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THE DEGREE OF DEMOCRACY OF THE STATE IN UKRAINE

СТУПІНЬ ДЕМОКРАТІЇ ДЕРЖАВИ В УКРАЇНІ

**Slovska I.Ye., Doctor of Law, Associate Professor,
Professor at the Constitutional Law and Branch Disciplines Department
National University of Water and Environmental Engineering**

The article examines the social nature of democracy, its characteristics and its role in the civilized world. Interrelations with the level of guaranteeing the rights of the person, education and other social programs are revealed.

It is emphasized that when Ukraine faces the most complicated political, legal, moral and mental task of determining ways of further development, understanding the goal-oriented foundations of the democratic state structure is extremely important.

The focus of study is placed on the main reasons' situation that Ukraine for all the time of its independent existence has not been able to create a comfortable, convenient, modern, acceptable environment for the life of its citizens. The article draws attention to the political «victories» of anti-liberal movements, populists and ultra-right, that destroy critical attitudes towards basic civil and political rights. The rates of freedoms also worsened due to flourishing corruption and violations of the rule of law.

The article highlights that the first step towards building a democratic, independent state in Ukraine was made by adopting the Declaration on State Sovereignty (16.07.1990). The document defined the fate and future of all Ukrainian people, proclaimed a new approach to understanding the status of Ukraine in the system of international relations.

Particular attention is paid to the role of civil society in the establishment of democracy.

It is emphasized that the core European value (the rights of individuals) can not be true if democracy is built from top to bottom. More importantly, it is built from below up.

Key words: democracy, democratic values, democratic environment, parliament, human rights, constitution, checks and balances, pluralism.

У статті досліджено соціальну природу демократії, її характеристики та роль у цивілізованому світі. Виявлено взаємозв'язок із рівнем гарантування прав людини, освіти й інших соціальних програм.

Підкреслюється, що перед Україною стоять складні політичні, правові, моральні та ментальні завдання визначення шляхів подальшого розвитку, тому розуміння основ демократичної державної структури надзвичайно важливі.

Основна увага приділяється вивченню ключових причин того, що Україна за весь час свого незалежного існування не змогла створити комфортне, зручне, сучасне, прийнятне для життя своїх громадян середовище. Увага акцентується на політичних «перемогах» антиліберальних рухів, популістів та ультраправих, які руйнують критичне ставлення до основних громадянських і політичних прав. Рівень свобод також погіршився через розквіт корупції та порушення верховенства права.

У статті підкреслюється, що перший крок до побудови демократичної, незалежної держави в Україні зроблений шляхом ухвалення Декларації про державний суверенітет (16 липня 1990 року). Документ визначив долю та майбутнє всього українського народу, проголосив новий підхід до розуміння статусу України в системі міжнародних відносин.

Особлива увага приділяється ролі громадянського суспільства у встановленні демократії.

Підкреслюється, що основна європейська цінність (права людей) не може бути реальністю, якщо демократія будується згори донизу. Важливо, щоби вона вибудовувалася знизу вгору.

Ключові слова: демократія, демократичні цінності, демократичне середовище, парламент, права людини, конституція, стримування та протизваги, плюралізм.

Introduction. The modern world is changeable, and changes affect all aspects of our lives. One of the fundamental questions that are of interest to politicians, scientists, and caring citizens: “What should a state be like in the third millennium?”.

For our country, experiencing difficult times, this question is not only of theoretical interest. After all, Ukraine can not overcome systemic problems in public administration, defeat corruption, create an independent and effective judicial system. The level of citizens' trust in state institutions is catastrophically low.

Now, when Ukraine faces the most complicated political, legal, moral and mental task of determining ways of further development, understanding the goal-oriented foundations of the state structure is extremely important. How did it happen that Ukraine for all the time of its independent existence has not been able to create a comfortable, convenient, modern, acceptable environment for the life of its citizens? Over the years, we all realized how fragile is statehood, and how easily a state can be lost. However, the events of 2013–2019 have shown us the power and capabilities of civil society, the potential of civil solidarity and direct action. There was a genuine

coup in the mass consciousness regarding the assessment of the role of the state and its purpose, the role and responsibility of the state apparatus to the citizens.

