FORMS OF CITIZEN PARTICIPATION IN THE MANAGEMENT OF STATE AND PUBLIC AFFAIRS: DOCTRINAL APPROACHES

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УДК 342.7
DOI: https://doi.org/10.71404/NP.2026.1.1

The article is devoted to the doctrinal analysis of the forms of citizen participation in the management of state and public affairs as a constitutional and legal institution that ensures the implementation of the principle of popular sovereignty and the legitimization of public power. It is substantiated that the right of citizens to participate in the management of state affairs is a constitutional right of a citizen, which also performs the function of a legally guaranteed mechanism of citizens' influence on the formation and exercise of public power. It is proved that the implementation of this right is not reduced to a formal expression of will, but assumes the presence of normatively defined forms of participation capable of ensuring the real influence of citizens on public and government decisions.

It is established that the modern doctrine of citizen participation has evolved from the classical electoral approach to a multi-level system of forms of participation, which includes representative, direct, consultative, deliberative and others. A comparative analysis of Western and Ukrainian legal doctrines has been carried out, as a result of which it has been revealed that Western scholars focus on the legal provision of the actual effectiveness of participation, while the Ukrainian doctrine of constitutional law focuses mainly on the normative consolidation of forms of participation and their constitutional legitimation.

Based on the analysis of scientific works of Ukrainian constitutional scholars, it has been proven that the right to participate in the management of state affairs cannot be considered separately from the institutions of constitutional and legal responsibility. It has been substantiated that it is the presence of effective mechanisms of legal responsibility of subjects of public authority and the electoral process for violations of the procedures for expressing the people's will that ensures the real, rather than declarative, nature of citizen participation.

It is established that the right to participate in the management of state and public affairs is not only individual, but also collective, in particular in the context of the participation of indigenous peoples and national minorities, which necessitates the need for special legal guarantees aimed at eliminating the actual inequality of access to public power. It is concluded that the effective implementation of the right of citizens to participate in the management of state and public affairs is possible only if there is a combination of clearly defined forms of participation, appropriate procedural guarantees and institutions of constitutional and legal responsibility, which meets modern European standards of constitutional democracy and is especially relevant in the context of the transformation of public power and the operation of the martial law legal regime in Ukraine.

Keywords: the right of citizens to participate in the management of state affairs, public power, forms of participation, popular sovereignty, constitutional and legal responsibility, legal doctrine, doctrine of constitutional law.

Formulation of the problem

The right of citizens to participate in the management of state affairs is a defining indicator of the democratic nature of public

authority. It is enshrined in international human rights instruments that form international and regional standards for the participation of individuals in public administration. Such administration can be carried out both directly and indirectly.

In the Ukrainian constitutional legal order, the right to participate in the management of state affairs is enshrined in Art. 38 of the Constitution of Ukraine: citizens have the right to participate in the management of state affairs, in all-Ukrainian and local referendums, to freely elect and be elected to state authorities and local self-government bodies [1]. This provision is systematically linked to Art. 5, 69, 70 of the Constitution of Ukraine, which enshrine the principle of popular sovereignty and the forms of its implementation [1].

The forms of implementation of this right are not stable, but are constantly transformed under the influence of socio-political, technological and security factors. Traditional forms of participation, such as elections and referendums, are supplemented in modern conditions by electronic petitions, public consultations, advisory bodies under public authorities, mechanisms for citizen participation in lawmaking, etc. In Ukraine, such forms are partially regulated in acts of the Parliament of Ukraine - laws and by-laws, in particular in the Law of Ukraine "On Amendments to the Law of Ukraine "On Citizens' Appeals" Regarding Electronic Appeals and Electronic Petitions" [2], the Law of Ukraine "On Local Self-Government in Ukraine" [3], etc.

At the same time, legal regulation is characterized by fragmentation and conceptual heterogeneity, which complicates the systematic understanding of forms of citizen participation in public administration. The legislation of Ukraine does not always provide effective guarantees for the implementation of the right to citizen participation in public administration, which creates the risk of formalizing citizen participation and reducing its real impact on the process of making administrative decisions.

The study becomes particularly relevant in the context of the legal regime of martial law in Ukraine [4], when a significant part of political rights may be subject to temporary restrictions in accordance with Article 64 of the Constitution of Ukraine [1]. In such conditions, a fundamentally important scientific question arises regarding the limits of permissible narrowing of forms of citizen participation in the management of state affairs, as well as the preservation of standards of democratic legitimacy of public authorities even in extraordinary circumstances. The practice of the European Court of Human Rights consistently assumes that the right to participate in elections and the management of public affairs is one of the key elements of "effective democracy" (judgments in the cases of "Mathieu-Mohin and Clerfayt v. Belgium" [5], "Ždanoka v. Latvia" [6].

