FEATURES OF DIRECT DEMOCRACY IN SWITZERLAND

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The subject. The article is about the peculiarities of referendum and popular initiative which are the main forms and institutions of direct democracy in Switzerland.

The purpose of the article is to determine the peculiarities of direct democracy in Switzerland and characterize its main forms: referendum and popular initiative. In order to achieve the objective the following tasks can be defined: 1) to find the origins and identify the variations of forms of direct democracy in Switzerland; 2) to trace the evolution of enshrining on the statutory level of such institutions of direct democracy in Switzerland as referendum and legislative initiative from the time of their conceiving till the enactment of the actual Constitution; 3) where relevant, to perform a brief comparative analysis of the forms of direct democracy in Switzerland and similar institutions shaped in other countries; 4) to define the role and meaning of referendum and legislative initiative in history as well as in the modern stage of the development of the Swiss State.

The methodology of the study includes the use of general scientific methods (description, deduction, induction, analysis and synthesis) together with formal juridical and comparative juridical approach. In addition, throughout the article and, in particular, while working with sources of law, historical approach and systematic approach were practiced.

The main results and scope of their application. The article presents the analysis of such forms of direct democracy in Switzerland as referendum and popular initiative, characterizing each form. The principle of democracy expressed by the practice of referendum and legislative initiative is present in its entirety. No country in the world has come as close to applying direct democracy to national political issues as Switzerland. Since the mid-nineteenth century, when the country's first Federal Constitution was adopted, Switzerland has managed to hold more referendums than all other countries combined in the same time frame.

Conclusions. Referendum enables Swiss citizens to dismiss the measures taken by their representatives and the initiative gives the citizens possibility to put laws into practice independently from the legislative powers. Swiss experience vividly demonstrates that used sensibly and taking into consideration national legislative traditions such forms of consulting with the people can be quite promising and efficient for other European countries.

1. Introduction.

This article focuses on the features of the referendum and popular initiative, which are the main forms or institutions of direct democracy in Switzerland. On this topic, you can find works in both domestic and foreign (including translated) literature, it has been addressed and continues to be addressed by modern authors. However, the topic of direct democracy in Switzerland and its features continues to be not fully studied in our time, which determines the relevance of this study.

The purpose of the article is to identify the features of direct democracy in Switzerland and describe its main forms: the referendum and popular initiative. To achieve this goal, the following tasks can be formulated: 1) to discover the origins and characterize the varieties of forms of direct democracy in Switzerland; 2) to trace the evolution of the institution of direct democracy at the legislative level in Switzerland, such as referendums and legislative initiatives, from their inception to the adoption of the current Constitution; 3) where appropriate for the purposes of the study, make a brief comparative analysis of the forms of direct democracy in Switzerland and similar institutions that have developed in other countries; 4) determine the role and significance of the referendum and legislative initiative in the history, as well as at the present stage of development of the Swiss state.

The research methodology includes the use of General scientific methods (description, deduction, induction, analysis, synthesis), as well as formal legal and comparative legal methods. In addition, throughout the article, especially when working with sources of law, a historical approach and a systematic approach are used.

Switzerland is a country that we can say with confidence that it has "a well-developed system of rights of direct democracy at all state levels, in the Federation, in the cantons and communities" [1, p. 5]. There is probably no other country where citizens are so active in the legislative process and where there are so many popular votes on specific issues.

In addition to Switzerland, only in the Principality of Liechtenstein and in some US States, such voting is a "political daily occurrence" [1, p.5]. On average, only national referendums are held in the Alpine Republic every three months. They make proposals to amend and Supplement the Constitution, laws adopted by the Parliament, international treaties and agreements concluded by the government, as well as other important issues for the country.

2. The origins of direct democracy.

Note that the first referendum was applied in 1778 in the United States, in the state of Massachusetts, where the state Constitution was submitted for popular approval. The original version of the Constitution was rejected by the people, but two years later the Convention developed a new draft, which was approved by a majority of the population [2, p. 5-11]. New Hampshire followed suit, and later other States joined in. France also adopted the custom of approving the country's basic laws by popular vote. This is how the first French constitutions of 1793, 1795, 1799, 1802, and 1804 were adopted, as well as the second Empire constitutions of 1852 and 1870. [3] However, after the formation of the Third Republic, the referendum was no longer applied in France. It is also worth noting that both in America and in France, only basic (constitutional) laws were put to the people's vote.

The referendum was most popular in Switzerland compared to other countries. A phenomenon similar to the referendum has existed in the Swiss state since its formation. In the "original" cantons (Schwyz, URI, and Unterwalden), issues of state significance were decided by a popular Assembly or Assembly, which met in the meadow once a year, usually in the spring. The oldest gathering, the news of which is preserved in monuments, took place in 1294 in Schwyz [4, p.3]. The beginning of the transformation of the people's Assembly into a referendum is sometimes called 1439, when Bern tried to restore the economic situation of the Canton by recognizing the right of the population to participate in the decision of General   Affairs [5, p.139].