In general, without denying the institution of the state, it is necessary to take a different look at its functionality. Of course, the existence of stateless forms of society organization is now impossible, since ensuring the inviolability of property guarantees the rule of law, and only the state can provide law. Need not to “liquidate” the state in the third millennium, but only to look at it is in a new way – like a “state company” (namely a service company), where all citizens are shareholders. Managing such a “joint stock society” is through the forms of direct or indirect democracy, which are the cornerstones of building and functioning of the state.

Today, we are in search of a solution of our problems, it is very useful to turn to the assessments and reflections of people who have positive experience in government and demonstrate the best qualities of modern politicians [1, p. 7, 10–11], scholars-experts in the field.

1. Ukraine in a democratic world: basic principles. In Abraham Lincoln's famous quotation (1863), democracy is

“government of the people, by the people, for the people”; the three definitions can be understood as follows:

- “of”: power comes from the people – the people are the sovereign power that exercises power or gives the mandate to do so, and whoever is part of authority may be held responsible by the people;
- “by”: power is exercised either through elected representatives or direct rule by the citizens;
- “for”: power is exercised to serve the interests of the people, that is, the common good.

These definitions can be understood and linked in different ways. Political thinkers in the tradition of Rousseau insist on direct rule by the citizens (identity of the governed and the government). The people decide everything and are not bound by any kind of law. Political thinkers in the tradition of Locke emphasise the competition between different interests in a pluralist society; within a constitutional framework, they must agree on a decision that serves the common good.

No matter how long the democratic tradition is in a country and how it has developed it cannot be taken for granted. In every country, democracy and the basic understanding of human rights have to be permanently developed to meet the challenges that every generation faces. Every generation has to be educated in democracy and human rights.

Core elements of modern constitutional democracies include:

- *constitution*, usually in written form, that sets the institutional framework for democracy protected in some countries by an independent, high court; human rights, usually not all, are protected as civil rights;
- *human rights* are referred to in the constitution and then relegated to civil rights as guaranteed constitutionally. Governments that have signed human rights conventions are obligated to uphold the range of rights they have ratified, regardless of whether they are specifically referred to in the constitution;
- *the equal legal status of all citizens*: all citizens are equally protected by the law through the principle of non-discrimination and are to fulfill their duties as defined by the law;
- *universal suffrage*: this gives adult citizens, men and women, the right to vote for parties and / or candidates in parliamentary elections. In addition, some systems include a referendum or plebiscite, that is, the right for citizens to make decisions on a certain issue by direct vote;
- *citizens enjoy human rights* that give access to a wide range of ways to participate. This includes the freedom of the media from censorship and state control, the freedom of thought, expression and peaceful assembly, and the right of minorities and the political opposition to act freely;
- *pluralism and competition of interests and political objectives*: individual citizens and groups may form or join parties or interest groups (lobbies), non-governmental organisations, etc. to promote their interests or political objectives. There is competition in promoting interests and unequal distribution of power and opportunities in realising them;
- *parliament*: the body of elected representatives has the power of legislation, that is, to pass laws that are generally binding. The authority of parliament rests on the will of the majority of voters. If the majority in a parliamentary system shifts from one election to the next, a new government takes office. In presidential systems the head of government, the president, is elected separately by direct vote;
- *majority rule*: the majority decides, the minority must accept the decision. Constitutions define limits for majority rule that protect the rights and interests of minorities. The quorum for the majority may vary, depending on the issue – for example, two-thirds for amendments to the constitution;
- *checks and balances*: democracies combine two principles: the authority to exercise force rests with the state,

amounting to a “disarmament of citizens”. However, to prevent power of force to turn into autocratic or dictatorial rule, all democratic systems include checks and balances. The classic model divides state powers into legislation, executive powers, and jurisdiction (horizontal dimension) (Ukraine, other democratic countries); many systems take further precautions: a two-chamber system for legislation, and federal or cantonal autonomy, amounting to an additional vertical dimension of checks and balances (such as in Switzerland, the USA or Germany);

- *temporary authority*: a further means of controlling power is by bestowing authority for a fixed period of time only. Every election has this effect, and in some cases, the total period of office may be limited, as in the case of the Ukrainian president, who must step down after two five-year terms of office [2].

