

The civil constitutionalism paradigm in the conditions of Bulgarian democracy

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Why a paradigm for the connection between citizens as a society and Bulgarian constitutionalism? Why is the topic relevant for every Bulgarian citizen to participate in the debates on convening a Grand National Assembly (GNA) and drafting a new Constitution?

On August 14, 2020, the Bulgarian Prime Minister proposed convening the Supreme National Assembly because it was *time for a "restart - time for decisions"*, proposing:

- reduction of the number of deputies from 240 to 120, and in the case of the Supreme National Assembly to be 280 instead of 400;
- dissolution of the Supreme Judicial Council and establishment of a Judicial Council of Judges and a Judicial Council of Prosecutors;
 - reduction of the mandates of the chairmen of the Supreme Court of Cassation and the Supreme Administrative Court, as well as of the Prosecutor General from 7 to 5 years;
 - introducing the instrument of the individual constitutional complaint.

The statement also contained a binding promise that *"when the current parliament decides to hold elections to the Grand National Assembly, he will resign as prime minister on the same day."*

According to Thomas Kuhn, the modern meaning of the word "paradigm" is taken to denote a set of practices that define a scientific discipline over a period of time with philosophical significance, as a scientific strategic goal, with object and subject in the form of questions: what should to be observed and researched and how an experiment should be conducted to achieve the reality of the goals or to limit acceptable programs that have not been sufficiently researched in the modern horizon.

In essence, constitutionalism aims to predetermine and guarantee democracy through the mechanisms of balance between state power and the rights and freedoms of citizens as a society. As a multidimensional concept, constitutionalism is explained by scientists and researchers with different determinative content. The most common definition is *"a set of techniques to limit public authority"*. This understanding is shared by Karl J. Friedrich in his work "Constitutional government and democracy".

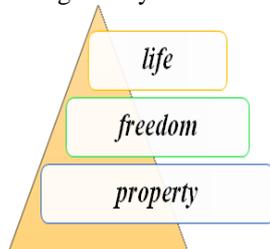
Constitutionalism is defined as an ideological-political movement, in which ideas and values are brought to the fore, written as rules and procedures for public authority. The state and its government have attracted the attention of a number of philosophers and scholars since antiquity, all of whom have contributed to the foundations of constitutionalism to the present day, and to find answers to a number of problematic questions we need to look deeper into them.

At the beginning of 5th Century BC Plato makes extensive research on democracy and the theme of the unity of the state as a great good and great evil which can destroys it. Develops the thesis of civic education of the young generation and cohesion of civil society as an entity of great importance. Aristotle also has his significant contribution to the definition and the concept of state, adopting it as "autarchy"¹, which has a high goal and obligation **to ensure a good, fair and happy way of life for its citizens**. According to Cicero, the state is a community of citizens who obey the same laws, and according to Burhaart, the state is seen as a work of art. Niccolo Machiavelli is credited with inventing the very term for the state, as a political status, a state of citizens, separating politics from morality, as civil morality. Machiavelli pleaded for the restoration of **dignity** and **valor** as democratic values of civic behaviour and was remembered for his well-known remark: *"The end justifies the means."* His work "The Ruler" and his doctrine of strengthening a powerful and strong state are most valuable today for democracy.

It is impossible to cover in one article all the philosophers who contributed to the development of the state, and the latter in turn to constitutionalism, but we should not miss Thomas Hobbes, as the founder of the

¹ Autarchy- system of self-sufficiency

contract theory of the state - a contract between the ruler and his subordinates, **as the latter expropriate all their power in favour of the ruler**. The voluntary renunciation of power by a civil society is defined in the history as a conservative interpretation. It is also worth noting the great merit of John Locke for government, especially with the treatise "On Civil Administration" (1689), which marked the beginning of constitutional government and later called the "*son of class compromise*". His contribution has been defined as fundamental with the three values derived as criteria for the legitimacy of the actions of public authorities, namely:



Mandatory, given the frequent protests in Bulgaria with each government over the past 30 years, we must note that it is John Locke who formulated the thesis of limited governance, governance by consent, as consent without rebellion against the government, the so-called civil law of resistance to power. Another merit is recognized to Locke, as the founder of the doctrine of the separation of powers into legislative, executive and federal powers.

