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## Code of Democracy: Need for Adoption and General Shapes

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### Abstract

The article discusses the principles and grounds for regulating democracy as the most important social practice. For the authors, the crisis of democratic institutions and the existence of challenges to democracy that this complex and often idealized social phenomenon faces are obvious. It is reasonable to ask how the State can and should regulate social practices. Can objective law play a useful role in this process? The authors believe that the last question can be answered in the affirmative, but without understanding the structure of democratic practice and without understanding the structure of general statutory regulation, this cannot be done. The authors believe that it is fundamental that a society organized in a state should create a system of norms, form a normative and legal model of democratic practice through the institution of a referendum, which is democratic in nature. Legal self-regulation and individual normative legal regulation of democratic practice are considered. The role of implementing the provisions of the law and the principles of law in democratic practice is shown. The structure of legal regulation of democratic practice is analyzed. Legal conflicts and their regulation are considered. The role of monitoring legal implementation and legal interpretation for democratic practice is indicated. Actual problems of the general normative legal regulation of democratic practice are revealed. The authors are convinced that taking into account the social and state significance of democratic practice, it is necessary to consolidate the regulatory norms in the form of a Code of Democracy. A theoretical basis for the development of the Code concept is proposed, which includes fundamental problems of practice, reflecting the regularities of its functioning and development. In particular, we analyze the practice-forming, practice-destroying, and practice-missing elements of democracy. The classification of practice-forming phenomena, relations, and processes that are included in the subject of general regulatory and legal regulation of democratic practice is given.

**Keywords:** Code of Democracy, democratic practice, practice-forming elements, practice-destroying elements, practice related elements, general legal regulation, fundamental problems of legal regulation of democratic practice, political regimes, National security.

## 1. INTRODUCTION

It is obvious that democracy is a political practice and is an object of legal regulation of constitutional (or state, in the future we will use these words as synonyms) law. It is also obvious that the current conditions of information technologies, the global interdependence of states from each other, and the need to ensure sovereignty have created a number of crisis situations and unresolved problems in the functioning of democracy. These problems are both theoretical (Fatke & Freitag, 2013; Inata, 2021; Ziegler, 2018) and practical, which cannot always be clearly distinguished (such problems include, for example, the identification of criteria for authoritarianism and non-Western variants of democracy (Rogozhnikov, 2006), legal regulation of opposition activities (Salikhov, 2017), and political "superstructures" over constitutional and legal structures (Pogodin, 2019; Zeng, 2016). Empirically, these problems can be noted, for example, in the course of unauthorized rallies in Russia and Belarus (Gapova, 2021; Marples, 2006; Tertychnaya & Lankina, 2020); in the democratic practice of expressing the will about the future fate of Crimea and the overthrow of V. Yanukovich's regime during democratic rallies in Kiev in 2014 (Geiss, 2015; Korotaev, 2014); in the crisis of confidence in the US electoral system during the elections won by D. Trump (Jacobson, 2020), that illustrates clearly the involvement of countries at different levels of

geopolitical influence and civilizational guidance in these problems and encourages legal theorists and philosophers to undertake efforts aimed at resolving the crises of democracy, as von Hayek and Y. Habermas once did (Sergeenko, 2010).

At the same time, in modern constitutional (state) law, unlike other branches of law, the practice of adopting normative legal acts such as codes has not developed as such. The time of great codifications affecting state legal issues, such as the *Corpus Juris Civilis* or the Complete Collection of Laws of the Russian Empire, has passed. In the modern doctrine of constitutional law, it is implicitly assumed that the constitution is already an act of codification that regulates the principles of regulating basic social relations, and there is certainly some truth in this. However, those relations that are the subject of State law regulation, in particular, in relation to elections and referendums, are quite complex and need to be codified separately. Is there an international standard of democracy that is universal for all democratic societies? If so, to what extent can it be imposed by some States on other States? Without claiming international legal competence and remaining within the framework of the philosophy of law, our team of authors wants to raise the problem of democracy as an object of legal regulation.

## 2. METHODS

The leading methods of study were general philosophical methods of analysis, synthesis, deduction and induction, as well as abstraction. In summing up the results of the study, we used the method of legal modeling, which allowed to reconstruct the structure of democratic practice and its legal regulation in the form of a theoretical model, and propose the development of a Code of Democracy.