The majority of the world’s countries, and Ukraine as well, are now democracies. The end of World War I led to the birth of many democracies. However, during the 1930s, many of these young democracies then reverted to being autocratic. After World War II, the number of democracies began growing again. But it was the fall of the Iron Curtain circa 1989 that led to a more dramatic increase in the number of democracies.

The first step towards building a democratic, independent state in Ukraine was made by adopting the Declaration on State Sovereignty (16.07.1990). The document defined the fate and future of all Ukrainian people, proclaimed a new approach to understanding the status of Ukraine in the system of international relations.

The act proclaimed the supremacy of the Constitution and laws of the republic on the territory of the Ukrainian SSR, the exclusive right of the people of Ukraine to own, use and dispose of the national wealth of Ukraine, recognition of the entire economic and scientific and technical potential created on the territory of Ukraine, the property of its people. Ukraine should become a constantly neutral state in the future and adhere to three non-nuclear principles: not to accept, produce or acquire nuclear weapons. At the All-Ukrainian referendum on December 1, 1991, the people confirmed the right choice and finally decided on the issue of Ukraine’s state independence [3].

We see that a democratic world is a very recent achievement, which gives a number of privileges. Economic success tends to go with political freedom. The countries that democratized first were also mostly the countries that first achieved sustained economic growth. One might thus hope that the relatively high growth rates enjoyed by today’s poorer countries will lead to further political freedom.

Besides, a long-standing theory in political science argues that education is a key determinant of the emergence and sustainability of democracy, because it promotes political participation at the individual level and fosters a collective sense of civic duty.

And so, under this theory, we should expect that education correlates positively with measures of democratization in subsequent years. Those countries that had higher average education levels in 1970 are also those countries that are more likely to be democratic today.

Democracy has the reverse causal effect on the process of protecting the rights of individuals and education. The countries that are more democratic are less likely to execute, regulate religion, or censor the press.

Furthermore, government revenue over GDP is growing during the period under democratic regimes as democracies spend less on the military. As a result, western scholars observed a correlation between democracy and the introduction of welfare programs, but pointed out that economic development likely drives social programs and is correlated with democracy. They noted, that the coefficient on democracy

is statistically insignificant. Perhaps the reason is that richer countries, smaller countries and also British legal origin countries spend more on social spending, including education, but, that is interesting, all of them are democratic ones [4, p. 58, 62–63, 70–71; 5].

Unfortunately, over the years of independence, the Ukrainian state and society did not take the necessary actions to ensure that these values – the values of democracy – are rooted. We only saw them – but they did not become the values of the state and, unfortunately, the values of the majority of society.

In order for values to be converted into state and public institutions, a completely decisive lever is needed. It is the same everywhere, in any country of the world – at any time, at any rate, in the 20th century and after the 20th century – these are public institutions. This is precisely what did not happen in our country and we were unable to build, explains our under-state and all the consequences that have come for the Ukrainian citizens, and for Europe and, possibly, for the whole world due to what has already happened and happening now in Ukraine.

The main understanding, which gradually comes to all those who are trying to realize what is happening, is that these values – the values of freedom, the values of human life, humanism – are not constant. They cannot be reached, like Everest, and you will be at this peak, thinking that if you have covered this distance once, then it will be your achievement forever – this is not so.

These values need to be maintained every day. This is not a stable product. One has only to turn away – and already someone else is using these values in the completely opposite sense of what was intended by you or those who worked before you.

Sustaining these values requires sustained effort. That is why after World War II states created supranational institutions in the hope that they would cope with this task. But this also turned out to be a significant illusion, because the domestic, intra-national agenda cannot contradict the supranational agenda.

It is impossible to practice democracy all over the world – and not to build democracy in one's own country. If you want to build a democratic Europe, then all the participants in this construction should do the same at home – and only then go out on the common scene with these values. This, unfortunately, did not happen [6].

2. Main challenges for Ukraine in democratic environment. Everyone wants to build the society of stable democracy, which does not seem to be threatened. One common answer points the way of the civic culture formation, a shared feeling of responsibility for the common fate of citizens. The stability of democratic rule is anchored in its integration in the large set of social institutions with both direct and indirect relationship to politics. These are linked to, give input to and are affected by democratic processes. Where these relations are ubiquitous and strong, democracy is stable. At the same time, institutions are slowly but constantly changing. Hence, in order to understand changes in the functioning of democracy at the level of the state, it is necessary to explore the changes in surrounding institutions and the way they shape a democratic society.

