veto was applied at the level of individual cantons, and in 1874 it was enshrined in the Swiss Constitution at the national level. According to the constitutional procedure, a specified number of voters can officially express disagreement with an adopted law within a set period, after which it must be submitted to a nationwide referendum for approval or repeal.

Key words: mechanisms of direct democracy, referendum, popular veto, Swiss Confederation, constitution, constitutionalism.

1. Introduction

The term "people's power" has become one of the key concepts during recent election campaigns. The introduction of popular veto as a mechanism of people's power was one of the first points in the election programs of some political parties. At the same time, as the analysis of several scientific sources shows, in the modern world, popular veto is not very common among world democracies. In a relatively small number of countries, rejective referendums are possible, and in most cases, only heads of state have the ability to veto legislative acts. Even fewer are the number of European countries whose Constitutions directly state the principles of conducting abrogative referendums - these are Austria, Denmark, Italy, Latvia, and finally, Switzerland. Moreover, it is known from scientific literature that the institution of popular veto has a long history (although some researchers point out that the very emergence of new forms of direct democracy began only in recent centuries, which is associated with the development of democracy, the complication of socio-political relations and, as a result, the expansion of political rights and freedoms of citizens) (Mykhailov, 2017, p. 129-130).

At the same time, today in Switzerland, there is a successful practice where people are the subject of legislative initiative. Europe is also taking its first steps. Draft laws have already been developed that should expand the forms of direct democracy: mechanisms of national and local referendums, popular veto, and recall of deputies have been established. Therefore, it is extremely important, in our opinion, to consider the historical experience of applying the institution of popular veto in the Swiss Confederation.

2. Analysis of scientific publications

Issues of forms of direct democracy in general, as well as popular veto in particular, were considered in the works of Avramenko S., Byelov D., Dunant L., Zharovska I., Kocherga A., Onishchuk M., Komarova V., Kotlyarevsky S., Prieshkin O., Pogorilko V., Staniychuk M., Stora A., Mamychev V., Solomonov S., Samorodova-Bogatskaya L., Fedorenko V. and a number of others.

3. The methodological basis of the publication

consisted of scientific methods based on the requirements of objective and comprehensive analysis of socio-political and legal phenomena, which include direct democracy in foreign countries. The research methodology is based on general theoretical principles and approaches to determining the initial parameters of the formation and development of such a form of direct democracy as popular veto. To achieve scientific objectivity of the results, the author used the entire complex of general scientific and special research methods that are widely used in the modern science of constitutional law.

4. Presentation of the main material

Switzerland is usually considered the "oldest democracy in the world". Since the mid-19th century, the institution of popular veto began to be actively used in Swiss cantons, based on the introduction of direct suffrage and citizens' right to participate in referendums. Despite the fact that at that time suffrage was applied in Switzerland in an extremely limited form, even then people had the legal opportunity to refuse consent to a law passed by the legislative body through voting (Maduz, 2010).

The history of the development of people's power in the exercise of public authority in Switzerland, including such institutions as the popular veto, is directly related to the development of Swiss statehood. In this regard, scientific literature offers views that conditionally divide this development into three stages.

The first stage: "Old Confederation" ("Confederation de l'Ancien Regime"), which existed from the foundation of the "Swiss Oath Alliance" through the signing of a treaty between urban and rural communities in 1291 ("Rütli Oath"). In the "old confederation", there were known institutions that guaranteed residents' participation in political life, such as popular assemblies (Landsgemeinde) in mountain cantons, referendums in the canton of Grisons, or the guild system of self-government in some urban cantons (Garrone, 1996, p. 252), which had no analogies in the world. However, given the limitations on the circle of aforementioned citizens, this system can be classified as more aristocratic than democratic (Aubert, 2012, p. 7).

In this regard, A. Dunant's view on the functioning of the institution of popular assemblies during the inception of Swiss statehood is interesting, as it essentially became the precursor to the institution of popular veto itself. The author notes that "the citizens of Schwyz have gathered for joint meetings since ancient times to resolve their local affairs; the political situation here was different from Uri, as the population of Schwyz was directly dependent on the powerful individuals of neighboring lands; its relations with the empire were inconsistent. Unterwalden was in the same position, with the difference that it was still divided between abbeys and castles. As a result, the number of peasants who owned land was limited. Everywhere there was fear that the powerful would no longer be satisfied with their feudal rights and would attempt to encroach on the privileges of the settlers. The people guarded the ancient traditions of independence with jealous care and energetically opposed any outside interference, any attempt at arbitrary interpretation of ancient customs" (Dyunan, 1896, p. 15).

