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WAYS OF STATE POWER INSTITUTIONALIZATION IN MODERN STATE

The article is dedicated to research forms and ways of state power institutionalization in modern state. There are two main ways of institutionalization. In the first case, institutionalization is a focused and controlled process, while the second method involves the spontaneous creation of an institution. Notion and types of institutional crisis are also researched in the article. They are understood as a state of failure and collapse of the institutional system under the influence of internal and external factors. Based on the main approaches to the definition and essence of an institution and institutionalization the following ways of institutionalization in public-legal sphere can be marked out: 1) normative 2) organizational 3) functional 4) subjective.

Key words: Institution, institutionalization, institutionalism, institutional crisis, institutional market.

Institutional approach to research of state and legal phenomena is becoming more common in the studies of Ukrainian and Russian lawyers. The interest in this area of research is stipulated by the fact that institutional approach may be used both for analysis of individual phenomena (state sovereignty, legal policy), and for the study of state and law as interconnected systems.

In jurisprudence, the institutional theory was developed within the framework of the sociological approaches to law and state. The sociological theory of law is based on the understanding of law as the actual tenor of life of society and relations that really exist. The key category of sociological theory of law is «the living law», that is the law which reflects an order set up in a society. Supporters of the sociological theory of law demand that the priority must be given to «the living law», not to the system of legal rules (formal norms).

A special place among sociological legal conceptions belongs to institutionalism. Its foundation was laid down by famous French administrativist, the dean of the faculty of law at Toulouse University, Maurice Hauriou (1856— 1929). He suggested a theory of institution in 1906, but its full expression was developed in his thesis «The theory of institution and its foundation. Essays on social vitalism» (1925) and in his later works¹.

The French lawyer regarded a society as a complex of a great number of institutions — organizations, consisting of people as well as ideas, ideals, principles, which serve as a kind of crucible extracting energy of the individuals. And if originally persons, united for common actions, form some organization, from the moment its individuals are imbued with consciousness of their unity the institution is formed. Thus Hauriou thought the most distinctive feature of the institution is its leading idea².

In his definition the institution is the idea of business or enterprise, carried out by legal means. For example, a business enterprise is based on the idea of profit, a hospital is based on the idea of compassion. Institution is a social organization which accomplished in itself the highest degree of legal order, i. e. the organization simultaneously possessing the sovereignty of power and constitutional system of this power with a certain statute and legal autonomy. If we accept this definition, it is possible to notice at once that an institution is a certain form of existence of a social organization, a social organization brought to some extent of perfection³.

This definition of the institution (with some amendments) is supported by the majority of scientists of the old school of institutionalism.

At the beginning of the seventies the French lawyer, political scientist and sociologist Maurice Duverger suggested a new conception of an institution. This approach was expounded by him in such works as «Political parties» (1951) and «Political institutions and constitutional law» (1960).

Formed under the influence of the ideas of structuralism it substantially differs from traditional

¹ Воротилин, Е.А. (1990). Онтология права в теории институционализма. *Правоведение*, 5, 43.

² Ориу, М. (1929). *Основы публичного права*. Москва: Изд-во Ком. акад., 113.

³ Ориу, М. (1929). *Основы публичного права*. Москва: Издательство Коммунистической академии, 116.

concept of the institution both in character and in volume. Duverger defines institutions as well-known models of human relations, from which the concrete relations are copied, gaining thus a character of stable, steady and solidary ones. Moreover, he distinguishes two elements in the concept of an institution: structural element and element of beliefs, collective views.

The French political scientist examines two types of institutions: an institution as a simple system of relations copied from a structural model, and others which have technical and material organization: legal texts, regulating their activity, premises, machines, emblems, forms, administrative hierarchy, personnel. Nevertheless M. Duverger considers technical and material elements secondary ones (not so important), recognizing however, that technical and material elements strengthen solidarity, stability of structural models, objectivising them and giving them tangible reality¹.

