

REPRESENTATIVE BODIES IN UKRAINE: DOCTRINAL DEVELOPMENTS**Vadim Hedulianov**

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Summary

The author analysis of the state of research of the sub-institutes of individual representative bodies. The author starts with the fact that this group of studies is the most extensive in the science of constitutional law, because the subject of constitutional law is traditionally considered to be two groups of social relations, which are significant in terms of their volume – these are the foundations of the legal status of the individual and the foundations of constitution systems of public authorities. It is within the scope of the second group of social relations that all representative bodies of public power in Ukraine are investigated. And therefore, conducting a detailed review of the state of research of the sub-institute of representative bodies of public power within the scope of this work seems ineffective.

The modern Ukrainian literature in constitutional law lacks monographical researches, when it comes about the representative bodies as they are –dedicated separately to the Parliament, to the Head of the state, to the local councils and to the Heads of the territorial collectives. There are some researches on these topics, but most of them are rather old – so, both of the four topics require ‘refreshing’. The absence of such researches creates certain difficulties for the scientists, that analyze the indirect democracy in general. As for the works, mentioned in this article, the author summarizes that not all authors, when researching representative bodies, pay due attention to their representative character. But works in which researchers "focus" on a more detailed analysis of the creation and especially the functioning of representative bodies is also useful for researchers of the institution of representative democracy.

Key words: democracy, direct democracy, people's power, public power, public authorities, human rights, political rights.

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1. Introduction

For decades, direct democracy was opposed to representative democracy. Researchers traditionally name a number of advantages of direct democracy and emphasize that precisely because of them, despite all its shortcomings, it will always have an advantage over representative democracy. Scientists consider the following to be among such advantages: citizens actively exercise their political rights, participating in the political process – in elections, referenda, general meetings of citizens at their place of residence, exercising freedom of speech on political issues, freedom of thought in this area, etc. Thus, direct democracy affects political activity, and therefore has an effect on the institution of representative democracy. This influence is quite clearly manifested in the recall of representatives elected to public authorities (one-person or collegial).

That is why it is essential to continue the further researches in this area. Also, it is important that they would mind the existence of the multiply representative bodies within one country.

Research methods, used in this article, are as follows: legal synthesis and analysis, inductive, deductive, comparative (horizontal comparison, the author draws parallels between the Ukrainian representative bodies), hermeneutical. The author of the article uses the anthropological, system and axiological methodological approaches.

The aim of the article is to give the overview of the Ukrainian constitutional law scientists' works on the Ukrainian representative bodies.

There is no doubt about the fact that historically the first form of democracy was direct democracy. And representative democracy, which is now considered as a "paired" form to it, arose later. Representative democracy arose in order to eliminate the shortcomings of direct democracy – the lack of a professional approach in solving important issues of state and local importance, the duration and resource-intensive procedures and processes of direct democracy, etc.

Moving on to the analysis of the state of research of the sub-institutes of individual representative bodies, we should start with the fact that this group of studies is the most extensive in the science of constitutional law, because the subject of constitutional law is traditionally considered to be two groups of social relations, which are significant in terms of their volume – these are the foundations of the legal status of the individual and the foundations of constitution systems of public authorities. It is within the scope of the second group of social relations that all representative bodies of public power in Ukraine are investigated. And therefore, conducting a detailed review of the state of research of the sub-institute of representative bodies of public power within the scope of this work seems ineffective (see, for example, (*Qaracaev, Mishyna*).

Below, one work will be described for each of the types of representative bodies in Ukraine:

- Verkhovna Rada of Ukraine;
- President of Ukraine;
- municipal bodies (local councils; village, settlement, city heads).

2. The Parliament – Verkhovna Rada of Ukraine

One of the most famous monographic works dedicated exclusively to the Parliament of Ukraine – Verkhovna Rada of Ukraine – belongs to the authorship of I.E. Slovskaia. This is her dissertation for obtaining the scientific degree of Doctor of Legal Sciences on the topic "The Verkhovna Rada of Ukraine in the system of domestic Parliamentarianism: a constitutional and legal study" and related publications to it.

In her work, the author uses the adjective "representative" quite "generously". Thus, in the introduction to her study, she consistently talks about the Verkhovna Rada of Ukraine as a "nationwide representative body (*Slovska, 7*), singles out the "representative direction of activity of the Verkhovna Rada of Ukraine" (*Slovska, 7*) and emphasizes that the Parliament of Ukraine has "representative functions and powers" (*Slovska, 7*).

First, the monographic study of I.E. Slovskaia attracts the attention of those who analyze the institution of representative democracy in Ukraine with its weighty historical excursion. In her work, the "doctrine about the periodization of the main stages of the genesis of scientific views on representative bodies of government – the focus is on the formation of a parliament, close to the modern type, in the system of parliamentarism:

- the pre-Soviet stage (beginning of the 20th century – 1920);
- the Soviet stage (1919 – 1990);
- the post-Soviet transitional stage (1990 – 1996);
- modern stage (1996 – present time)" (*Slovska, 17*).