Throughout the Middle Ages, Avramenko S. notes, the legislative power of these assemblies remained unchanged; their main task was, first of all, to observe public interests. However, only the rural population was subordinate to their authority, and the rights of

the nobility were gradually reduced. Accordingly, only peasants who owned land plots had the right to vote in popular assemblies. Land law, meanwhile, limited the possibility of acquiring land plots by persons who were not members of the community, so a significant layer of landless peasants emerged who were not involved in community management. Thus, as we can see, the institution of popular assemblies, although formally an "institution of direct democracy", had a pronounced aristocratic character in the Middle Ages, as a significant part of the population did not have the right to participate in its work (Avramenko, 2002, p. 26).

According to Dunant A., the institution of popular assemblies also existed in Geneva, but until almost the middle of the 15th century, the power to manage city affairs was actually carried out by the "Council of 50", which consisted of representatives of the most noble families of the city (Dyunan, 1896, p. 55).

Starting from the 16th century, the interests of the nobility and craftsmen converged, thus forming a new political elite that had absolute dominion over public life in the cities. As a result of craft guild representatives joining the communal councils of some cities, their influence in the urban community increased. Consequently, the composition of communal councils was expanded, and they acquired the status of representative bodies of "Great Councils". Accordingly, the political majority in these bodies no longer belonged to representatives of old aristocratic families, but to representatives of the new bourgeoisie (Micotti S., Butzer M., 2003, p. 19).

The *second stage* of the establishment of people's power in the Swiss Confederation is associated with the conquest of its territory by revolutionary France and the consequences of this conquest. In December 1797, France captured Basel and its lands. The Basel Great Council hastily proclaimed freedom and equality in the spirit of the French Revolution. Peter Ochs, a decisive supporter of democratic renewal and head of the guild of crafts, declared: "We want to prevent the storm. Let's show the whole world how the aristocracy itself takes the path of democratization" (Fahmi, 1982, p. 51).

According to A. Kölz, "the French managed to overthrow the almighty nobility and abolish the privileges of the ruling families. This opened the way to a new concept of legal freedom based on individual freedom and political equality" (Kolz, 1992, p. 506).

The ideas of the French Revolution were quite thoroughly studied by Swiss philosophers, political scientists, and lawyers. There was an export of French democratic ideas to Switzerland. However, the ideas of "plebiscitary democracy" were not implemented in France at that time, as this country has quite strong traditions of representative democracy, which, in turn, were borrowed and embodied in Swiss constitutionalism, and subsequently sublimated from France through Switzerland to all of Europe. The 18th century and the influence of the French Revolution, in addition to obvious occupational troubles, brought certain achievements to Switzerland in the development of direct democracy institutions. In particular, Swiss constitutional and legal thought borrowed from French Enlightenment ideas the concept of natural rights, which in the context of direct democracy was reflected as the natural, inalienable right to vote of any citizen, which cannot be limited for utilitarian purposes (Tecklenburg, 1911, p. 146).

The third stage is associated with the adoption of the Constitution of the Swiss Confederation in 1848, which marked the beginning of a new phase in the establishment of a democratic state (political) regime in this country, as well as in the implementation of the principle of people's power. It should be noted that on the eve of the establishment of the federal state in 1848, neither universal suffrage nor direct democracy instruments were yet widespread (Aubert, 2000, p. 130).

Initially, in 1891, there was a reform of the constitutional initiative institution, which established the introduction of distinctions between general and partial revision of the Constitution. Then, in 1921, a referendum on international treaties was held. In 1949, a referendum was held on the abolition of urgent federal decrees. These two reforms ultimately stemmed from the adoption of popular legislative initiatives. The conditions for the referendum on international treaties were clarified in 1977. In the same year, the people and cantons approved an increase in the number of signatures required for a referendum and for a popular legislative initiative to 50,000 and 100,000 respectively. In 1987, a requirement for double approval - by the people and cantons - was introduced in case of an initiative and a "counter-project" being put to a referendum. Thus, as Kocherga A. notes, in the development of direct democracy, a period of rapid development until 1949 was followed by a period of gradual development of legislation and bringing it in line with the general principles of constitutional law (Kocherga, 2008, p. 21).