In addition, the relevance of the topic is also due to the fact that the expansion of forms of citizen participation in the management of public affairs should not replace the constitutionally defined mechanisms for the exercise of power, but should supplement them, ensuring the real participation of an individual in the formation and implementation of state policy in various areas. That is why a scientifically based analysis of the forms of exercising the right to participate in the management of public affairs is necessary for improving the legislation of Ukraine, the practice of its application and the constitutional doctrine of democracy.

Thus, the relevance of this study is due to the theoretical and practical significance of the problem of the forms of exercising the right of citizens to participate in the management of public affairs, the need to systematize and conceptualize the relevant forms, as well as the need to ensure their compliance constitutional principles, international human rights standards and modern challenges to the functioning of a democratic state.

The purpose of the study is to identify the evolution of doctrinal approaches to understanding the content of a citizen's right to participate in the management of state and public affairs and to determine the legal conditions for the effective implementation of relevant forms of participation.

The state of research on the issue

In classical political and legal doctrine, forms of citizen participation are traditionally analyzed through the prism of representative

democracy. One of the basic approaches was formulated by Joseph Schumpeter, who in his work "Capitalism, Socialism and Democracy" considered citizen participation mainly as a mechanism of periodic expression of will through elections, which ensures the legitimization of elite governance. The scientist denied the possibility of permanent direct participation of citizens in public administration, emphasizing the functional role of elections as a key form of participation [7].

The further development of the representative approach is associated with the works of Robert Dahl, who, in the concept of polyarchy, justified citizen participation through the institutions of elections, political pluralism and elite competition. In his work "Polyarchy: Participation and Opposition", the scientist emphasized that citizen participation is institutionally mediated and is implemented through guaranteed procedural mechanisms, rather than through permanent direct governance [8].

A critical review of the limitations of the representative model was carried out by Carol Pateman, who in her work "Participation and Democratic Theory" developed the doctrine of participatory democracy. The author proved that citizen participation cannot be reduced exclusively to voting, but should include involvement in decision-making processes at various levels of public authority. The scientist substantiated the legal and social value of such forms of participation as consultations, public discussions and other instruments of direct influence [9].

The development of the participatory doctrine was the concept of strong democracy, proposed by Benjamin Barber. In the work "Strong Democracy: Participatory Politics for a New Age", citizen participation is considered as a constant process of collective self-government, which is implemented through referendums, citizens' assemblies and other direct forms of political participation. The scientist emphasizes that such forms have not only political, but also normative and legal significance, since they form responsible citizenship [10].

A separate doctrinal direction is deliberative democracy, developed by Jurgen Habermas. In his work "Between Facts and Norms", he argued that participation is realized not only through formal legal mechanisms, but also through institutionalized public discourse, which has legal significance for the democratic legitimation of power [11].

In modern European legal doctrine, citizen participation is also analyzed through the prism of international human rights standards. The UN Human Rights Committee in its General Comment No. 25 to Article 25 of the International Covenant on Civil and Political Rights directly indicated that participation in the management of state affairs covers not only elections, but also other forms of direct and indirect participation in public processes [12].

In the Ukrainian doctrine of constitutional law, the issue of forms of citizen participation is developed in close connection with the principle of popular sovereignty. Thus, V. F. Pohorilko and V. Ya. Tatsii considered citizen participation as a structural element of the exercise of democracy, which is realized through elections, referendums and other forms of direct democracy [13].

O. V. Skrypnyuk, in his works on the theory of constitutionalism, emphasizes that forms of citizen participation must be legally defined and procedurally guaranteed, otherwise they lose their constitutional meaning. The author emphasizes the need to distinguish between representative and direct forms of participation taking into account the principle of the rule of law [14].

In the collective monograph "The Supremacy of Constitutional Norms in the National System of Law" (T. Polychko, Yu. Bysaga, V. Birch, L. Deshko, G. Nechyporuk, N. Petretska), citizen participation is considered indirectly as an element of the implementation of the principle of popular sovereignty and constitutional legitimacy of public authority. The authors argue that any forms of citizen participation acquire legal significance only if they are consistent with the supremacy of the Constitution and procedural certainty, otherwise they turn into political-declarative mechanisms [15].

In the international collective monograph "Law in Wartime: Issues of Theory and Practice" (Yu. M. Bysaga, D. M. Belov, V. V. Birch, O. V. Skrypnyuk, L. M. Deshko,

etc.), citizen participation is analyzed in the context of the legal regime of martial law. The authors consistently proceed from the position that limiting the forms of citizen participation is permissible only within the framework of the principle of proportionality and cannot lead to the leveling of democracy as the constitutional basis of the state [16]. This approach is of key importance for the modern rethinking of the forms of citizen participation in extraordinary circumstances.