The most well known definition of institution belongs to Douglass C. North: Institutions are the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction. In consequence they structure incentives in human exchange, whether political, social, or economic. Institutional change shapes the way societies evolve through time and hence is the key to understanding historical change. Institutions reduce uncertainty by providing a structure to everyday life. They are a guide to human interaction, so that when we wish to greet friends on the street, drive an automobile, buy oranges, borrow money, form a business, bury our dead, or whatever, we know (or can learn easily) how to perform these tasks².

However, among neoinstitutionalists there is no consensus on the list of rules and restrictive framework. Representatives of the sociological institutionalism include norms, culture symbols, customs, or even myths and ceremonies in the structure of institution. While the representatives of rational institutionalism define institutions as a set of rules that structure the behavior of individuals and their decision-making³.

We agree with position of Professor Avner Greif who besides rules of conduct, highlights other elements within the institution, they are: beliefs (ideas) and organizations. Unlike beliefs, rules and organizations are visible components of institutions.

The term "beliefs" is not clearly defined. Beliefs are divided into two groups: internalized and behavioral. Internalized beliefs reflect knowledge about the world in the form of cognitive models which help a person to understand and explain the reality. Behavioral beliefs are rational and reflect expectations of individuals with respect to the actions of other subjects in various unforeseen circumstances.

Apart from internalized and behavioral beliefs professor Greif distinguishes "cultural beliefs" - "shared ideas and thoughts that regulate the interaction between individuals, and between them and their Gods and other groups of people." Cultural beliefs become generally known in the socialization process, when there is unification, support and communication of culture⁴.

Summarizing it up we may notice that depending on which of the institution elements is dominating, institutions can exist in the form of organizations, norms and beliefs. Considering the institutionalization of state power, we will be guided by such a broad understanding of the institutions.

In the framework of state power majority of institutions take organizational forms. Organizational institutions are the institution of the Head of State, the institution of Parliament, executive institutions and others. However, there are normative or, as they are also called, functional state institutions. They include, for example, institutions of elections, referendum, state of emergency.

If ultimately the result of institutions borrowing depends on the ability of society to organize itself, traditions prevailing in this society and other non-institutional factors, there is quite a logical question, what is the role of institutions in the democratic process?

The answer to this question is related to the consideration of such category of institutional theory as institutionalization. The process of institutionalization includes three main points:

1. One of the necessary conditions for the emergence of institutions is a relevant social need. Institutions exist to organize joint activities of people in order to meet their different needs. The occurrence of certain social needs, as well as the conditions for their satisfaction is the first point of the

¹ Грацианский, П.С. (1975). *Политическая наука во Франции: критические очерки*. Москва: Наука, 64.

² North, D.C. (1990). *Institutions, Institutional Change and Economic Performance*. Cambridge: Cambridge University Press, 3.

³ Judge, D. (2005). *Political Institutions in the United Kingdom*. Oxford: Oxford University Press, 6.

⁴ Greif, A. (1994). Cultural Beliefs and the Organization of Society: A Historical and Theoretical Reflection on Collectivist and Individualist Societies. *The Journal of Political Economy*, 102, 913.

institutionalization.

2. Social institution is formed on the basis of social relations, interactions and relationships of specific individuals, social groups and other communities. But, like other social systems, it can not be reduced to the sum of these individuals and their interactions. The main elements of the institution include a system of values, norms and ideals, as well as samples of activities and behavior.

3. Adaptation of individuals and groups to the regulatory requirements of social institutions, which forms the socio-psychological mechanisms to ensure stability and sustainability of public organization¹.

There are two main ways of institutionalization: in the first case institutions are established by the decision of public authority or they are formed by socially active citizens. The second way is connected with the fact that institutions are formed in the practice of social relations, they exist in the form of actual behavior, and only then they take form of common rules. It is in the first case institutionalization is a focused and controlled process, while the second method involves the spontaneous creation of an institution.