The principle of people's power and direct expression of the people's will in the Swiss Confederation subjects the adoption of the most important (Constitution) and important (Law) decisions of the parliament to control by voters through a referendum and gives the electorate, in addition, the right to put their own proposals to a vote through popular initiative. People's rights developed at the cantonal level even before the formation of the Swiss Confederation, and it was there that they gradually formed by the 19th century.

In contrast to plebiscites used in parliamentary democracy in addition to parliamentary rule to legitimize current government policy, direct expression of the people's will in the Swiss Confederation emerged as a form of opposition of "direct people's rule" to the representative system, as a way to limit parliamentary

power and control the most important state decisions. It was from this that a form of government grew in which 3 main institutions cooperate - the government, parliament, and the electorate (people): the people – through the highest democratic method of lawmaking – genuine expression of will – make the most important final decisions, parliament – important ones, and the government – less significant decisions. This idea of dividing the competence of state institutions according to the criterion of material importance is at least on the same level as the principle of distributing legal norms between sources of law – constitution, law, and regulation (Muller, 1979, p. 21).

Since the adoption of the Constitution in 1848, referendums have been held at the national level in this country about 3-4 times a year, and at the moment their total number exceeds over half a thousand (Premat, 2010, p. 137).

Despite the fact that the principle of people's power in its modern format was not initially inscribed in the foundations of the Swiss federal state, it has undoubtedly long become its iconic characteristic. It can be said that it has become a self-sufficient factor for the Swiss citizen and a constituent element of Swiss statehood itself (Ehrenzeller, 1999, p. 65–91).

The iconic, or, if you will, ideological (central) place that the principle of people's power and direct expression of the people's will occupy among the foundations of the Constitution does not mean that its application would minimize voter activity. The number of popular legislative initiatives put forward over thirty years continues to increase. As for the optional referendum, after a rather calm period that followed the integration of all major parties into the Federal Council in 1958, it began to be used quite actively again from 1970 (Auer, Malinverni, Hottelier, 2008, p. 768).

Swiss constitutionalists note that direct expression of the people's will is the citizen's opportunity to express themselves through voting on a specific issue, in a way other than electing deputies or officials, and this opportunity cannot depend on the "goodwill" of representative bodies (Trechsel, 2000, p. 579). A referendum is mandatory if the vote takes place without a request from a group of citizens; it is optional if one vote is cast only in response to a request from a certain number of voters. The Federal Constitution enshrines both the institution of initiative and referendum, although it does not enshrine them symmetrically. These institutions of direct democracy are usually united by the concept of "people's rights" (Message on the New Federal Constitution, 1996, p. 444).

Investigating the problems of direct expression of the people's will as the basis of the constitutional order in the Swiss Confederation, A. Kocherga notes that the nature of the right to a referendum changes depending on the subject matter (it can be the Constitution, law, international treaty). Its nature differs mainly in that the right to a

referendum is absolute when the referendum affirms texts that cannot come into force without the will of the people; it is relative when the referendum is held at the request of a certain number of citizens. In the first case, we speak of a mandatory referendum, in the second - of an optional referendum. The use of the right to a referendum always leads to a nationwide vote. A mandatory referendum exists in two different forms: either ordinary, which suspends the action of acts that are the subject of the referendum, or abrogative - for laws that do not directly follow from the content of the Constitution, and urgent laws (Kocherga, 2008, p. 21-22).

In the 19th century, Switzerland once again proved to the world the uniqueness of its national experience of local democracy: in 1831 in the canton of St. Gallen, the people's veto (veto) was introduced, in 1845 in the canton of Vaud, people's legislative initiatives began to be used, and from the end of the 19th century in the cantons of Schaffhausen, Lucerne, Solothurn, Aargau and Thurgau, the use of popular recall (abberufungsrecht) of representative bodies of these cantons is allowed. Along with mandatory referendums, optional referendums have become widespread (Onishchuk, 2010, p. 98).