Such assemblies for a long time performed, among other things, judicial functions, and in the

order of activity resembled the German courts, which had to "find and specify" the law [6, p. 270 and further; 7, p. 251]. Initially, they were designated by the term "Landtag", the term "Land(e)sgemeinde" occurs only from the middle of the XV century. Swiss researchers point to the Swiss origin of popular assemblies, noting, in particular, that their appearance represented "a majestic process of transformation and development of German people's freedom in the Swiss" [8, p.5].

All the free male population, and sometimes the unfree or semi-free, gathered at the gatherings. In the XV century, the age limit for men participating in gatherings was established everywhere-14 years (in this form it remained until 1798). Before reaching this age, boys could attend them, but were not eligible to vote. At these meetings, all the most important General issues were decided, as well as the chief officer (Landammann), judges, and, if necessary, ambassadors and other officials were chosen.

Each meeting began with a Church service, after which the procession, consisting of the highest officials of the Canton, with landammann at the head, went to the meadow, where by then the inhabitants of the Canton were converging. The foreman was placed in the center, and all the others were around him. He gave a report on the state of Affairs of the Canton for the past year, at the end of which there was silence — everyone had to mentally say a prayer. Then came a detailed and comprehensive discussion of cantonal Affairs. Formally, any resident who had the right to vote could make a proposal and speak without time limit. Participants of the meeting voted by raising their hands. Thus, the Swiss people's assemblies for centuries made decisions with the direct participation of all free members of the community, "who did not recognize any master over themselves and lived not on other people's land, but on their own land" [9, p.32].

A person could be re-elected to the position of landammann an unlimited number of times, which happened in practice. According to the established tradition, the head of the Canton, who served his term, resigned his powers and

declared that "he did not intentionally offend anyone, and asks for forgiveness from all who may consider themselves offended" [10, p. 132]. Then the landammann (first elected or re-elected) took a solemn oath to the Canton, and all the participants in the meeting took an oath of obedience to it. Then the election of the remaining officers of the Canton would begin, after which the Assembly would declare its work over and disperse until the following spring. Approximately the same system of government was established in Appenzel, Zug, and a number of other cantons. It is noteworthy that in some cantons, a fine was imposed for not attending people's assemblies [11, p. 36-70].

Over the centuries, this form of expression of the will of the Swiss people has been modified and improved, but in no way lost its relevance for the Alpine Republic. On the contrary, the referendum, and then the popular initiative, became even more popular and famous in Switzerland.

3. Referendum.

The constitutional referendum, or, as it was still called at that time, the constitutional plebiscite, was first introduced in 1802 under the influence, or rather pressure, of the French, who wanted to impose a so-called "puppet" Constitution on Switzerland. In the cantons, it became widely used after 1830, since both liberals and radicals believed that the direct participation of the people in the adoption and revision of the Constitution was the main manifestation of the sovereignty of the people. However, the custom of passing laws by popular vote did not become widespread in Switzerland until the middle of the nineteenth century. Only after the first Swiss Federal Constitution was adopted in 1848 (see the text on: [12, p. 429-449; 13, p. 167-183]) was the constitutional referendum officially established (Section III), both at the Federal and cantonal levels. In addition, it is necessary to point out the fact that Switzerland has begun to submit to the people's vote not only constitutional, but also ordinary (unconstitutional) laws. Note that in Spain under the Constitution of 1931, on the contrary, popular vote was possible in relation to ordinary laws, but "was not allowed in relation to the Constitution, laws on making additions to it..." [14,

p.110-111].

At the time of the adoption of the Swiss Federal Constitution in 1848, differences in the state structure of the cantons concerned mainly the degree and form of participation of citizens in the decision of cantonal issues, both legislative and administrative. There are cantons in which all major issues were resolved at National meetings or assemblies (democratic), and cantons in which the decision of major issues was delegated to elected bodies (representative). Only in the small mountain cantons of population and territory did the state structure follow the first pattern, while in most Swiss cantons it followed the second.

As a rule, the German-speaking cantons were characterized by the direct participation of all full members of the community in solving its main issues. As for the French-speaking cantons, they usually resorted to the principle of "representativeness" [15, p. 55]. This state of Affairs in the literature is often explained by the following: in French-speaking cantons, under the influence of French state-legal ideas, there is a perception that the rights of the community are granted by the public authority, in connection with which it is more an expression of the will of the state than the population of this community. The difference in community-based organizations French and German cantons, according to some researchers, is that "Germans are to the rule of a jealous and distrustful; they have more confidence in direct democracy; whereas the French are less democratic, in the Swiss sense of the word, and more inclined to follow the guidance of the rulers" [15, p. 55].

The Swiss Federal Constitution of 1874, as amended in 1891, distinguishes between a General and partial revision. At the same time, the initiative of both revisions belongs to both the Federal Assembly and Swiss citizens who have the right to vote (if there are 50 thousand of them). Both the Constitution as a whole and individual amendments to it adopted by the Parliament are proposed for popular vote and are considered accepted if a majority of the citizens participating in the vote and a majority of the cantons vote in favor of them (Article 123) (see the text on: [16, p. 23-

76]).