In the joint works of O. P. Vasylchenko, L. M. Deshko and O. S. Lotyuk, a holistic constitutional and legal doctrine of the participation of an individual in the management of state affairs is formed, which is considered not declaratively, but through the prism of the legal responsibility of the state and other subjects of public power for violating the mechanisms of democracy. In particular, in the article "The Correlation of Constitutional and Legal and Political Responsibility of Subjects of the Electoral Process" the authors conceptualize the electoral process as a key institutional form of implementing the right of citizens to participate in the management of state affairs, enshrined in Art. 38 of the Constitution of Ukraine. Their conclusion that the political responsibility of subjects of the electoral process cannot be considered as a self-sufficient mechanism for guaranteeing democracy, since it is devoid of legal certainty, coercion and effective means of restoring the violated right, is fundamental. The authors argue that only constitutional and legal responsibility (through the institutions of contesting election results, declaring acts unconstitutional, early termination of powers and other legal sanctions) is able to ensure the real, rather than the formal, nature of citizens' participation in the exercise of public power [17]. This approach has doctrinal significance, as it shifts the focus from the political to the legal nature of guarantees of participation, considering it as a subjective public right subject to judicial protection. In the article Deshko L., Vasylchenko O., Lotiuk O. "Crimean Tatar National-Territorial Autonomy: Regulatory and Legal Guarantees of the Rights and Freedoms for the Indigenous Peoples of Ukraine", the right to participation is analyzed in a broader dimension. The authors consider the participation of indigenous peoples in public administration not only as an individual political right, but as an element of constitutional identity and a form of self-determination within the framework of a unitary state. In the context of the Crimean Tatar national-territorial autonomy, participation is interpreted as a multi-level legal category that includes representation in state bodies, special consultation mechanisms, and institutional recognition of self-government bodies of indigenous people. Doctrinally important is the conclusion of the authors that effective participation is possible only if special guarantees are normatively enshrined [18]. Thus, the right to participation in this work goes beyond the classical electoral paradigm and appears as a component of collective rights that require positive obligations of the state. The most concentrated and applied analysis of the right to participation is contained in the article "Lustration as a type of constitutional and legal liability and compensation for moral damage caused as a result of a violation of the right of an individual to participate in the management of state affairs: the practice of the ECHR in cases against Ukraine". In this work, the authors deeply integrate the national constitutional doctrine with the practice of the European Court of Human Rights, primarily in the context of Art. 3 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms. Lustration is considered not only as an instrument of transitional justice, but also as a form of interference with the right of an individual to participate in the management of state affairs, in particular by restricting access to public service. The authors convincingly prove that in the absence of individualization of responsibility, proportionality and effective legal remedies, lustration measures are transformed from a legitimate mechanism of democratic renewal into a violation of the subjective right to participation [19]. Doctrinally significant is the justification of the possibility of compensation for moral damage as a way of restoring the violated right to participation, which expands the classical understanding of the forms of protection of political rights and emphasizes their private-public nature. Taken

together, the above works form a consistent scientific position, according to which the right to participate in the management of state affairs is a constitutional right, which is implemented through various forms and at the same time ensured by mechanisms of constitutional and legal responsibility. The authors' doctrinal contribution lies in moving away from a purely political understanding of participation and rethinking it as a legally protected right, the violation of which entails specific legal consequences for the state. It is this interpretation that allows integrating the right to participation into the modern European constitutional tradition, where democracy is viewed not as an abstract principle, but as a set of clearly defined, judicially protected legal possibilities of an individual.

Conclusions

As a result of the study, it was established that the right of citizens to participate in the management of state affairs is a complex, multifaceted constitutional right. In modern legal doctrine, citizen participation is considered not only as a political right, but as a constitutionally guaranteed instrument of democratic legitimation of public power, which requires a clear normative definition, procedural guarantees and effective mechanisms for implementation. The implementation of this right is not reduced to a formal expression of will, but assumes the presence of effective, legally defined and guaranteed forms of participation capable of ensuring the real influence of citizens on the formation and exercise of public power.

The modern doctrine of citizen participation has undergone significant evolution: from the classical electoral understanding to a multilevel concept of participation, which includes representative, direct, consultative, deliberative and other forms.

The Western doctrine of citizen participation in the management of state and public affairs is characterized by a gradual transition from electoral minimalism to participatory and deliberative models. Its defining feature is that forms of participation are considered as an independent value of the democratic legal order, capable of forming political will, and not only legitimizing already made decisions. At the same time, legal analysis in the Western doctrine is often secondary to the political and philosophical understanding of participation.

