

# КОНСТИТУЦІЙНЕ ПРАВО; МУНІЦИПАЛЬНЕ ПРАВО

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## THE ROLE OF THE LEGISLATURE IN THE FORMATION OF A DEMOCRATIC AND LEGAL STATE

*The main purpose of the research study is to analyze the historical stages of the formation of the legislative branch in Azerbaijan. The author substantiates the need to use the historical approach in the study of the national parliamentary institution, emphasizes the exceptional role of the Milli Majlis, the legislative body of our independent state in the successful solution of the task of building a democratic state governed by the rule of law in Azerbaijan. Representative norm-setting distinguishes the stages of development of legislative institutions.*

*The systematic analysis, historical approach to the generalization of normative scientific and practical materials and other methods has been used while writing the research. With the help of general and specific scientific methods the author coherently analyzed the data.*

*Parliamentarism of Azerbaijan is not limited to one constitutional norm. The history of parliamentarism in Azerbaijan is broader than parliamentarism, which determines constitutional norms. In 1918–1920, the history of parliamentarism in the modern sense begins in Azerbaijan, which is associated with the formation and activities of the Azerbaijan Democratic Republic. On November 20, 1918, the National Council adopted the Law “On the Parliament of the Republic of Azerbaijan”, according to which representatives of political parties and all national minorities living in Azerbaijan were to be represented in a unicameral parliament of 120 deputies.*

*The researcher defines in the **conclusions** that study of the history of the development of the Milli Mejlis ensures the effective use of the historical approach in the research of this institution; allows the national parliament to examine the historical necessity that justifies the emergence and emergence of our traditions; leads to the formation of a clear understanding of the subsequent history of the development of the national parliament; creates a theoretical basis for a clear understanding of the place and role of this parliamentary institution in modern society and for the advancement of scientific ideas about the prospects for its further development.*

**Key words:** *democracy, democratic state, legal state, formation of a democratic state based on the rule of law, power of the people, people’s sovereignty, legislative power, parliamentary functions.*

**Introduction.** It is known from the history and theory of state and law that, in general, each specific legal institution has a certain history of formation and development. This can be attributed to the institution of parliament, which is one of the most important institutions of law and has passed a unique path of historical development. When studying the Milli Majlis of the Azerbaijan Republic as a legislative institution, it is important to use the method of the historical approach.

**The main purpose** of the research is to study the history of the formation and development of parliamentarism in Azerbaijan.

**Methods.** When writing the study, a systematic analysis, a historical approach to the generalization of normative scientific and practical materials and other methods were used. Using general scientific and specific scientific methods, the author consistently analyzed the data.

**Review of recent publications.** Considering the research conducted by a number of research-

ers on this topic, the following can be noted. S.A. Mirzaev notes that, although the activities of the parliament in the state structure of Azerbaijan are assessed from various historical, legal and political aspects, in general it is assigned a special role in the process of state building. To fully understand the place of the Azerbaijani parliament in society and its role in public administration, it is necessary to consider the development of parliamentarism in the country. According to T. Islamov, the traditions of parliamentarism in Azerbaijan are rooted in the development of this institution in Russia, correspond to the same historical chronicle when the first parliament in tsarist Russia, the State Duma, was created. Despite the fact that the history of parliamentarism in Azerbaijan is not as centuries old as in a number of European countries, during this century it has been enriched with its national characteristics and political diversity.

**Presentation of the main text.** Democracy means rule by the people, in which the people are the only source of power. Speaking about the essence of democracy – people’s power, it should be noted that democracy (demos – people, kratos – rule) is a Greek word meaning “power of the people” or “rule of the people”. “The will of the people is the only basis of a democratic state, and the mandate for state power and the change in its form comes from it” [3].

A.I. Asadov points out that in Athens, “democracy” meant “the rule of the common people”. Thus, the word “demos” in ancient Greek meant not “people”, “the entire population”, but “non-aristocratic”, “ignoble people” and separated the children of noble fathers – the Eupadrides – from the rest of the population. It is interesting that in ancient Greece the same event was originally called both “democracy” and “demagoguery”, and approximately the same people were called “democrats” and “demagogues” [2].

Most people take part in running a democratic state. The main factors of democratic governance are: the rule of law, separation of powers, freedom of choice, election of key state bodies, equality of rights and opportunities of citizens in government, multiparty system, pluralism of opinions, establishment of the rule of law and civil society, decision-making by the majority, freedom of speech and press [8, p. 21].