S. Kotlyarevsky, considering the concept of the referendum institution from the point of view of its historical roots in a political-morphological review, emphasized the transition from the cantonal form of referendum to the federal one: "The very word 'referendum' was familiar to the Swiss from their political past: this was the name for decisions that in some cantons – Graubünden, Valais - were made at meetings of representatives and then passed ad referendum to parts of the cantons, which were the main political units; the final acceptance or rejection of the decision depended on them. The same order was observed in the union, which was only a congress of independent cantons; the analogy with the new referendum here was that in both cases the representation did not have final, decisive power" (Kotlyarevskij, 1907 p. 34-35). At the same time, he highlighted the following important moment in the evolution of world gatherings, which indicates an expansion of people's legislative rights: "On the contrary, there is a tendency towards more categorical, so to speak, immediacy - the people's veto". That is, after the optional referendum, then appears the mandatory referendum and people's initiative. Therefore, the center of influence shifts from representatives to voters" (Kotlyarevskij, 1907, p. 251).

It should also be noted that support for the institution of the people's veto was not unanimous throughout Switzerland. Communities located predominantly in the German part of Switzerland still prefer the People's Assembly (Assemblée Populaire) to parliament. This fact is historically explained. A. Story explains this by the fact that in the French part, the consciousness of self-governing community was less ingrained compared to the

German part, where each generation was brought up in this elementary "school of freedom" (Stori, 1914, p. 54).

As a result of France's occupation of all of Switzerland and by decision of the French Directory, the country was transformed into a unitary Swiss republic. On April 12, 1798, representatives of the Union of 13 Swiss cantons adopted a Constitution created in the likeness of the French Basic Law of 1795. It limited a number of rights, including citizens' rights to popular legislation (Mamichev, 2000, p. 39).

The Constitution of 1801, approved by Bonaparte, showed a tendency towards centralization. The central government bodies were the Sejm and the Senate, and the cantons were given limited self-government. On October 24, 1801, after another round of negotiations between representatives of unitarists and federalists, the Swiss Sejm developed and adopted a new constitution. The draft of the new constitution, developed by the federalists, was approved and came into force on February 27, 1802. However, the legislator rejected direct public participation in governance, establishing instead the principle of representation, which directly contradicted the historical traditions of Swiss cantons (Solomonova, 2007, p. 45).

It should be noted that "the unitary state structure did not take root among the Swiss accustomed to self-government, and by the end of February-early March 1803, the French authorities were forced to return Switzerland to a decentralized system of governance (Oechsli, 1903, p. 444-445). In the same year, with Napoleon's participation, a new Constitution was developed, which went down in history under the name of the Act of Mediation. "It again established the confederation - a union of 19 separate cantons. All cantons retained their status as independent republics, constitutionally formalized their structure and democratic political regime. In internal affairs, the cantons retained traditional self-government" (Solomonova, 2007, p. 48-49)..

According to J. Bluntschli, from 1815 to 1848, the history of Switzerland is divided into two periods, with the boundary between them connected to 1830. The first 15 years are usually called the period of restoration, and the years following up to 1848 – the period of regeneration. If the first period was characterized by a decline in political forces and relative calm, the second was characterized by the emergence and development of new views and ideas caused by a series of disturbances and revolutions [26, p. 495-496].

V. Mamychev highlights 1829 as the beginning of the period of revival of people's rights in large cantons. In 1831, the canton of St. Gallen introduced the people's veto. Following St. Gallen, Basel-Land, Valais, and Lucerne introduced the people's veto. In 1845, the canton of Vaud, in addition to the people's veto, also introduced an optional referendum and popular initiative (Mamichev, 2000, p. 39).

Direct democracy institutions were further developed in 1891 with the introduction of a popular initiative for partial revision of the Constitution. The peculiarity of this innovation was the novelty of the form in which the initiative itself was essentially formulated (Favez, 1996, p. 323). The latter, according to L. Samorodova-Bogatskaya, could now be expressed in the form of either a thesis containing only a general requirement to change the Constitution in principle by voting "for" or "against" its revision, or a specific draft act amending the Constitution (Samorodova-Bogackaya, 2014, p.145).