The empirical focus of the article is institutional change in the Ukrainian model, with special emphasis on post-Soviet background. There are many reasons to pay closer attention to the questions, case when it comes to analyses of changes in the functioning of democracy. On a par with the other European countries, Ukraine is in the background in the world in the quality of democratic governance, as well as social trust and quality of life [7].

Among the “authoritative international organizations” that are involved in the assessment of democratic processes in the world and the preparation of relevant ratings, the following should be noted:

- Freedom House (House of Freedom, an organization conducting international ratings on the level of democratic freedoms, media freedom, etc.);
- Transparency International (International Anti-Corruption Organization, which generates annual ratings of corruption in all countries of the world);
- Reporters Without Borders (International Organization for the Protection of the Rights of Journalists and Freedom of Speech);
- Bertelsmann Stiftung (Germany's Bertelsmann Foundation, which holds ratings on the level of democracy in transition economies);
- Polity IV (international organization conducting a rating of democratic political regimes in the world) and others.

Of particular interest for a more detailed review are the results of ratings in the Nations in Transit countries – 29 countries of Eastern Europe and the former USSR – and Freedom in the World, conducted by Freedom House, since their results are based on political statements about Ukraine's progress towards democratization compared to the rest of the CIS (Union of Independent States).

Nations in Transit-2007: Ukraine, having a rating of 4,25 on a scale of 7 (permanent authoritarian regime) to 1 (stable democratic regime), is really ahead of the rest of the CIS member-states. According to the type of political regime in the CIS countries, they are ranked as follows:

Countries with a transition type of government or mixed modes (4,00–4,99):

- Ukraine – 4,25;
- Georgia – 4,68;
- Moldova – 4,96.

Semi-authoritarian regimes (5,00–5,99):

- Armenia – 5,21;
- Kyrgyzstan – 5,68;
- Russia – 5,86;
- Tajikistan – 5,96.

Authoritarian regimes (6,00–7,00):

- Azerbaijan – 6,00;
- Kazakhstan – 6,39;
- Belarus – 6,68;
- Uzbekistan – 6,82;
- Turkmenistan – 6,96.

Thus, in the directions of internal political transformations in the post-Soviet space, Ukraine, Georgia and Moldova can be identified as separate groups, which have chosen the pro-Western vector of development, which involves the implementation of democratic reforms. The second group includes countries that are oriented towards rapprochement with Russia, and mainly the Eurasian vector of cooperation – these are Central Asian countries (except for authoritarian Turkmenistan known for its isolationism), Belarus and Armenia. Azerbaijan is trying to maintain equally-lasting relations both with the Russian Federation and with the countries of the West, but the political regime of the country is increasingly taking on the features of authoritarianism.

The rating also includes the following types of regimes, such as the stable democracies (1,00–2,99) and semi-democracy (3,00–3,99), but none of the CIS countries are assigned to them. The semi-democratic regimes, which today are one way or another serve as a reference point for developing countries with “transitional type of government”, include: Romania, Serbia, Croatia, Albania, Macedonia and Montenegro.

Consider the criteria for which the rating and relevant assessments that Ukraine has received (also on a scale from 1 to 7) is compiled:

- Election process – 3;
- Civil Society – 2,75;
- Independent media – 3,75;
- Democratic government at the national level is 4,75;

- Democratic Governance at the Local Level – 5,25;
- Independence of the judiciary – 4,50;
- The level of corruption is 5,75.

According to the above indicators, the main achievements of Ukraine can be considered the development of such democratic institutions as civil society, freedom of speech and the electoral process. Meanwhile, the indicators of the development of civil society and independence of the media show a steady positive dynamics with a significant improvement compared to 2000, while the indicator of electoral democracy is undergoing significant fluctuations and is gradually improving already since 2005.

At the same time, in the fight against corruption, Ukraine has not achieved significant success. In particular, among the CIS countries it is ahead of Georgia (with a rate of 5,0), the same indicator as in Ukraine – 5,75 – has Armenia, classified as semi-authoritarian regimes.