A thorough analysis conducted by I.Slovaska provides an opportunity to use its results and not conduct your own historical-constitutional research.

Secondly, I. Slovaska pays considerable attention to the issues of popular representation, which is of interest to those who study the institution of representative democracy. For example, she entitled Chapter 1 of her study "The political and legal system of parliamentarism – a special form of popular representation based on the supremacy of the parliament: theoretical and methodological foundations" and consistently revealed this issue in it. It is in this section that the author "justifies that the parliament is the only state-wide, national body of people's representation (representative body of the people) in view of its elective and collegial nature, competence and legal force of decisions" (*Slovaska, 13*). In addition, she formulated the author's definitions of the terms "parliament", "parliamentarism", and others.

The focus of the author's attention is always centered around representation. For example, as an interim conclusion, she notes that "discussions about the representative nature of the parliament, its place and role in the system of the state apparatus, are not intended to diminish the importance of other bodies of state power. Each of the links is a necessary and integral component of power and is endowed with a special constitutional status. But the purpose of the parliament itself is to express the will of the people and give it a universally binding character through the adoption of laws" (*Slovaska, 14*). One should fully agree with this generalization.

Finally, I.E. Slovaska pays considerable attention to the processes and procedures used in the Parliament, and almost ignores the issue of the constitutional status of members of the Verkhovna Rada of Ukraine (although she rightly noted that "representatives of the people, realizing the needs of social practice, form ideology, the legal system, and even morality and customs state" (*Slovaska, 33*)). Such an approach can hardly be considered fruitful. Moreover, the deep analysis of issues of parliament and parliamentarism makes the opinion of I.E. Slovaska is important and influential in this field.

3. The Head of the State – President of Ukraine

One of the most famous monographic works dedicated to the Head of the Ukrainian State – the President of Ukraine – is authored by G.V. Zadorozhna This is her dissertation for obtaining the scientific degree of Doctor of Legal Sciences on the topic "Constitutional status of the head of state in Ukraine and foreign countries: a comparative analysis" and related publications to it.

It is worth noting that, despite the detail and thoroughness of this monographic work in the analysis of all aspects of the legal status of the heads of state in the republics, the author ignores the question of whether the mandate of the President of Ukraine should be considered representative, or whether the head of state belongs to the number of representative bodies. She mentions representation only in subsection 4.1 "Representational competence of the head of state in Ukraine and foreign countries."

In this subdivision, G.V. Zadorozhna noted that "the representative competence of the head of state is determined by the political and legal appointment in the state mechanism, defined by the Constitution and laws of Ukraine, a complex of state-power powers in the sphere of relations and representation of the state both at the international level and within the country, the implementation mechanism which are provided for by the norms of national and international law" (*Zadorozhnyya, 13*). Taking this into account, she suggested separating the internal representative competence of the head of state and the external representative competence of the head of state. As for other issues of the election and work of the Head of State, this work remains the most thorough in the science of constitutional law of Ukraine.

Professor Zadorozhnyia paid a lot of attention to the actuality of her research. It is very persuasive, how she argues this – and one should agree, that ‘Ukraine has chosen European integration as its priority foreign policy course a strategy that necessitates the adaptation of national legislation to legal system of stable democracies. Institute of the head of state as a social the legal phenomenon has a universal meaning for all legal systems of the world, therefore scientific value of comparative analysis of constitutional legislation, state-building practice and doctrinal studies in the aspect of research the constitutional and legal status of the head of state is justifiably not limited to no time limits, nor borders of national states’ (*Zadorozhnyia, 1*). This was persuasive in 2016, this is still persuasive – so far, the legislation in the field hasn’t changed a lot.

To make a preliminary conclusion, the purpose of the reviewed study, according to its author, was to research through the prism of highlighting the concept and elements of the constitutional status of the head of the state, the specifics of the legal regulation of its status, place and role of the head of state in the system of the state apparatus of Ukraine and foreign countries to determine the current state and shortcomings of the constitutional status of the head of state, based on what to develop the concept of improving the constitutional and legal status of the chapter states in Ukraine, taking into account the legislative experience and practice of foreign countries.

4. Ukrainian municipal bodies (local councils; village, settlement, city heads)

One of the most famous specialists in municipal law of Ukraine, Professor O.V. Batanov noted that "constitutional provisions regarding the fact that 'the bearer of sovereignty and the only source of power in Ukraine is the people' and that 'the people exercise power directly and through state authorities and local self-government bodies' became a normative and methodological basis for the constitution identification of public power and its differentiation into direct people's power, state and municipal power" (*Batanov, 176*). Accordingly, it is expedient to also analyze the work of scientists regarding local self-government bodies.