However, it should also be noted that the statistics of the results of people's vetoes in Switzerland show that "From 1848, when the Swiss Constitution legalized the institution of referendum and popular initiative at the federation, canton and commune levels, to 1971, in 157 cases of referendums, 63% were initiated by Parliament and 13% by voters". The general characteristic of Swiss referendums comes down to stating the conservatism of this institution during this period. "The referendum is conservative in nature. Most Swiss referendums end with support for the status quo and rejection of proposed reforms" (Mamichev, 2000, p. 39). It should be noted that in a referendum in 1972, Swiss citizens rejected a bill on the sale of weapons abroad (Pohorilko, 2006, p. 349).

Other examples of the use of the people's veto in Switzerland include the 2013 referendum on abolishing compulsory military service, which became one of the most controversial in Swiss society. During this referendum, the Swiss population voted against abolishing universal conscription for military service. That is, 73% voted "for" its preservation. Recall that supporters of mandatory military conscription believe that all young people should serve in the army, while opponents complain about the high cost of maintaining it. It should be noted that the issue of mandatory military service has been raised in referendums in Switzerland more than once. Supporters of mandatory military conscription believe that all young people should serve in the army, while opponents complain about the high cost of maintaining it (Shveitsartsi vystupyly proty skasuvannia viiskovoho pryzovu).

5. Conclusions

Despite the fact that the emergence of new forms of direct democracy began only in recent centuries, the formation of the institution of the people's veto originates from ancient civilizations as a means of limiting the arbitrariness of government representatives. Initially, the people's veto was not applied directly by the people themselves, but by a special person or group of persons authorized in the interests of the people, who opposed laws that, in their opinion, violated the prescriptions of founding laws, which at that time had the prototype of a modern constitution.

Despite the fact that the people's veto was first enshrined in French constitutional provisions, Switzerland is considered the birthplace of this institution, as it was in this country that the people's veto received genuine development and was first implemented in practice in 1831. The development of the people's veto is directly related to the development of Swiss statehood. However, the immediate prerequisite for the practical implementation of this institution in Switzerland was the granting of direct suffrage and citizens' right to participate in referendums. However, it should be noted that initially, the people's veto was implemented at the regional (municipal) level in several cantons, and much later in 1874 at the national level after the implementation of this institution in the Swiss Constitution. According to the constitutional procedure, within a certain period, a specified number of voters have the right to officially declare their disagreement with an adopted law, after which it is mandatorily put to a referendum, where, depending on the results, such a law is either repealed or remains in force.

Bibliography:

1. Михайлов, М. (2017) Класифікація типових та нетипових форм безпосередньої демократії. *Конституційне право*. № 10. С. 127–131.

2. Maduz, L. (2010) Direct Democracy. Living Reviews in Democracy. Vol. 2. p.14. URL: http://www.css.ethz.ch/content/dam/ethz/specialinterest/gess/cis/center-for-securities-studies/pdfs/Maduz-2010-DirectDemocracy.pdf.

3. Garrone, P. (1996) Le suffrage universe! et egal en Suisse. Les origines de la democratic directe en Suisse. / Ed. A. Auer. – Bale-Francfort-sur-le-Main. P. 252.

4. Aubert, J.-F. (2012) Introduction historique. *Commentaire de la Constitution federate*. № 3. P. 7.

5. **Дюнан, Л.** (1896) Народное законодательство в Швейцарии. Исторический обзор / Пер. в французского. СПб.: Тип. М.М. Стасюлевича. С. 15–21.

6. Авраменко, С.Л. (2002) Швейцарский федерализм. Дисс. канд. юрид. наук. 26 с.

7. Дюнан, Л. Н. (1896) Народное законодательство в Швейцарии. Исторический обзор / Пер. в французского. СПб.: Тип. М.М. Стасюлевича. С. 15–21.

8. Micotti, S., Butzer, M. (2003) La democratie communale en Suisse: vue generale, institutions et experiences dans les villes. 1990-2000. Geneve. P. 19–22.

9. Fahmi, D. (1982) Schweizer Geschichte. Zuerich: Pro Helvetia. S. 51–55.

10. Kolz, A. (1992) Neuere schweizerische Verfassungsgeschichte. Beme. P. 506–611.

11. Tecklenburg, A. (1911) Die Entwicklung des Wahlrechts in Frankreich seit 1789. Tübingen, J.C.B. Mohr. P. 146–155.

12. Aubert, J.-F. (2000) Introduction historique. № 3. P. 129–136.

13. Кочерга, А. В. (2008) Прямое волеизьявление народа как основа конституционного строя в Швейцарской конфедерации : дис. на соиск. учен. степ. канд. юрид. наук : специальность 12.00.02 – конституц. право; муницип. право. 191 с.