## 3. RESULTS AND DISCUSSION

Definition of the study subject. Legal regulation of democratic practice (Practice of Democracy - PoD) consists of a number of subsystems at the micro level. In the process of interaction, they create, or rather should create a system for ensuring socially appropriate, stable and at the same time constantly updated law and order in the PoD. Electoral practice, meeting practice, collegial practice of local self-government, and other PoD types are dynamically developing and are being filled with new content. The use of the Internet in social communication, PoD digitalization, and other challenges necessitate a theoretical analysis of current issues of PoD legal regulation. In the structure of legal regulation of DP, the following subsystems are distinguished:

1. *General Normative Legal Regulation* (GNLR) – production of legal norms necessary and sufficient for the stable functioning of the PoD in the form of a Code of Democracy (CoD). It is impossible to develop socially significant practices and their social regulation (Pogodin, 2018). The state of PoD (low, medium, high quality of life of a person, social group, society, the state in PoD, the state of the political regime in this practice) directly affects the national security of the Russian Federation. That is why it is necessary to codify all legal norms governing PoD. Who should create a CoD? Due to the fact of social significance of the PoD, the formation of CoD is the prerogative of the federal legislator and society through the institution of a referendum (Tolstik & Trusov, 2014). The combination of federal legislative technology and referendum technology in the GNLR PoD process is a necessary condition for a high degree of legality and legitimacy (Pogodin, 2019). At the same time, this feature is a problem of the GNLR PoD in comparison with the GNLR of tax practice, business practice, investigative practice, and any socially significant practice.

As a result, GNLR PoD, in the form of CoD, identifies the subjects, their legal status, their methods of operation, civil law, administrative law, criminal law liability of PoD subjects, etc. In fact, the practical rules of CoD are nothing but as the normative legal model of PoD; they show what can and should ideally be PoD in modern Russian society and state.

2. *Organizational and legal activity*. The effectiveness of PoD legal regulation largely depends on the organizational and legal activities of specially authorized entities. Acting on behalf of civil society institutions and state institutions, they are called upon to create the necessary and sufficient prerequisites, conditions, and guarantees for the full implementation of legal norms in the PoD. The various organizational and legal activities of representatives of civil society and the State are creating the financial, information, cultural and institutional basis for the normative legal model of PoD.

This can include, in particular, legal campaigning and promotion of CoD norms, determining the sources of election financing, allocating material resources for the activities of parties, organizing and reorganizing democratic institutions, etc.

3. *Legal self-regulation. Individual statutory regulation.* The legal norms of the CoD are addressed to various non-personal subjects of the PoD, for example, a voter or a rally organizer. The norms are always implemented in a specific life situation by a personally named subject: voter A, rally organizer B. Before implementing legal norms, they must be specified taking into account objective conditions, individual interests, and the capabilities of a particular subject in a simple or complex situation. In a simple situation, legal self-regulation is used, i.e., a specific subject determines subjective rights, obligations, situational prohibitions, restrictions, procedures for actions, omissions, deadlines, and ultimately creates a *cognitive situational right* (Belousova, 2015), for example, making a decision to participate in elections, organizing a rally. In a difficult situation, non-jurisdictional situational (individual) statutory regulation is used, for example, an application for holding a rally and its registration. A situational law formalized in a legal document appears (Pogodin, 2014). Legal self-regulation and situational statutory regulation precede legal implementation and are functionally related to it. However, this is a relatively independent subsystem, since there may be intentions, situational law is created, but there is not always legal implementation.

4. *Enforcement.* Implementation of situationally defined norms by personally named entities in specific legal relationships and outside of legal relationships, resulting in a low, medium, or high level of law and order in the PoD. Here the law, conditioned and dependent on the content of practice, having completed a kind of cycle, returns to practice in the form of an imperative or variable behavior model and stabilizes it.

5. *Legal conflicts and their regulation.* Legal conflicts arise in the PoD. They are regulated in the process of jurisdictional statutory regulation, for example, criminal proceedings and a sentence against a subject who committed a crime during a rally. This subsystem also includes activities related to the enforcement of conflict resolution decisions, including the enforcement of criminal penalties by the Federal Penitentiary Service.

6. *Monitoring of enforcement in the PoD. Correct interpretation.* Theoretical analysis by legal scholars and practitioners of legal implementation in PoD. Determination of the effectiveness of legal implementation and legal regulation in general. Identification of gaps, conflicts, outdated norms, corruption-related norms, other defective norms, lack of necessary norms, development of draft amendments and additions to the objective law governing PoD. In addition, it can also include other actions, such as legal interpretation (Bakulina, 2016; Reshetov, 2019). Each subsystem as a relatively independent practice in the system of legal regulation has its own content, legal form (legally significant documents) and functionality. Therefore, actual problems of PoD legal regulation can be detailed within any subsystem. Let's consider the actual problems of GNLR in relation to PoD.