Aristotle argued that there are different types of democracy: “The first type of democracy is equality. Equality is the basic law for this type of democracy and does not give any advantage to the poor or the rich; the supreme power is not

concentrated in either one or the other, both sides are equal. If freedom and equality are important factors in democracy, this is manifested in the fact that everyone should participate in the government. Such a state structure is democratic, because in a democracy the people remain in the majority, and their decisions are final. This is a kind of democracy <...> Another type of democracy is the establishment of a small property qualification for wealth in order to maintain a position. Those who receive such qualifications can take up the position, and those who have lost it are dismissed. The third type of democracy implies that all citizens have the right to hold a position, but only the law rules. The fourth type of democracy still provides for the right of the citizen to hold a position and provides the rule of law. The fifth type of democracy presupposes the supreme power of the common people, not the law” [8, p. 22].

It is clear that democracy presupposes the supremacy of the will of the people, the power of government to enact laws, including laws of a higher nature, and the ability of people to exercise this power directly and on an equal basis in a representative manner. Democracy is a government in which the power of the people is ruled by the people, where the supreme power is entrusted to the people and is governed independently by the people or by representatives elected by the people on the basis of a free electoral system. According to US President Abraham Lincoln: “Democracy is direct self-government, over all the people, for all the people, by all the people” [18, p. 49].

The transformation of democracy into a fundamental direction in the development of society led to the development of democratic institutions in the political sphere and the formation of democratic political regimes. A number of principles underlie the development of democracy and a democratic political regime. One of these principles is the principle of the sovereignty of the people. The idea behind this principle was formed during the bourgeois revolutions in European countries. According to the idea of the sovereignty of the people, the source of political power is the people, and in this sense people do not depend on the will of individual and group subjects of political relations, are independent in expressing their will, and there is no higher will that could prevail. The implementation of this principle is connecting with the following:

- powers of establishment and constitutional power belong to the people;

- people regularly elect their representatives and replace them with others;
- direct participation of the people in the adoption of laws through referendums;
- recognition by the people of the power of the government and, consequently, its legitimacy [6, p. 300–301].

Another principle associated with the idea of people's sovereignty is the principle of representation. The principle of representation presupposes the formation of a representative democracy. In large societies, it is almost impossible for every member of society to directly participate in the solution of political and social issues, so making decisions on relevant issues remains at the discretion of the competent authorities. As a result, people's participation in the exercise of power through elected representatives has become one of the important requirements of democracy. Thus, a mechanism has been formed to express the will and common interests of people through representative political institutions. The use of the principle of representation extends to other elements of representative democracy – a whole complex of parties, elections and other institutions was created. The implementation of the principle of representation in a democratic spirit depends on the observance of the principle of equality [6, p. 301]. The principle of equality includes equal participation of all citizens in political processes.

The main requirement of the feature on the participation of citizens in government on the basis of equality is expressed in the fairness of the electoral right. In a democratic society, all citizens are guaranteed equal rights and opportunities both in voting and in elections. The equality of rights to citizens' participation in government is manifested in their participation in the struggle for power by creating political parties, various public organizations, expressing their views, and influence in one or another form on the government. Thus, the principle of equality of citizens in the government is enshrined by the state in Articles 25, 54, 55 and others of the Constitution of the Republic of Azerbaijan. The provisions of Article 25 include the right of citizens to equality, Article 54 – the right to participate in the political life of society and the state, and Article 55 – the right to participate in ruling the state. Decisions are made by the majority, regardless of the form in which the people's power is manifested. Although the concept of the majority, required in democratic procedures, especially in the formation of the structure of state power, in some cases is relative, in a democracy the gov-

ernment is the expression of the will of the majority [9, p. 68–73].

The inclusion of provisions on popular sovereignty and the forms of its implementation directly into the text of the constitution provides the basis for characterizing the principle of popular sovereignty and the institutions that serve to implement this principle in practice, as signs of the democratic legal state. Most modern theorists of our time ascribe to the principles of a democratic state: the rule of the people, the division of power into legislative, executive and judicial, political diversity, local self-government. As statehood develops, democracy is increasingly seen in the context of its representative forms. A state structure in which power belongs to elected representatives and all people have equal electoral right is characterized as a democratic state structure [15, p. 101; 10, p. 18]. Of course, a democratic state is a state based on law and the rule of law. From this point of view, a democratic state is a legal state.

It is known from the theory of law that the term "legal state" was first used by Robert von Mohl, the former Minister of Justice of the German Empire [12, p. 335].

In a state governed by the rule of law, the methods of activity of state bodies are based on the rule of law and justice, and the order of relations between them and citizens is determined by law. The law provides that persons whose interests are violated by the adoption of administrative acts should be able to influence them. In the conditions of democratization of society, special attention should be paid to measures to strengthen internal control and responsibility of people in management, administrative methods of management should be replaced by democratic collegial methods and public control [4, p. 43].