Locke's values were adopted by Thomas Jefferson, who replaced the last value of property with the **pursuit of happiness and self-realization**, which found its place in the American Declaration of Independence of 1776. The author of The Spirit of Laws, Charles-Louis Montesquieu was recognized scientist and founder of the doctrine of separation of powers² to legislative, executive and judicial, which form is preserved until today in the Bulgarian constitutions. However, it is difficult for members of society today to accept what Montesquieu has written that they must be organized in such a way that "**one power stops another**". Today, this view can be seen as a way to guarantee individual freedom. To a large extent, the legitimacy of power in representative democracies depends on whether it respects its constitutionally defined powers. In other words, citizens have the guarantee that whoever is in power will adhere to this set of constitutional and legal rules.

According to the 1947 Bulgarian Constitution, "**all power stems from the people and belongs to the people**". Literally the same text is contained in Art. 2, para 1 in the Constitution of 1971 under the conditions that the Republic of Bulgaria is a democratic, parliamentary and legal state. Significant restrictive changes for the citizens and the society are introduced by the Constitution of 1991, where in art. 1, para. 2 is taken only the first part of the text of the previous Constitutions, ie. **all power derives from the people**, adding that this constitutional rule applies only to "all state power" which may derive from the people. Art. 8 of the CRB clarifies that state power is divided into legislative, executive and judicial. Unlike the previous two constitutions, in the current one the second part of the sentence has been dropped, ie. that the "**power belongs to the people**". To this end, we must return to the separation of powers, according to John Locke and Charles Montesquieu. The two philosophers, in the age of bourgeois revolutions, perceived that power had a political division. Magnificent political, human and life foresight, established two and a half centuries ago (244 years ago to be exact), finds real and visible reflection today to answer the question of how the legislature allows and has put it under full scrutiny and decommissioning of the executive. Opposing the idea of bringing the legislature under the executive power, Locke and Montesquieu pleaded for the creation of another power - the **political power of civil society, of the citizens**- the fourth power:



The separation of powers has a single purpose - equality between the authorities, to be observed and controlled by the judiciary, based on the positions of the natural law school, which argues **that there is no law, there is no freedom, because the law is an expression and guarantee of freedom**.

In fact this fourth power is a reality for Switzerland through its unique model for combining the two principles with a clear advantage of direct democracy. Model, which scientists and citizens often discuss and talk like civilized, fair and democratic necessity that any political party when in power, finds no political will to implement.

² Charles-Louis Montesquieu - "On the Government of England", Book 11, Chapter 6.

According to Montesquieu, if a person or institution gains a monopoly on the law, he **easily becomes a tyrant**, so several holders are needed. The separation of powers in the political aspect must lead to an **increase in the welfare and freedom of citizens, and a real opportunity for them to participate equally in governance**. When this balance is disrupted, citizens have the only opportunity to express it in protest since the constitution lacks a text and procedure that power belongs to the people.

The Tarnovo Constitution (1879) was also based for its time on modern democratic Bulgarian constitutionalism, which has deep and strong foundations, laid down in the era of the National Revival. It is the first Bulgarian basic law - revived Bulgaria for a new political life, paved the way for a modern European statehood and enlightenment. The Constitution does not disclose who and how many are these state powers, but introduces their mandatory division. The introduced political pluralism, freedom of the media, thought and speech speak of the democracy of the Constitution, but refrains from declaring that power belongs to the people.

The 1947 Constitution began in this spirit, without displaying it as a separate power, but giving it the power that **power belongs to the people**. This right of the people was removed by the Constitution from 1991, retaining only the first part of the text in previous constitutions that all state power derives from the people.