14. Muller, G. (1979) Inhalt und Formal der Rechtsetzung. Basel. P. 21–25.

15. Premat, C. (2010) Direct Democracy in a Comparative Perspective. *Taiwan Journal of Democracy*. Volume 2. № 1. P. 137–139.

16. Ehrenzeller, B. (1999) Moglichkeiten und Grenzen der direkten Demokratie. *BJM*. S. 65–91.

17. Auer, A, Malinverni, G. Hottelier, M. (2008) Droit constitutionnel Suisse. Vol. I. 768 p.

18. Trechsel, A. (2000) Feuerwerk Volksrcchte. Bale-Geneve-Munich. P. 6.

19. Message on the New Federal Constitution of 20 November 1996. *FF*. (1997). 1. 444 p.

20.Оніщук, М.В. (2010) Конституційні основи референдної демократії в Україні: дис. д-ра юрид. наук. Київ. С. 98.

21.Котляревский, С. А.(1907)Конституционное государство. Опыт политико- морфологического обзора. СПб. С. 34–35.; **Котляревский, С.А.** (1915) Власть и право. Проблема правового государства. М. 251 с.

22. Стори, А.Т. (1914) Швейцария. М. 54 с.

23. Мамичев, В.Н. (2000) Референдум в законодательстве зарубежных стран: Дисс. ... канд. юрид. наук. С. 39.

24. Соломонова, С.А. (2007) Швейцарская конституция: историко-правовой аспект: Дисс. ... канд. юрид. наук. СПб. С. 45.

25. Oechsli, W. (1903) Geschichte der Schweiz im neunzehnten Jahrhundert. Bd. 1. Die Schweiz unter franzosischen Protektorat 1798–1813. Leipzig. S. 444-445.

26. Bluntschli, J. C. (1875) Geschichte des schweizerischen Bundesrechtes. Bd. 1. Stuttgart. S. 495-496.

27. Favez, J.-C. (1996) L'initiative populaire fédérale. *Les origines de la démocratie directe en Suisse*. Bâle. 323 p.

28. Самородова-Богацкая, Л.В. (2014) Эволюция института референдума и народной инициативы в Швейцарии: историко-правовой подход (федеральный уровень). *Труды института государства и права академии наук.*. № 4. С. 135–148.

29. Мамичев, В.Н. (2000). Референдум в законодательстве зарубежных стран: историко-правовое исследование. 39 с.

30. Погорілко, В.Ф. (2006). Референдне право України: навч. посіб. / В.Ф. Погорілко, В.Л. Федоренко. К. : Вид-во «Ліра-К». 366 с.

31. Швейцарці виступили проти скасування військового призову. URL : https://web.archive.org/web/20131230235327/ http://newsradio.com.ua/2013_09_22/SHvejcarc-vistupili-proti-skasuvannja-v-jskovogo-prizovu.

32. Belov, D., Gromovchuk, M., Blikhar, V. (2019). The Constitution as the Basic Law of the State: Statics and the Possible Dynamics of Development. *Challenges and prospects for the development of legal systems in Ukraine and EU countries: comparative analysis: Collective monograph.* Riga: Izdevnieciba "Baltija Publishing". S. 23–29.

33. Byelova, M., Farcash, I.-M., Byelov, D., (2022). The principle of humanism and its content in the conditions of the formation of the newest social paradigm**.** European Socio-Legal and Humanitarian Studies. Issue 1. P. 30–43.

References:

1. Mykhailov, M. (2017) Klasyfikatsiia typovykh ta netypovykh form bezposerednoi demokratii [Classification of typical and atypical forms of direct democracy]. *Konstytutsiine pravo.* № 10. S. 127–131. [in Ukrainian].

2. Maduz, L. (2010) Direct Democracy. Living Reviews in Democracy. Vol. 2. p.14. Available from: http://www.css.ethz.ch/content/dam/ethz/specialinterest/gess/cis/center-for-securities-studies/pdfs/Maduz-2010-DirectDemocracy.pdf [in English].

3.Garrone, P. (1996) Le suffrage universe! et egal en Suisse. Les origines de la democratic directe en Suisse. / Ed. A. Auer. Bale-Francfort-sur-le-Main. p. 252. [in French].