Current GNLR PoD issues are divided into two types. First, applied (practice-oriented) problems that require specific recommendations for the legislator in the form of draft legal norms. Secondly, there are actual problems of fundamental nature related to the regularities of PoD functioning and development. If the former reflects the urgent needs of the PoD, answer the question of what needs to be done "here and now" in response to the challenges of today, then the latter show why and how to implement GNLR PoD taking into account not only the short-term, but also the medium-term perspective. Here the universal principle of GNLR of any socially significant (economic, social, etc.) practice is applied: qualitative (with minimum number of defects) legal norms are produced then, when there is an exact, regularized theoretical model - the concept of the substance and content of the object and subject matter of regulation. All the prerequisites for the consolidation and codification of the legal norms of PoD in the form of the Code of Democracy (CoD) had been established in modern Russia. The only obstacle is the ratio "one branch of law - one branch of legislation - one code", which is well-established both in law-making practice and in the minds of most Russian lawyers. The prospect of informal or formal incorporation or acceptance of an act of strategic planning in the sphere of democracy seems more realistic, since these results of legal activity, on the contrary, have always been distinguished by the cross-sectoral nature of the norms included in them. However, this option will be incomplete or intermediate. Ultimately, the most difficult task of developing a Code of Democracy requires a theoretical concept of the CoD.

Let us further consider the main fundamental problems: the object and subject of the GNLR PoD; the practice-forming elements of the PoD. The result of the study of the above problems is the theoretical and methodological basis of the concept of CoD. Therefore, they are relevant primarily for the legislator and other subjects of the GNLR PoD.

The GNLR PoD object and subject. The distinction between object and subject is related to the principle of necessary sufficiency of GNLR limits. Excessive, as well as incomplete regulation, destabilizes the PoD. For its stable functioning and development in accordance with the laws of practice, an optimal GNLR measure is required. It has limits, peculiar red lines of restriction for the legislator. By analyzing the PoD as a whole (object), it identifies the subject, that is, the part of practice that can and should be regulated by law.

From the standpoint of an extremely general approach, the object includes three groups of phenomena, relationships, and processes: 1) practice-forming elements (positive), 2) practice-destroying elements (negative), 3) practice related elements that are functionally insignificant at this stage of GNLR PoD development. The first and second groups form the GNLR subject. The law is designed to consolidate the best algorithms of behavior of practice-forming entities and thereby stabilize practice and at the same time block (ideally exclude) practice – destroying elements or at least minimize the risks of practice destruction.

The third group is regulated by morals, corporate norms of public organizations, customs, rituals, to some extent – legal norms-ideologemes, first of all norms-principles. Thus, along with legal norms, PoD has other social norms that regulate relations and situations that are insignificant for society. This is why the principle of "Everything is allowed that is not prohibited by law" does not work in PoD, it is counterproductive, as it provokes abuse of democratic freedom. In PoD, what is not prohibited by law is regulated by social norms, including through prohibitions, such as prohibitions in the form of moral norms. What situations and relationships are regulated by non-legal norms, and which ones are regulated by legal norms? How do different norms interact? What is the mutual influence of social, non-legal and legal regulation? These and other tasks are solved in the process of distinguishing between the object and the subject of the GNLR PoD.

Practice-forming elements of the PoD as a GNLR subject. First, let's define the PoD and its relationship to democracy. In the Russian Federation and many other countries, practice-destroying phenomena, relations, and processes exceed the functionally permissible norm and discredit democracy. A natural question arises: is democracy in danger or is democracy in danger? This is a real dilemma, especially given the threat of further escalation of the hybrid war of all against all, not only at the interstate level, but also within the country, including in Russian society and the state.

PoD shows how democracy functions, and they are united in content. In terms of the volume of practice-forming, practice-destroying, and practice related elements, PoD and democracy coincide and differ exclusively in terms of terminology (an example of the richness of the Russian language: PoD and democracy are synonymous terms that denote the same object). We can deduce the formula: PoD is where democracy has a minimum number of practice-destroying elements, and practice becomes democratic when it is filled mainly with practice-forming elements of democracy (Eremina, 2014; Galimova, 2018). The unity and interdependence of PoD and democracy are clearly seen in the analysis of the practice-forming elements.

Practice-forming phenomena, relationships, and PoD processes manifest themselves at the ideological level in the form of a scientific theory, political slogan, declaration, and so on. They formalize the goals, principles, and ideas about the need and prospects for PoD development. In essence and in fact, it is a reflection in the information space of democracy, as it should be. The most important goals, principles, and ideas that are significant for society are formulated in legal norms-ideologemes and form the state ideology of democracy. If it does not contain defects, i.e., norms-ideologemes with unrealistic goals, outdated principles, populist slogans, etc., it becomes a practice-forming element, defective norms – ideologemes – a law-destroying element (Pogodin, 2016).