However, it should be noted that formation of the institution is not the end of institutionalization. The newly emerged institution should pass the test of time, social practices can significantly modify enshrined therein models of behavior, change its structure and organization.

The system of social institutions generates so-called "institutional matrix" – a stable, historically developed system of basic institutions that govern the operation of the related basic social spheres – economic, political and ideological².

Since institutional matrix is the basis of the functioning of the interconnected key public subsystems – economics, politics and ideology, it indicates the nature of the society, its specifics reproducing during the historical evolution.

Institutions have their own logic, and at least they define the rules of the game. For example, even if the electoral process is designed to change zones of influence in the sphere of shadow economy, the very organization of elections, the presence of observers, election campaign, the need for inter-party agreements can significantly change the initial conditions. Political arrangements may be made in sauna or during a banquet, but to be the solution, they should be issued as a result of the parliamentary debate on the basis of the voting results. To implement shadow or clan interests it becomes necessary to create different social structures - parties or social organizations. To be registered and function they have to meet some conditions: have a statute and a manifesto, organize public events, be composed of qualified experts and speakers, etc.³

It is also important how the society perceives institutions. Thus, the functions of the president are perceived more in the spirit of the monarchy institution (a president, as the father of the nation, a good and just monarch). Attitude to deputies and local authorities resembles the relations between a client and a patron, if not between a feudal lord and a serf. Any politician who comes to a meeting with voters, especially in rural areas, whether he is a member of the ruling party or opposition, is perceived as official whom voters can complain about unpaid pensions, apply for a job, etc.

As a result of these transformations, shift of attention from mechanisms to individuals, "erosion" of institutional framework occurs, implemented institutions cease to function as institutions and are reduced to purely nominative use – like beautiful foreign labels on the bottles filled with good or bad "home-made drinks"⁴.

In modern institutional theory changes in political, economic and legal systems are considered mainly in terms of the evolution of institutions, but the trend is definitely shifting from the study of institutional evolution to the study of institutional crisis. The researchers focus their attention on various critical moments in the development of institutional models, analyze their causes. In addition to traditional interpretations of crises, recently it has become an influential approach that focuses on the systemic and institutional characteristics of the crisis and explains it as a state of failure and collapse of the institutional

¹ Зырянов, С.Г. (2007). Институционализация электоральных процессов в странах с переходными политическими режимами. *Личность. Культура. Общество*, 1, 171.

² Кирдина, С.Г. Институциональные матрицы и развитие России. <<http://kirdina.ru/book/glava2.shtml#p21>>.

³ Золян, С. (2007). Институты западной демократии и армянские реалии. *Сравнительное конституционное обозрение*, 2, 134.

⁴ Золян, С. (2007). Институты западной демократии и армянские реалии. *Сравнительное конституционное обозрение*, 2, 132.

system under the influence of internal and external factors¹.

As it has been noted above, the foundation of the institution is its ideological content, i.e., social needs and interests, to maximize the satisfaction of which the institution arises. The dynamics of social processes in the society leads to changes in the needs and interests of individuals, creates new ways to meet them. There is also a possibility of contradiction of formal and informal norms within an institution that corrupts the effective mechanism of monitoring the fulfillment of requirements and rules of the institution. As a consequence, the existing institutions do not have adequate influence on the behavior of individuals.

Institutional crises can be divided into three kinds, based on the reasons of their origins. Crises can occur as a result of informal institutionalization, deinstitutionalization, and also because of long-term institutional distortions (perversions)².

The informal institutionalization is traditionally understood as ousting of formal institutions by informal rules.

In most cases, the emergence of informal institutions is closely related to such political phenomena as personalism, clientalism, corruption and cartels. However, in some cases, informal institutions are not a direct consequence of autocratic heritage, but the result of rational strategies of actors. In democratic, constitutional states both forms of institutions complement each other, formal institutions rely on additional support of informal ones³.