4. Aubert, J.-F. (2012) Introduction historique. *Commentaire de la Constitution federate*. № 3. p. 7. [in French].

5. Dyunan, L. (1896) Narodnoe zakonodatel'stvo v Shvejcarii. Istoricheskij obzor [National legislation in Switzerland. Historical review] / Per. s francuzskogo. SPb.: Tip. M.M. Stasyulevicha. s. 15-21. [in Russian].

6. Avramenko, S.L. (2002) Shvejcarskij federalizm [Swiss federalism]. Diss. kand. yurid. nauk. s. 26. [in Russian].

7. Dyunan, L.N. (1896) Narodnoe zakonodatel'stvo v Shvejcarii. Istoricheskij obzor [National legislation in Switzerland. Historical review] / Per. s francuzskogo. SPb.: Tip. M.M. Stasyulevicha. s. 15-21. [in Russian].

8. Micotti, S., Butzer, M. (2003) La democratie communale en Suisse: vue generale, institutions et experiences dans les villes. 1990-2000. Geneve. p. 19-22. [in French].

9. Fahmi, D. (1982) Schweizer Geschichte. Zuerich: Pro Helvetia. s. 51-55. [in German].

10. Kolz, A. (1992) Neuere schweizerische Verfassungsgeschichte. Beme. s. 506-611. [in German].

11. Tecklenburg, A. (1911) Die Entwicklung des Wahlrechts in Frankreich seit 1789. Tübingen, J.C.B. Mohr. s. 146-155. [in German].

12. Aubert, J.-F. (2000) Introduction historique. № 3. S. 129–136. [in English].

13. Kocherga, A. V. (2008) Pryamoe voleizyavlenie naroda kak osnova konstitucionnogo stroya v Shvejcarskoj konfederacii [The direct expression of the will of the people as the basis of the constitutional system in the Swiss Confederation]: dis. na soisk. uchen. step. kand. yurid. nauk: special'nost' 12.00.02 – konstituc. pravo; municip. pravo. 191 s. [in Russian].

14. Muller, G. (1979) Inhalt und Formal der Rechtsetzung. Basel. S. 21–25. [in German].

15. Premat, C. (2010) Direct Democracy in a Comparative Perspective. *Taiwan Journal of Democracy*. Volume 2. № 1. P. 137–139. [in English].

16. Ehrenzeller, B. (1999) Moglichkeiten und Grenzen der direkten Demokratie. *BJM*. S. 65–91. [in German].

17. Auer, A, Malinverni, G., Hottelier, M. (2008) Droit constitutionnel Suisse. Vol. I. p. 768. [in French]

18. Trechsel, A. (2000) Feuerwerk Volksrcchte. Bale-Geneve-Munich. P. 6. [in German].

19. Message on the New Federal Constitution of 20 November 1996. *FF*. (1997). 1. p. 444. [in English].

20. Onishchuk, M.V. (2010) Konstytutsiini osnovy referendnoi demokratii v Ukraini [Constitutional foundations of referential democracy in Ukraine]: dys. d-ra yuryd. nauk. Kyiv: b. v. s. 98. [in Ukrainian].

21. Kotlyarevskij, S.A. (1907) Konstitucionnoe gosudarstvo. Opyt politiko-morfologicheskogo obzora [Constitutional state. Experience of political and morphological review]. S. 34-35. [in Russian].

22. Stori, A.T. (1914) Shvejcariya [Switzerland]. S. 54. [in Russian].

23. Mamichev, V.N. (2000) Referendum v zakonodatel'stve zarubezhnyh stran [Referendum in the legislature of foreign countries]: diss. ... kand. yurid. nauk. S. 39. [in Russian].

24. Solomonova, S.A. (2007) Shvejcarskaya konstituciya: istoriko-pravovoj aspect [Swiss constitution: historical and legal aspect]: diss. ... kand. yurid. nauk. S. 45. [in Russian].

25. Oechsli, W. (1903) Geschichte der Schweiz im neunzehnten Jahrhundert. Bd. 1. Die Schweiz unter franzosischen Protektorat 1798–1813. Leipzig. S. 444–445. [in German].