One of the most famous monographic works dedicated exclusively to collegial representative bodies of local self-government in Ukraine – local councils – is authored by O.Yu. Lyaluk. This is his thesis for obtaining the scientific degree of candidate of legal sciences on the topic "Fundamentals of the organization and activity of local councils in Ukraine" and related publications to it.

The author formulates the importance of his research as follows: "the leading place in the system of local self-government bodies belongs to local councils as representatives of the will of territorial communities, representatives and defenders of their needs and interests. Therefore, the strengthening of the foundations of local self-government should begin with these bodies. Unfortunately, the foundations of the organization and activity of local councils have so far remained beyond the attention of the Ukrainian scientists and were not the subject of an independent dissertation study. The specified factors determine the relevance of the topic of this dissertation research, its essential importance for municipal legal theory and practice" (*Lyaluk, 2*). In general, one can agree with this approach, especially taking into account the fact that the author emphasizes the representation of interests carried out by city councils in relation to territorial communities.

The fact that the author considers that local councils are representative bodies is repeatedly emphasized in the work. First, the author calls local councils "representative collegial bodies of local self-government" (*Lyaluk, 3*). Secondly, this characteristic of the studied bodies

formed the basis of the fact that the dissertation "proposed the author's concept of reforming the territorial basis of the organization and activity of local councils, which provides for a two-level system of representative bodies of local self-government, optimization of the administrative-territorial system and the introduction of settlements as basic administrative territorial units" (*Lyalyuk, 4*). Once again, it is worth emphasizing that this work is not the only study of local councils as representative collegial bodies of local self-government, but is the main one for researchers of the institution of representative democracy from the point of view of its complexity and systematicity.

One of the most famous monographic works devoted exclusively to village, settlement and city heads in Ukraine is authored by Yu.Yu. Baltsiy. This is his thesis for obtaining the scientific degree of candidate of legal sciences on the topic "Legal status of the city mayor in Ukraine" and related publications to it.

This monographic work remains leading when it comes to village, settlement, and city heads. From the point of view of the study of the institution of representative democracy, it is worth emphasizing: the author ignores the question of whether these one-person bodies of local self-government are representative.

For example, Yu.Yu. Baltsiy noted that "on the basis of the system-functional approach, three main subjects (bodies) are distinguished in the system of Ministry of Internal Affairs and Communications: village, settlement, and city head; representative OMSU; the executive body of the representative local self-government bodies" (*Baltsiy, 9*). The fact that the local council is called a "local self-government body" and not, for example, a "collegiate local self-government body" gives reason to presume that the author does not consider village, settlement, and city heads to be among the representative bodies of local self-government.

Likewise, there is no mention of representation, representative nature, and the characteristics of city mayors. The author summarizes that "the mayor is an individual subject who, according to the law, is called upon to exercise public self-governing (municipal) power. The election of this official by members of the territorial collective testifies to her important place both in the system of the Ministry of Internal Affairs and the mechanism of its implementation" (*Baltsiy, 12*). Again, in this context, a mention of representation would not be out of place.

There is no mention of representation even when Yu.Yu. Baltsiy describes the place of the mayor in the system of local self-government bodies. He notes that "the mayor occupies one of the central positions in the system of the local self-government bodies in both the statutory and functional aspects, since he is the main official of the city TG, which acts as the primary subject of the local self-government, formed by it and accountable to this community" (*Baltsiy, 12*).

The author uses the adjective "representative" only in the context of the analysis of the mayor's powers. According to Yu.Yu. Baltsiy, "normative analysis of the powers of the mayor in various spheres of functioning of the territorial collective and the bodies formed by it makes it possible to single out the following groups of them: organizational (related to the organization of the work of the city council and its executive committee); to ensure implementation by the city territorial collective of forms of direct expression of will; in the field of development of the territory on which the TG functions and the Ministry of Internal Affairs is carried out, as well as in the field of budget and finance; administrators; representative..." (*Baltsiy, 13*). It is hardly sufficient. Nevertheless, it is worth emphasizing once again – the analyzed work, despite the indicated shortcoming, remains key when it comes to city heads (and by analogy, these provisions can also be applied to village heads and village heads).

5. Conclusions

The modern Ukrainian literature in constitutional law lacks monographical researches, when it comes about the representative bodies as they are –dedicated separately to the Parliament, to the Head of the state, to the local councils and to the Heads of the territorial collectives. There are some researches on these topics, but most of them are rather old – so, both of the four topics require ‘refreshing’. The absence of such researches creates certain difficulties for the scientists, that analyze the indirect democracy in general.

As for the mentioned works, it should be summarized that not all authors, when researching representative bodies, pay due attention to their representative character. But works in which researchers "focus" on a more detailed analysis of the creation and especially the functioning of representative bodies is also useful for researchers of the institution of representative democracy.

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