Along with the idea of the legal state, mankind also thought about its democratic form of government. The discovery of democracy and the republican form of government that arose in ancient times is the result of these searches. The basis of the rule of law of the state in the world is the Greco-Roman tradition of statehood, consisting of the unity of freedom and the rule of law. This tradition is based on the protection and equal distribution of freedoms regulated by law. In the form of a democratic republic, state power protects, regulates and develops freedom through the law, and the executive, legislative and judicial power is based on the constitution and law, people actively participate in this government, and the dignity, rights and freedoms of citizens are ensured. The

basic principles of democracy – the sovereignty of the people, majority rule, representation, pluralism – form the basis of parliamentarism. Parliament is elected by the people and rules on behalf of the people. In its turn, the people realize control over their representatives through elections as a sovereign. The powers of the elected deputies are determined and limited by the constitution, which reflects the national consensus [7, p. 10]. Parliament represents the majority of all socially significant segments of the population; at the same time, the decision-making mechanism is based on the principle of “majority” (with respect for the opinion of the “minority”); and opposition is a necessary institution of parliamentarism.

The concept of “democracy” (rule of the people) is important for characterizing the form of the state, its political regime. This concept determines the structure of the state, therefore, government is carried out by the will of the majority, and the people are the only source of power. In conditions of democracy, the legislative power is exercised by a representative body (national assembly, parliament) elected by the people [5]. Thus, in a democracy, people freely participate in the elections of their ruling elite, their representatives, as well as parliamentarians representing the legislature of the people, and manifest their political will.

The legislative power plays an important role in the realization of political pluralism, one of the important characteristics of a democratic legal state. This government is one of the main mechanisms for the comprehensive and coordinated expression of various political views in society.

Legislative power becomes a necessary element of state power bodies in a democratic legal state, but does not change its content: it expresses existing political views in society as a whole, performs a legislative function in the interests of the people. Therefore, we can agree with the following opinion: everything that is done in a democratic state is done with the consent of the people through its representatives.

As democratic political regimes and democratic political institutions (including, of course, popular representation) develop, the tendency of citizens to control the governing powers of the state to meet the interests and needs of the population becomes more pronounced. Such control can be carried out both directly (through the institution of a referendum, legislative initiatives of the people, etc.) and by delegating powers to its representatives. Consequently, the strengthening

of popular representation as the institutional basis of statehood means the creation of the necessary conditions (including the necessary legislative base) for the activities of representative bodies in the country and, as a result, the approval of its democratic character. The legislative power systematizes the mechanism of interaction between government bodies and citizens, and achieves this by creating a model for ensuring the interests of citizens in the adoption of laws necessary in a truly democratic political regime. The legislative branch becomes a mechanism of interaction between the state and its citizens: people become an integral part of state power from the subject to the government, and the legislative power becomes a link between the state and the citizen, regulating the process of interaction [17, p. 38; 13, p. 35–36].

It follows from the above that legislation is an important tool for building a democratic state based on the rule of law, and a necessary attribute of such a state.

By electing their representatives to the legislative body, people get the opportunity to realize their right to participate in government and influence reforms in the country through the adopted laws.

Legislation plays an important role in further developing dialogue between government and civil society in the context of regular meetings of MPs with their constituents. At these meetings, citizens' appeals are considered, their problems are clarified, and questions are raised before the relevant officials.

The institution of the legislative power is one of the necessary conditions for strengthening civil society. In the modern sense, civil society is a collection of politically active citizens who express their position regarding decisions and actions taken by the state authorities. The participation of citizens in elections to the legislative body creates conditions for the activation of their political positions. And this directly effects on the development of civil society [13, p. 43].

A legislative body empowered to pass laws in the interests of the people must coordinate its activities not only with the interests of the state, but also with the opinion of citizens. This is due to the ambivalent nature of the institution of parliament. Thus, its core is the people's representation (deputies, as a rule, are elected directly by the people), and the external side is the status of the legislative body of state power [16, p. 13]. This point also touches on the essence of the main functions of the parliament and finds its expression here. So, for example, modern German authors [14, p. 155;

11, p. 172–175] distinguish five functions inhering to parliament:

- legislation;
- composition of other organs;
- formation of political will;
- control over the government;
- representation of the nation.