The Ukrainian doctrine of constitutional law, on the contrary, is formed mainly within the framework of the constitutional and legal paradigm, where citizen participation is considered as an element of the mechanism of popular sovereignty. Its strength is legal certainty, but its weakness remains the insufficient development of the doctrine of actual effectiveness.

Critical analysis allows us to conclude that the Western doctrine is ahead of the Ukrainian one in developing the substantive content of participation, while the Ukrainian doctrine demonstrates a higher level of formal and legal conceptualization, but requires a deeper understanding of the real impact of citizen participation on public administration.

Based on the analysis of the scientific works of O. P. Vasylchenko, L. M. Deshko and O. S. Lotyuk, it is established that the right to participate in the management of state affairs cannot be considered in isolation from the institutions of constitutional and legal responsibility. It is proved that citizen participation acquires real legal significance only under the condition of the existence of effective mechanisms of responsibility of subjects of public power and the electoral process for violations of the procedures of expression of the people's will. It is substantiated that political responsibility, being an important component of the democratic process, is not able to independently ensure the restoration of the violated right to participation without supplementing it with instruments of constitutional and legal responsibility.

It has been found that the right to participation has not only an individual but also a collective dimension, which is especially clearly manifested in the context of the rights of indigenous peoples and national minorities. In this aspect, participation is a form of institutionalized self-determination within the constitutional order of the state and requires special legal guarantees aimed at overcoming the actual inequality of access to public power. It has been proven that the absence of such

guarantees leads to the formalization of participation.

The right of citizens to participate in the management of state affairs should be considered as a legally secured mechanism of real influence on public power, and not as a formally declared element of the democratic system. Its effective implementation is possible only if there is a combination of clearly defined forms of participation, effective guarantees, and constitutional and legal responsibility. It is this approach that meets modern European standards of democracy and creates the appropriate prerequisites for strengthening democracy in the context of the transformation of public power and the challenges of wartime.

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ФОРМИ УЧАСТІ ГРОМАДЯН В УПРАВЛІННІ ДЕРЖАВНИМИ ТА ПУБЛІЧНИМИ СПРАВАМИ: ДОКТРИНАЛЬНІ ПІДХОДИ

Статтю присвячено доктринальному аналізу форм участі громадян в управлінні державними та публічними справами як конституційно-правового інституту, що забезпечує реалізацію принципу народного суверенітету та легітимацію публічної влади. Обґрунтовано, що право громадян брати участь в управлінні державними справами є конституційним правом громадянина, яке виконує і функцію юридично гарантованого механізму впливу громадян на формування та здійснення публічної влади. Доведено, що реалізація цього права не зводиться до формального волевиявлення, а передбачає наявність нормативно визначених форм участі, здатних забезпечити реальний вплив громадян на публічно-владні рішення.

Встановлено, що сучасна доктрина участі громадян зазнала еволюції від класичного електорального підходу до багаторівневої системи форм участі, яка охоплює представницькі, безпосередні, консультативно-дорадчі, деліберативні та інші. Здійснено порівняльний аналіз західної та української правової доктрини, у результаті якого виявлено, що західні вчені акцентують увагу на юридичному забезпеченні фактичної ефективності участі, тоді як українська доктрина конституційного права зосереджується переважно на нормативному закріпленні форм участі та їх конституційній легітимації.

На основі аналізу наукових праць учених-конституціоналістів України доведено, що право на участь в управлінні державними справами не може розглядатися відокремлено від інститутів конституційно-правової відповідальності. Обґрунтовано, що саме наявність ефективних механізмів юридичної відповідальності суб'єктів публічної влади та виборчого процесу за порушення процедур народного волевиявлення забезпечує реальний, а не декларативний характер участі громадян.

Встановлено, що право на участь в управлінні державними та публічними справами є не лише індивідуальним, а й колективним, зокрема в контексті участі корінних народів та національних меншин, що зумовлює необхідність спеціальних правових гарантій, спрямованих на усунення фактичної нерівності доступу до публічної влади. Зроблено висновок, що ефективна реалізація права громадян брати участь в управлінні державними та публічними справами можлива лише за умови поєднання чітко визначених форм участі, належних процедурних гарантій та інститутів конституційно-правової відповідальності, що відповідає сучасним європейським стандартам конституційної демократії та є особливо актуальним в умовах трансформації публічної влади і дії в Україні правового режиму воєнного стану.

Ключові слова: право громадян на участь в управлінні державними справами, публічна влада, форми участі, народний суверенітет, конституційно-правова відповідальність, юридична доктрина, доктрина конституційного права.