Freedom in the World-2008: According to another Freedom House rating, which is conducted on two criteria: political rights and civil liberties, Ukraine was the only one among the CIS countries to be classified as “free” countries. On a scale from 7 (the lowest level of freedom) to 1 (the highest level of freedom), she received an “3” rating on the level of political rights and “2” – on the level of civil liberties. Ukraine received the status of «free» in 2006, but its average score of “2,5” has not improved since then.

Among the “partially free” countries, the best result in the post-Soviet space was demonstrated by Moldova with the ratings of “3” on the level of observance of political rights and “4” on the level of civil liberties, that is, the average score of “3,5”. On the results of Georgia (4–4), which deteriorated in comparison with 2006. (the country’ average score was then “3”), obviously the tense socio-political situation was affected, starting in November 2007. The rest of the CIS countries have even lower rates and belong to either “partially free” or “non-free” countries.

Undoubtedly, Ukraine’s successes in the development of democratic freedoms and institutions must be recognized. But such optimism should be moderate: it should not be forgotten that the drift towards authoritarianism, which has been observed in the post-Soviet space in recent years, does not allow a real “breakthrough” of Ukraine’s democracy among the CIS countries according to the international ratings[8]. The next impression one gets of the Freedom House-2018, according to which Ukraine is in the status of “partially free” country, and Crimea has received the status of “non-free” territory occupied by the Russian Federation. Overall, the level of freedom in Ukraine has deteriorated. The researchers note that Russia’s occupation of Crimea includes targeted repressions against Crimean Tatars, as well as those who continue to insist on their Ukrainian affiliation.

In general, from 2005 to 2018, the number of «non-free» states increased by 26%, while the proportion of “free” fell by 44%. The decline of democracy is linked, among other things, to a change in the balance of power at the global level – the influence of such undemocratic countries as China is increasing.

The report notes that in many countries (including Ukraine) that democratized after the end of the Cold War, the rates of freedoms also worsened, including through flourishing corruption, anti-liberal populist movements and violations of the rule of law. But most of all, the fact that the populists were able to “shake” even the established democracies is worrying, writes the authors.

The report also draws attention to the political “victories” of anti-liberal movements, populists and ultra-right.

Antidemocratic leaders “undermine” critical institutions. In general, they are detrimental to democracies through disparaging attitudes towards basic civil and political rights. For example, attacks by anti-liberal leaders on the media contributed to polarization in the press, political control over state broadcasters and an increasing physical threat to journalists [9].

Antidemocratic manifestations can largely be limited by civil society. Civil society actors have become key players in constitutional reforms as promoters of human rights. This has been facilitated by the transformation of state building process, increasingly characterized by high intensity intra-border tensions and strong international appeals for human rights protection. Nevertheless, the precise relationships underpinning the human rights-civil society/state-conflict nexus have not been fully taken into account by politicians. To solve modern Ukrainian problems means to analyze the impact of civil society on state apparatus, liquidation political conflicts through human-rights-related activities, and identify the means to strengthen the complementarity between civil society and national government actors.

Civil society institutes ensure the rights of individuals through the pressure on the exercising of full power by state authorities. It is well-known that without guaranteeing the rights of a person, democracy is absent. The idea of human rights rests on the premise of protecting people from political, legal and social abuses, initially and primarily by the state. The Universal Declaration of Human Rights (UDHR) provides all humanity with the rights to life, liberty and security of person; freedom from torture or enslavement; protection from arbitrary arrest or exile; equality before the law and remedies for violations suffered; a fair trial; freedom of thought, opinion, expression, movement and peaceful assembly; participation in the political and cultural life of the community; remunerated work, free choice of employment and protection against unemployment; education; social security; and a standard of life adequate for one’s family health and well-being (United Nations, 1948) [10, p. 1, 28–29].

The core European value can not be true if democracy is built from top to bottom. More importantly, it is built from below up. Local communities pass up these powers that cannot be implemented at the local level (the principle of subsidiarity). In our conditions (talking about Ukraine and other post-Soviet states) we have many years of discussion on decentralization of management and budget, however things are still there.

Thus, for example, the ruling prince of Liechtenstein, Hans Adam II¹, in his book “The State in the Third Millennium”, is quite categorical in the negative assessments of traditional representative democracy, which is increasingly replacing forms of direct democracy. The prince calls representative democracy “a weak form” of democracy, because it is very difficult for the uninitiated population to know where the real centers of power and responsibility are concentrated [11, p. 2].