The state ideology of PoD competes and exists alongside the ideology of the opposition. In addition, there are other types of local ideology, such as the ideology of maternity capital, the ideology of "green" energy. The oppositional ideology of democracy is also ambivalent in its functionality. It can be either positive or negative for the PoD: when it is adequate to the objective conditions of social activity, it is a practice – forming element, and vice versa.

Based on and in the process of developing norms-ideologemes, a regulatory model of PoD is formed in the form of a system of norms for detailing and fixing practice-forming elements; at the same time, a regulatory framework for countering practice-destroying elements is created. Together with positive norms, the system includes defective norms, for example, the subject's criminal liability for ballot stuffing in the practice of elections is inadequate to public danger, corruption-related norms in PoD, the predominance of authoritarian-legal or democratic-legal methods (Pogodin, 2020) instead of the necessary balance between them (Pogodin, 2016). The regulatory model and its component – the state ideology of PoD – are the subject of GNLR, since the dynamics of development of modern society and the state oblige the legislator to make changes and additions to this system of norms, to eliminate defects (practice-destroying elements).

In the information space, in parallel with the ideology of democracy and its regulatory model, in the form of a statistical report, a sociological study, Internet forum materials, etc., there is an accurate or distorted (fake information) description of the PD. For example, the election process in a particular polling station or the holding of a rally by the opposition can be described. True information refers to the practice – forming elements of the PoD,

while false information refers to the practice-destroying elements. Information activities in the PoD and their results are included in the subject of GNLR.

The practice-forming elements of PoD manifest themselves in the cognitive and mental activities of a person, at the socio-psychological level of a social group (family, rally participants, party members, Internet communities, etc.), society, and the state. In a person's mind, this practice is analyzed, positively or negatively evaluated, and there is a motivation to participate or not to participate in specific democratic relations. The subjective image is supplemented and interacts with the dominant socio-psychological assessment of PoD by a social group, society, or state. As a result, a positive or negative socio-psychological aura is formed in the mentality of society in relation to the PoD ideology, its regulatory model and real facts. A positive aura is a guarantee of stable functioning and development of practice and at the same time a practice-forming element. However, as an exception to the rule, it is not included in the subject of GNLR. At the same time, the GNLR and other subsystems of legal regulation affect these processes.

The practice-forming elements of PoD manifest themselves at the level of activity of a person, social group, society, or state. Depending on the feature values that are created in one way or another practice, and the specifics of legal regulation highlights the main types of PoD: the practice of elections; the practice of the referendum; the meeting practice (demonstrations, picketing, etc.); party practice; the practice of a plebiscite; the Federal and regional normative practice; peer practices in local government; representatives of civil society institutions, the activities of institutions and state representatives; joint activities of state institutions and civil society; openness of the institutions of society and the state, including the practice of freedom of speech; the practice of appealing against the actions of state officials and local governments.

#### 4. SUMMARY

1. PoD legal regulation consists of six subsystems: general statutory regulation, organizational and legal activity, legal self-regulation and individual regulatory legal regulation, legal implementation, legal conflicts and their regulation, monitoring of legal implementation and legal interpretation. General statutory regulation is a relatively independent subsystem. Ideally, it should be implemented by a Code of Democracy adopted exclusively by the federal legislator and society through the institution of a referendum. In each subsystem of PoD legal regulation, there are objective regularities, and theoretical knowledge of these regularities forms the concept of CoD.

2. Actual problems of general statutory regulation of PoD are divided into practical and applied (practice-oriented) and fundamental (theoretical and methodological). The results of the study of fundamental problems are necessary for the development of the concept of the Code of Democracy.

3. PoD form: 1) practice-forming; 2) practice-destroying; 3) practice related elements. The first and second groups are the subject of general statutory regulation. Legal scientists and practitioners are faced with the urgent task of classifying PoD types in statics and dynamics, identifying the practice-forming and practice-destroying elements in each specific democratic practice.

#### 5. CONCLUSIONS

The structure of the Code of Democracy should correspond to the structure of the PoD: each type of practice is fixed in a separate section (chapter) of the Code. In the GNLR process, legislators need to take into account the specifics of a particular practice in a static and dynamic way (Pogodin, 2018). But this is a problem for further study.

Taking into account the volume of the article's content, we will select one element. In static, in any PoD, the critical practical element is the development and punishment. It was particularly important to establish a system of disciplinary, administrative, material and criminal penalties in CoD (as was traditionally the case, that could be replicated in the relevant codes). Punishments for PoD subjects should be adequate to the public and state danger of illegal behavior in the PoD. The main thing here is not humanism, but the effectiveness of legal punishments to prevent offenses in the PoD (which, in fact, is reasonable humanism). Violations in PoD, as in no other socially significant practice, destroy social communication. It is possible to formulate a pattern: if the number of offenses exceeds the critical mass of social stability, then there is an insurmountable threat to national security, the collapse of society and the state.

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