In addition to the right to a constitutional or constituent referendum, the Swiss people also have the right to a legislative referendum. It concerns ordinary (unconstitutional) laws. The issues related to such a referendum are assigned by the Constitution of 1874 to the Federal legislation for settlement. It is worth noting here that "concerning any law and certain measures of government, if they are delayed and have a General meaning, 30 thousand citizens may demand that this law or measure be submitted to the popular vote" [17].

The right of the people to demand laws for their approval is called an optional referendum, in contrast to the mandatory referendum, in which every law, without any requirement, is necessarily submitted to the approval of the people, and without this approval has no force. Such a mandatory referendum exists at the Federal level only for constitutional laws, and only an optional referendum is established for ordinary laws. By the way, "optional popular vote when voting laws" was borrowed by Switzerland from the French Constitution of 1793, although it found application "on the basis of local institutions" [18, p. 32]. Such popular votes on laws, both constitutional and ordinary, in their political significance are, in fact, control over legislation, "because they prevent the introduction of unpopular legislative measures" [19, p. 89].

4. People's initiative.

At the cantonal level, the people's initiative first appeared in 1845, and since 1869 has been approved by all cantons, and applied not only to the basic, but also to ordinary laws. At the Federal level, the development of the law of initiative was slow. It was first established by the Constitution of 1848 (Article 113) in relation to the General revision of the Basic law. The same rule was adopted by the Constitution of 1874 (Article 120), and only starting from 1891 was the popular initiative allowed for amendments to the Constitution.

Note that the third and last Chapter of this Basic law in the version in which it existed until the end of the XIX century. (during the XX century. in the Constitution as a whole and in its last Chapter in

particular, certain changes were made), was adopted by popular vote on July 5, 1891 and entered into force on July 29 of the same year.

The specified version of Chapter 3 contained six articles (article 118-123), while the previous version contained four (article 118-121). The differences were limited only to editorial changes and the addition of article 121 to the Basic law, which did not previously exist. It established the procedure for reviewing the Constitution at the request of citizens. However, in essence, this article did not introduce anything new. The popular initiative was previously allowed by article 120 of the Basic law of 1874, but had a wider application. It did not distinguish between General and partial revisions of the Constitution, they were mentioned without specifying the varieties.

With regard to the partial revision, it should be noted that 50,000 citizens could submit to The people's vote a draft of a partial change to the Constitution that was already prepared or developed in basic terms. At the same time, the Parliament could present its own parliamentary counter-project to the people along with the people's one, but it could not refuse to put to the people's vote a project submitted by 50 thousand citizens (Article 121). Thus, the people "themselves can propose and carry out any changes to the Constitution that they find necessary, and they can build and rebuild the foundations of their state building on their own initiative" [17].

With the adoption of the current Swiss Federal Constitution in 1999, the list of issues subject to mandatory and optional referendums remained virtually unchanged, but they were only more clearly and clearly stated. The only change that can be noted here is the following: a full or partial revision of the Constitution can now be carried out at the request of 100 thousand voters (art. 138, 139) (see the text on: [20, p. 537-579]), and not 50 thousand, as it was before; a legislative referendum can be held at the request of 50 thousand voters (Art. 141), and not 30 thousand, as before. This change can be explained by the fact that over a century and a half, not only the population, but also the number of voters in Switzerland has increased significantly. In 1848,

when the Constitution recorded that 10% of the electorate must have their signatures in order to initiate a constitutional reform, there were 500,000 voters. Over the past century and a half since then, their number has increased almost tenfold [see: 21, p. 82].

5. Conclusion.

Summing up this research, we note that in Switzerland the principle of democracy, which is expressed in the application of such forms of direct democracy as referendums and legislative initiatives, is presented in its entirety. The referendum allows Swiss citizens to reject measures taken by their representatives, and the initiative gives Swiss citizens the opportunity to personally implement laws independently of the legislature.

Perhaps the answer to the question why the referendum and the right of initiative in Switzerland have become so widespread is that the Swiss, although, however, not only they, "need to solve the problems of democracy, to master the art of limiting and controlling the authorities, to look at public officials not as masters, but as their servants" [22, p.4].

The special role of referendums in Switzerland as a manifestation of direct democracy is due to the desire of the Swiss people to free themselves from the pressure from representative authorities, which is inevitable in ordinary elections, but impossible in the popular discussion of laws. No country in the world has come as close to applying direct democracy to national political issues as Switzerland. Since the mid-nineteenth century, when the country's first Federal Constitution was adopted, Switzerland has managed to hold more referendums than all other countries combined in the same time frame.

Swiss citizens participate very successfully in law-making and government through legislative initiative, as well as discussion of a wide range of issues submitted to referendums. Moreover, the Swiss experience clearly shows that such forms of consultation with the people, if applied wisely and taking into account national legislative traditions, can also be very promising and effective for other European countries.

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