Theorists of neoinstitutionalism understand deinstitutionalization as liquidation of old institutional structures, which is accompanied by decrease in importance of corresponding values and symbols and "reorganization" of value-symbolic system of society. In general, deinstitutionalization should be considered not as a change of one or several institutions, but as more large-scale process of destruction of the institutional system of society. Deinstitutionalization is replaced by the period of reinstitutionalization, i.e. the reestablishment of basic institutional forms on new principles.

Deinstitutionalization process can often be observed during periods of revolutionary transformation of society, or pre-revolutionary periods. The consequences of these processes occurring in the 80 - 90-ies of XX century are still being felt in the countries of the former Soviet Union.

Such institutional forms that do not meet the functional nature of the institutions and have a destructive effect on the institutional system are called institutional distortions. Unlike ordinary failures of institutions` effectiveness, distortion is a serious and long-term institutional change: an institution acquires uncharacteristic functions of another institution, or other alien forms. The scale of the distortion in this case may be different - from certain shortcomings in the activities of one institution to the creation of "mutant institutions" and distortions in various sections of the institutional system⁴.

To the examples of institutional distortions can be attributed not quite successful development of some Western democracies institutions borrowed by CIS (Commonwealth of Independent States) countries and Ukraine. For example the institution of Ombudsman, successfully developing in Western Europe proved to be extremely ineffective one in our country. The reason for the institutional distortion is mainly a conflict of formal and informal institutions of a particular society.

Institutional distortion is primarily related to the subjective content of institutions. The divergence between the rules and beliefs of subjects forming the institution leads to functional failure of institutions. On the one hand institutions determine the behavior of subjects, on the other subjects form the ideological content of the institutions.

Mentioned above models of institutional crises are interrelated. For example, deinstitutionalization may be a result of institutional distortions or widespread informal institutionalization. Therefore, to reflect the status of the changes in the institutional system adequately, these processes should be considered by researchers as a whole, as some invariant patterns of institutional crisis.

¹ Евдотьева, М.Г. (2006). Политико-культурный и институциональный подходы к политическим изменениям: институциональные и политико-культурные кризисы. *Вестник московского университета*, 5, 93.

² Евдотьева, М.Г. (2006). Политико-культурный и институциональный подходы к политическим изменениям: институциональные и политико-культурные кризисы. *Вестник московского университета*, 5, 94.

³ Гельман, В.Я. (2003). Институциональное строительство и неформальные институты в современной российской политике. *Полис*, 4, 10.

⁴ Игошин, И.Н. (2003). Институциональные системы и их искажения. *Вестник московского университета*, 5, 43.

We should also consider which institutions and form of government (parliamentary, presidential or mixed) would contribute more to democratization of a state.

It seems that parliamentary and mixed forms of government are more suitable tool of democratization.

Parliamentary elections offer many alternatives: formation of a coalition government; overt or covert cooperation of a government and opposition in the legislative process; opportunity for opposition parties to consolidate and win the next election. It reduces the severity of frustration, a loser keeps hope for the future, and often allows a loser to participate in the administration of power.

In contrast, within the presidential system, the candidate who gets the most votes receives control over the executive branch for a specified period and relatively freely uses it to appoint all senior civil servants, to introduce laws and to veto proposals of legislators. At the same time opposition feels helpless and becomes aggressive. Opposition fractured during the elections has many reasons to unite after the defeat. In his turn, a candidate who gained power could feel the fear that his program would not work and in the next elections he would be defeated. The impersonal nature of the magistracy, plebiscitary character of the elections, the contrast between the national level of debates in the context of the presidential elections and their local level, possibility of corruption during elections to the legislative bodies – all this could give the president a sense of power, a sense of mandate, exceeding available real support¹.

Considering the question of the institutionalization of public authorities we should consider the impact of globalization on the functioning of institutions and their development trends in modern conditions. One consequence of globalization is the emergence of a global "institutional market" and institutional competition.

