

Секция 7. ЮРИДИЧЕСКИЕ НАУКИ

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PUBLIC OPINION AND PUBLIC AUTHORITY: INTERACTION FUNCTIONS

The political sphere determined by the dynamics of the system of influencing factors — subjective and objective, external and internal. Public opinion is a social institution that has always accompanied the development of the political system of an asymmetric society. It's consolidating potential forms and means of influencing the institutions of power change its originality and intensity: from spontaneous verbal or tacit (latent) approval / condemnation of their activities to targeted forms of pressure on them — legal and non-legal, civilized and radically aggressive. With varying degrees of social effect, they adjust the meaning and direction of political and personnel decisions, legal reforms, legislation, electoral activity, and decisions of municipal authorities.

The increasing complexity of the system of public relations and the intensive technologization of mass and business communication have led to the use of information resources in the mutual influence of society and government. This necessitated the legal formulation of restrictions and methods of control over the dissemination and use of digital information. Restrictions on freedom of the media, the use of the Internet, the use of IT lobbying processes for bills, the digitalization of public administration and the electoral process have also become factors that drew attention to the problem of functioning of public opinion in the new conditions.

Public opinion is functionally indispensable in the exercise of power functions in political communications and in making political and legal

decisions, in ensuring national security in information, military, environmental, humanitarian and other spheres.

Communication theories reveal the nature and functionality of public opinion in power relations. The content and direction of its functions are realized in the vertical-horizontal model of influence: the vertical one reflects the projection of the influence of public opinion on public power structures within the framework of expressive, consultative and directive functions, and the horizontal one reflects the influence on the citizen [1, p.104–105]. This is noted in the studies of E. Noel-Neumann, P. Lazarsfeld, and F. Allport.

In the “vertical” model, the functional field of public opinion is its interaction with the institutions of public authority. The expressive function forms the criteria for assessing the activity of government institutions in resolving social problems, synthesizing control and evaluation functions [2, p. 13]. Advisory implemented in citizens’ appeals, their participation in the creation of algorithms for solving problems at the local and state level, the organization of public discussions in the media, social networks, where public opinion retains a consultative status, assessing the implementation of the social order by the authorities — ensuring the rights of citizens, the security of civil society. Its subjects are entitled to demand that the authorities fulfill their constitutional obligation legally use the resources of the civil service and public administration.

The implementation of this function depends on such factors:

- 1) Possibilities and ability of opinion carriers to analyze facts and processes — lawmaking, law enforcement (judicial and other), social control, to predict social and legal consequences (protection of the rights and interests of citizens from the introduction of bills);
- 2) Ability of the authorities to perceive and analyzing proposals (advisory communication) or imperative (statutory) opinions (directive communication).

Directive function fixes the legal grounds for the imperative influence of public opinion. For example, electoral participation (such as elections, referendums), where the opinions of voters are transformed into a constituent decision imperative for the authorities: “popular veto” in Italy (voting to repeal the law); Switzerland’s “popular choice” (vote for an alternative law); “Popular initiative” in Spain, Austria (the right of voters to propose to parliament to adopt, amend or repeal a law).

Public opinion completes the function of social control (in the context of E. Ross, R. T. La Pierre, and G. Spencer). This function focuses on the level of consent in society regarding its values and goals [3, p. 105]; implemented in the form of organized legally formalized actions

(elections, manifestations); enhances the influence of an authoritative opponent (bearer of public opinion); or, more radically, he presses on the authorities with protests, disobedience, riots, sabotage, and armed protests. The peculiarity of the control function of public opinion lies in its ability to form a distinct social position, social expectation and influence directed to the authorities.

E. Noel-Neumann interprets public opinion as a form of social control, a tool for promoting social integration and ensuring a level of consent sufficient to rely on it in decisions. Opinion concerns the entire society and the essence of the mechanism of its influence on citizens is that they are influenced fears of isolation, condemnation of non-standard behavior in relation to the opinion of society (“a spiral of silence”, into which non-democratic regimes turn public opinion [4, p. 98–101].

The essence of protective function of public opinion is its expression and consideration in the implementation of civil rights and the inclusion of a legal mechanism for their protection and restoration, creating obstacles (prevention) of offenses by the authorities [5; 6].

The meaning of the integrative function is the regulation of relations in the system of institutions of power, and communications between power and society. In it, the determination of legal and political forms and relations, the stimulation and correction of the inertia of the institutions of power or, on the contrary, the uncontrollable hyperactivity of its civil servants, deputies, lobbies, etc., most manifested in it.

The ideal condition for the influence of public opinion on the institutions of power is a stable democratic regime that guarantees social partnership between the authorities and society, in which public opinion and its consideration by the authorities are a condition and form of maintaining the regime. The formation of public opinion and the mechanism of its real influence on the political and legal segment of society based on legal, political and, especially, informational guarantees of its free expression. Outside of real access to objective information, public opinion is invariably defective, distorts real social processes. The complex of guarantees of freedom of public opinion ensures the normal legal regime of this institution, as an important component of the political regime.

The author substantiates the judgment on the inclusion of the category “regime of interaction between power and public opinion” in the scientific apparatus of sociology of law. This category based on the analysis of the attitude to judgments of subjects on the part of government institutions and the degree of presence of public opinion in the process of developing a political decision [7, p. 14–21].