26. Bluntschli, J.C. (1875) Geschichte des schweizerischen Bundesrechtes. Bd. 1. Stuttgart. S. 495-496. [in German].

27. Favez, J.-C. (1996) L'initiative populaire fédérale. *Les origines de la démocratie directe en Suisse*. Bâle. P. 323. [in French].

28. Samorodova-Bogackaya, L.V. (2014) Evolyuciya instituta referenduma i narodnoj iniciativy v Shvejcarii: istoriko-pravovoj podhod (federal'nyj uroven') [Evolution of the institution of referendum and popular initiative in Switzerland: historical and legal approach (federal level).]. *Trudy instituta*

gosudarstva i prava akademii nauk. № 4. S. 135–148. [in Russian].

29. Mamichev, V.N. (2000) Referendum v zakonodatel'stve zarubezhnyh stran: istoriko-pravovoe issledovanie [Referendum in the legislation of foreign countries: a historical and legal study]. S. 39. [in Russian].

30. Pohorilko, V.F. (2006) Referendne pravo Ukrainy: navch. posib. [Referendum law of Ukraine: academic. manual] / V.F. Pohorilko, V.L. Fedorenko. K.: Vyd-vo «Lira-K». 366 s. [in Ukrainian].

31. Shveitsartsi vystupyly proty skasuvannia viiskovoho pryzovu [Швейцарці виступили проти скасування військового призову. URL :]. Available from: https://web.archive.org/ web/ 20131230235327/

http://newsradio.com.ua/2013_09_22/SHvejcarc-vistupili-proti-skasuvannja- v-jskovogo-prizovu/ [in Russian].

32. Belov, D., Gromovchuk, M., Blikhar, V. (2019) The Constitution as the Basic Law of the State: Statics and the Possible Dynamics of Development. *Challenges and prospects for the development of legal systems in Ukraine and EU countries: comparative analysis: Collective monograph*. Riga : Izdevnieciba "Baltija Publishing". S. 23–29. [in English].

33. Byelova, M., Farcash, I.-M., Byelov, D. (2022) The principle of humanism and its content in the conditions of the formation of the newest social paradigm**.** European Socio-Legal and Humanitarian Studies. Issue 1. P. 30–43. [in English].

ІНСТИТУТ НАРОДНОГО ВЕТО: ДОСВІД ОКРЕМИХ ЗАРУБІЖНИХ КРАЇН

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Анотація

Стаття досліджує законодавство зарубіжних країн щодо механізмів прямої демократії, зокрема інституту народного вето. Здійснено історичний аналіз розвитку цього інструменту в європейському праві.

Методологічну основу публікації склали наукові методи, що базуються на вимогах об'єктивного і всебічного аналізу суспільних явищ політико-правового характеру, до яких належить безпосередня демократія в зарубіжних країнах. В основу методології дослідження покладені загальнотеоретичні принципи й підходи з визначення вихідних параметрів становлення й розвитку такої форми безпосередньої демократії, як народне вето. Для досягнення наукової об'єктивності результатів автор використав увесь комплекс загальнонаукових і спеціальних методів дослідження, які знаходять широке застосування в сучасній науці конституційного права.

Встановлено, що хоча сучасні форми прямої демократії з'явилися відносно недавно, концепція народного вето сягає корінням давніх цивілізацій як спосіб обмеження владного свавілля. Спочатку право вето здійснювалося не безпосередньо громадянами, а уповноваженими особами від імені народу, які могли відхиляти закони, що суперечили основоположним нормам.

Аргументовано, що хоча народне вето вперше було закріплено у французькому конституційному праві, його батьківщиною вважається Швейцарія, де цей інститут отримав справжній розвиток і вперше був реалізований на практиці в 1831 році. Еволюція народного вето тісно пов'язана з розвитком швейцарської державності, однак безпосереднім поштовхом до його впровадження стало надання громадянам прямого виборчого права та права на участь у референдумах. Спочатку народне вето застосовувалося на рівні окремих кантонів, а в 1874 році було закріплено в Конституції Швейцарії на загальнодержавному рівні. Згідно з конституційною процедурою, визначена кількість виборців у встановлений термін може офіційно висловити незгоду з прийнятим законом, після чого він обов'язково виноситься на всенародний референдум для схвалення або скасування.

Ключові слова: механізми прямої демократії, референдум, народне вето, Швейцарська Конфедерація, конституція, конституціоналізм.