Institutional market includes offer of institutions by more successful countries for "transplantation" in less successful states. Availability of institutional market generates institutional competition between states, which is converted into power, forcing the states to improve its institutional structures constantly². Nowadays, for the successful implementation of organizational and normative elements of an institution, states borrow not only the organizations and norms but also subjective content of institutions.

Globalization processes lead to the fact that the nation-state is gradually losing ground. At first state institutions alone determined the basic parameters of the national domestic and foreign policy, today the concept of national sovereignty is "eroded"³.

The problem of the institutional system formation in Ukraine is also aggravated by unresolved issue of the relationship between universal civilization and national culture in the legal system. The legal system, on the one hand, should focus on cultural tradition, on the other hand, it should be based on universal principles (human rights as an expression of justice)⁴.

It is also important to consider the impact of information technology on the institutional structure of state power. Analyzing modern scientific researches regarding transformation of institutions, we can single out two approaches for assessing impact of information technology and advanced means of communication on the political process and political institutions.

According to the first approach, arisen simultaneously with emergence and widespread of information technologies, their use contributes to efficiency of state activity, accessibility of the political processes and formation of a broad public consensus due to the feedback between the political system and citizens.

At the same time representatives of the second approach believe that use of IT in political process strengthens the position of the executive branch, increases the role of administration and experts, disrupting the balance of powers, strengthens the control of bureaucracy over the citizens. All this factors could change relations between Parliament and Government forming "information dictatorship" in the country⁵.

Therefore it is impossible to assert with certainty, how the development of information technologies will effect modern political process and legal system. Information becomes power, and power could be

¹ Мазманян, А. (2007). Выбор оптимальных институтов: взгляд на строительство демократии в постсоветских странах. *Сравнительное конституционное обозрение*, 2, 125.

² Либман, А.М. (2006). Институциональная конкуренция и постсоветская трансформация (влияние неформальных институтов). *Общественные науки и современность*, 6, 59.

³ Любашиц, В.Я. (2004). Современное государство в глобализирующемся мире. *Правоведение*, 4, 204.

⁴ Максимов, С.І. (2008). Універсальне і національне у ціннісному вимірі права. *Актуальні проблеми держави і права*, 40, 100.

⁵ Федосеева, Н.Н. (2007). Демократия в информационном обществе. *Журнал российского права*, 6, 17.

abused. Society has yet to find out whether information technology and advanced means of communication will bring benefits or harm for the political process.

Effective functioning of modern state institutions requires high level of social and institutional trust, while low values of both of them indicate anomie and "erosion" of politics as space of common will and common interests.

Thus, the problem of efficiency of state power institutionalization is directly related to the problem of acknowledgement of its legitimacy and equity of the existing state power by society. Although it may seem that elite has all the resources of power at its disposal, it can not guarantee the stability of its position, without gaining a determinant resource – legitimacy, the voluntary consent of the majority of the population.

The state power institutionalization is related to its efficiency in two ways. Firstly, institutionalization of power leads to regulating of social relations in general, and power relations in particular. Secondly, institutionalization of state power inevitably leads to the establishment of a rational type of legitimacy, which means establishment of a new order of relations between state and society. The result of the institutionalization of power is the increase of institutional and social trust in government.

Based on the main approaches to the definition and essence of an institution and institutionalization the following ways of institutionalization in public-legal sphere may be marked out:

1) normative – formation of stable models of behavior, consolidation of these models in a variety of sources;

2) organizational – organizational support for the effective functioning of the established patterns of behavior by creating various social structures, the formation mechanisms of social control and external attributes of institutions;

3) functional – formation of goals and objectives, and functions of institutions on their basis. The main function of institutions is consolidation of society and regulation of relations between subjects;

4) subjective – institutions form a system of status and role differentiation, division of labour, leading to professionalization of individuals. The division of functions and relationships of interdependence between individuals become reproducible in institutions, and that leads to formation of qualitatively new requirements for subjects who form institutions of state power.

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