As you can see, parliamentarism is one of the essential foundations of modern democracy, being a system of expressing the interests of the people at the state level. In many cases, representative (legislative) power is characterized as an integral principle (attribute) of democratically organized power. For example, V.U. Chirkin specially distinguishes the category of “representative democracy”. The author names the most important characteristics of representative democracy [18, p. 249–251]:

- representative bodies in their composition and nature of actions represent the interests of the people;
- representative democratic bodies play a key role in the system of state bodies;
- representative bodies discuss and resolve issues on the basis of real collegiality;
- the elected representatives use the support of the people who elected them and the respect of other government bodies.

The function of parliamentarism is the true implementation of the principle of pluralism in political practice. Elections of parliamentarians on party lists, activities of party factions, including opposition ones, comparison of programmatic views and concepts, political views and positions of various political groups expressing the spectrum of interests and ideas of voters, open competition of factions are specific forms of realizing political pluralism in parliamentary democracy. Parliamentarism is a system of democracy in which, besides the official opposition, there are also groups of civil pressure (lobbies). These pressure groups can represent corporate, national, regional and other interests. Pressure groups create opposition outside parliament. Lobbying for the adoption of important government documents is widespread in the practice of foreign parliaments [7, p. 10].

In our time, parliament has become the main political body operating in the socio-political life of society. Democratization of society, the formation of civil society and legal state are increasingly dependent on the activities of parliament [1, p. 139–140].

**Thus, the generalization of the above allows us to draw the following conclusions.**

1. Legislative power is an important tool for formation a democratic legal state and a necessary attribute of this state. The legislature plays an important role in the realization of political pluralism, one of the important characteristics of a democratic state based on the rule of law. This government is one of the main mechanisms of the comprehensive and coordinated expression of various political views in society.

Electing their representatives to the legislative body, people get the opportunity to exercise their right to participate in ruling the state and influence reforms in the country through the adopted laws.

2. The legislature plays an important role in further developing the dialogue between government and civil society in the context of regular meetings of MPs with their constituents.

3. In general, the following factors can be noted that determine the role of the legislature in formation a democratic state based on the rule of law:

- the collegial and selective nature of the legislative power;
- to act as an institution of representative democracy;
- operate as a mechanism for ensuring the participation of citizens in the management of society and the state, the implementation of their respective rights in this area;
- adopted laws are aimed at meeting the real needs of people;
- expression of public opinion on the main directions of development of society and the state;
- act as a favorable platform for open expression and harmonization of various interests and political views that exist in society;
- further development of the dialogue between the authorities and civil society in the context of regular meetings of deputies with voters.

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### **Гасанов Ельшад Ельдар огли. Роль законодавства у формуванні демократично-правової держави**

Основна мета дослідження полягає в аналізі історичних етапів становлення законодавчої влади в Азербайджані. Автор обґрунтовує необхідність використання історичного підходу у дослідженні інституту національного парламенту, підкреслює виняткову роль Міллі Меджлісу – законодавчого органу нашої незалежної держави в успішному вирішенні завдання побудови в Азербайджані демократичної держави, заснованої на верховенстві закону. Розрізняє етапи розвитку представницького законодавства, законодавчих інститутів.

У дослідженні використовувалися системний аналіз, історичний підхід до узагальнення нормативних науково-практичних матеріалів та інші методи. За допомогою загальнонаукових і спеціальнонаукових методів автор послідовно проаналізував дані.

Парламентаризм Азербайджану не обмежується однією конституційною нормою. Історія парламентаризму в Азербайджані ширша, ніж парламентаризм, який визначає конституційні норми. У 1918–1920 рр. в Азербайджані починається історія парламентаризму в сучасному розумінні, пов'язана з утворенням і діяльністю Азербайджанської Демократичної Республіки. 20 листопада 1918 р. Національна рада ухвалила Закон «Про Парламенті Азербайджанської Республіки», згідно з яким представники політичних партій і всіх проживаючих в Азербайджані національних меншин повинні були бути представлені в однопалатному парламенті зі 120 депутатів.

У висновку дослідник визначає, що вивчення історії розвитку Міллі Меджлісу забезпечує ефективне використання історичного підходу в дослідженні цієї установи; дозволяє національному парламенту вивчити історичну необхідність, що виправдовує виникнення і появу наших традицій; призводить до формування чіткого уявлення про подальшу історію розвитку національного парламенту; створює теоретичну основу для чіткого розуміння місця і ролі цього парламентського інституту в сучасному суспільстві та для просування наукових уявлень про перспективи його подальшого розвитку.

**Ключові слова:** демократія, демократична держава, правова держава, формування демократичної держави на основі верховенства права, влада народу, народний суверенітет, законодавча влада, парламентські функції.