Recognition of the peculiarities of the ways of interaction between the authorities and public opinion based on such criteria:

a) Depending on the level of democratic character of the electoral legislation as an institution of constitutional law;

b) Depending on the degree of legalization of public opinion, its subjects, and their powers;

c) Depending on the reality of the demonstration of opinions, public discourse and freedom of expression of alternative judgments, oppositional authorities, inclined to level them with repressive restrictions with a general weakness of the arguments;

d) Depending on how pronounced the judgment, the degree of openness of the discussions between the government and opinion leaders in the media, the degree of their activity during the discussion of draft laws, public opinion polls, with the use of ICT — social networks, etc. Internet platforms;

e) According to the demand for public opinion data by the authorities. Intensity, frequency and subject of appeal, the level of its study, the degree of consideration of alternative judgments, their argumentation in draft laws and drafts of government decisions at the state and municipal level (in harmony with public opinion, they acquire a normative character, or in spite of him;

f) Depending on the subject, the degree of coverage of the studied opinions and their consideration in power decisions (as an indicator of the partnership type in the regime of relations between the authorities and subjects of public opinion);

g) Depending on the presence of functioning centers (institutions) for the study and analysis of public opinion — to determine its objectivity, elimination of its errors and distortions.

The sustainable development of the social system, the state, the stability of its legal basis is a natural requirement and condition for legal statehood, the implementation of the principle of the rule of law both in its political and legal sphere and in the private law sphere.

The political and legal system of society implies its internal organization based on the principles of the rule of law, ensuring the rights and freedoms of citizens, impeccable legal organization of the institutions of representative and direct democracy, stabilization of public and professional legal awareness and legal culture. At the same time, not only the subjects of public administration — the legislative body, the executive branch, law enforcement agencies, but also active individuals. Citizens capable of exerting a positive influence on the legal forms of state activity, lawmaking, legal policy, social control over the activities of public law institutions.

The specificity of public opinion, the processes of its formation and the degree of its dominant influence on state institutions determined by such factors as political and social asymmetry, social discourse about legal ideology, political and legal doctrines. In addition, the opinions of people influenced by the globalization of culture, the internationalization of law and legal consciousness, the development of communication means (new channels of information transmission and an increase in the volume of information flow). Digitalization of many types of human activity in the field of private and public law institutions of the legal system of society and many others.

Ideally, public opinion cannot express only passive wait-and-see sentiments of society regarding the measure of guaranteeing their rights and freedoms and their assessment. It can and should act in the format of a technically, informationally and legally secured real imperative factor of influence on electoral procedures, lawmaking, and activity of executive authorities, public administration, and control [8, p. 359–366]. Public opinion must ensure timely correction of legal policy. As a result, public opinion, as an authoritative and powerful factor influencing all elements of the social system, public institutions can provide civil society with the necessary potential for legal progress, improving the quality of legal life. This is possible if the authorities provide sufficient resources.

The peculiarity of interaction between public opinion and public authority reflects the interconnection of the state, law and society and gives rise to political and legal regimes of interaction between the authorities and public opinion.

Their originality depends on the type of attitude of the state power towards it. Especially in the context of a democratic transition for societies with an unstable hybrid form of political regime, which are delimited depending on the democracy of electoral laws, consideration of opinions in laws, forms of discussions with the authorities and forms of expression of judgments.

The doctrine traditionally follows the thesis that the optimal functioning of the rule of law is impossible without a formed and expressed public opinion. However, theoretical and empirical studies accompanied by the absence of a basic methodological principle that can determine the levels of studying public opinion in the field of political and legal reality, the legal system of society, legal consciousness, lawmaking and law enforcement processes.

Specificity that reflects signs of public opinion in the political and legal sphere:

1) Availability of a legal goal and available legal means to achieve it. Awareness of the goal directs the content and dynamics of public opinion to the implementation.

2) The existence of a unified system of legal and moral values that dominate in society and expressed in a system of ethical and legal principles — such imperatives that determine the content, process of formation and expression of public opinion.

3) The level of freedom of expression of public opinion, which ensured by political, legal, moral, religious norms. The combination of such social norms is specific in societies with different political and legal regimes — in clerical, theocratic, clerical or secular states;

4) Differentiation of social statuses and roles of generators, spokespersons and carriers of public opinion;

5) The presence of public opinion in other social institutions, their segments — political, economic and legal systems, etc. The degree and forms of such presence;

6) organization of the mechanism of legal and moral responsibility of subjects for deliberate informational distortion of public opinion in the process of its formation and expression (influencing subjects with the help of biased information, distorted data, imaginary forms of expression, etc.).

Modern methods of researching the problem of the relationship between power and law, public power and society should take into account the peculiarity that these studies are interdisciplinary [9, p. 84–87]. The study of public opinion is not only a problem of the sociology of law or the sociology of politics: it is a functional institution of civil society. Moreover, it can function only under conditions of real guarantee of the constitutional principle of freedom of public opinion by the public authorities. The fulfillment of this condition gives a chance to consider the political regime in the state democratic, and public opinion becomes an effective factor in limiting public power [10, p. 53–56].

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