References. Paraphrasing J. Kennedy’s textbook expression, you can summarize: “Do not ask what a citizen can do for the state, but ask what the state can do for a citizen, better than any other organization” [1, p. 10, 12]. Ukraine, despite choosing the pro-Western vector of development, can be classified as democratic state if implement real democratic reforms only. Human rights protection, civil society activity, fight against corruption – core challenges, which must be resolved.

¹ Forbes estimates Hans-Adam II as the richest monarch of Europe. The country is among the world leaders in per capita GDP. The principality thanks to the activity Hans-Adam II has become one of the world’s financial centers. It also has a developed high-precision industry, pharmaceutical production, winemaking, etc.

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ПРИНЦИП РІВНОГО ВИБОРЧОГО ПРАВА ЗА ЄВРОПЕЙСЬКИМИ СТАНДАРТАМИ

THE PRINCIPLE OF EQUAL SUFFRAGE BY EUROPEAN STANDARDS

Сон С.С., старший викладач
кафедри конституційного права

Національний університет «Одеська юридична академія»

У статті досліджується сутність принципу рівного виборчого права за національними конституційними та європейськими стандартами, зокрема позиціями Європейської комісії за демократію через право (Венеціанська комісія), Бюро з демократичних інституцій і прав людини (БДІПЛ/ОБСЕ).

Констатується, що традиційний підхід передбачає рівність змісту й обсягу права голосу для виборців, а також рівність можливостей для суб'єктів пасивного виборчого права.

Виокремлюються проблеми та порушення рівності виборчого права під час реалізації активного та пасивного виборчого права. Наприклад, до них відносяться обмеження обсягу права голосу окремої категорії виборців на підставі їхнього місця проживання (перебування); запровадження суто пропорційної виборчої системи; «джеррімендеринг» (штучна зміна меж округів «виборчої геометрії» на користь окремого кандидата); заборона «подвійного балотування» на різних видах виборів, що відбуваються одночасно. Зауважується, що введення чистої пропорційної системи призведе до повної залежності кандидатів у народні депутати України від політичних партій, які витіснять втілення інтересів виборців. Тому вирішення питання порушення принципу рівності виборців під час голосування в закордонному виборчому окрузі вбачається в розробленні й унормуванні механізму попередньої реєстрації таких виборців із фіксацією місця їхнього постійного проживання та надання можливості проголосувати за кандидатів свого виборчого округу.

Формулюється зміст виборчо-процесуальної рівності кандидатів, тобто рівності можливостей діяльності зареєстрованих кандидатів у виборчому процесі, що може стосуватися й рівних можливостей для агітації, реєстрації, недопущення застосування адміністративного ресурсу, чесного підрахунку голосів тощо.

Ключові слова: принцип, виборчий процес, рівне виборче право, активне виборче право, пасивне виборче право.

The article examines the essence of the principle of equal suffrage in accordance with national constitutional and European standards, in particular the positions of the European Commission for Democracy through Law (Venice Commission), the Office for Democratic Institutions and Human Rights (ODIHR / OSCE).

It is stated that the traditional approach involves equality of content and volume of voting rights for voters, as well as equality of opportunities for subjects of passive voting rights.

Problems and violations of equality of suffrage during implementation of active and passive electoral rights are singled out. For example, they include restrictions on the voting rights of a certain category of voters based on their place of residence (stay); the introduction of an exclusively proportional electoral system; "Jerrimending" (artificial change of the districts of the "electoral geometry" in favor of a separate candidate); the prohibition of "double balloting" in different types of elections that takes place simultaneously. It is noted that the introduction of a pure proportional system will lead to the full dependence of candidates to the people's deputies of Ukraine from political parties, which will supersede the voters' interests. Therefore, resolving the issue of violating the principle of equality of voters during voting in a foreign constituency is seen in the development and standardization of the mechanism for the pre-registration of such voters with the fixation of their place of permanent residence and the possibility of voting for candidates in their constituency.

The content of the electoral and procedural equality of candidates is formulated, that is, the equality of opportunities for the registered candidates in the election process, which may concern equal opportunities for campaigning, registration, prevention of the use of administrative resources, fair counting of votes, etc.

Key words: principle, electoral process, equal suffrage, active electoral right, passive electoral right.