Yes, democracy is based on the principle that power comes from the people, but democratic principles also require that power belong to the people in order to have equality and trust between civil society and other authorities.

What does it mean and what is the impact of the removal of the text that power belongs to the people. The answer is given by the current situation in the country. The protests, which have lasted for more than four months, do not have the ability and legal basis to implement their demands for the resignation of the government. Response is seen as hinted by John Locke and Charles Montesquieu to the fourth power of citizens, the Constitution of 1947 has the courage to declare that "**power belongs to the people**", in time of socialism and today at liberal democracy, power is only in the hands of the elected majority.

If the power belonged to the people by constitutional order, then the people would have the right with a referendum or a petition signed with an equal + 1 vote more than the votes received in the elections to terminate the government and dissolve the National Assembly. This was introduced by the Grand National Assembly in the most turbulent years of the early democracy in Bulgaria, and no government so far in these more than 30 years has decided to return power to civil society to belong to the people.

The exclusion of civil society as an equal power is calling into question the democratic foundations of law. To support this argument, we should refer to the Global-Regulation Translation of the Law On The Direct Participation Of Citizens In The State Power And Local Self-Government"³The subject of the law regulates the conditions, the organization and the order for direct participation of the citizens in the exercise of the state and local power. This law as a title sounds democratic, but de facto civil society has the power only to participate - to vote in elections, but not the power to take away trust from state and local authorities.

The principles of direct participation of the citizens in the state power, according to art. 2 of the Act relates to:

- free expression of the will;
- joint, equal and direct participation by secret ballot,
- equal access to information on the issue raised and
- equal conditions for providing different opinions.

It is evident from the cited texts of the law that there is no legal legislative possibility for a society to achieve the termination of the powers of a government of state and local government by referendum, petition or by other constitutional and legislative order. The presented analytical considerations and analyses can be summarized in the conclusion that the 1991 Constitution does not provide a way for power to belong to the people and does not provide constitutional mechanisms for civil society to take away trust from state and local authorities. A debate that civil society must take part in.

Another constitutional norm regulated in Art. 4 of the 1947 Constitution, which reads: "*Representatives of the people in all representative bodies are accountable to the electorate. Elected persons may also be recalled before the term for which they were elected.*" "With an amendment to Art. 7, para 1, Government Gazette issue 29 of 1990 in the Constitution of 1971 includes an additional obligation to report to their constituents, the text acquiring the following wording: "*Members of Parliament and councillors are responsible and accountable to their constituents.*" If this addition can be hailed as fair and democratic, then dropping the text that the **people's elected representatives can be recalled** is a significant retreat and rejection of democratic principles, which is the second paradigm that has finally bound the hands of citizens and made them deprived of

³ ZPUGDVMS, adopted in 2009 with the last amendment in October 2020.

the opportunity to have democratic constitutional instruments, at least at this level, which gave the Constitution of 1947.

In the 1991 Constitution, with Art. 1 is determined that Bulgaria is a republic with a parliamentary government and all state power derives from the people and shall be exercised by them, but only **by the authorities, provided for in this Constitution**. What rights do citizens have under the 1991 Constitution: to vote, to appeal and make written proposals, to request information under the Access to Public Information Act and to appeal to court against the refusal and no mechanism for immediate civil control and recall of those who have chosen if found there. What a significant difference from the texts discussed with the 1947 Constitution for Democratic Constitutionalism, adopted 73 years ago. This is not nostalgia for the past, but it is indisputable that those we have elected once, the citizens do not have an instrument with which to recall it before the expiration of the term, which raises a number of issues to be resolved by the forthcoming Grand National Assembly.

What does include the project for a new constitution by the government in 2020? Let the readers of this article decide and judge for themselves what constitutional powers the government's draft of a new Constitution offers to the people.

Chapter One

Basic principles

Art. 1 (1) Bulgaria is a republic with a parliamentary government.

(2) All state power derives from the people. It shall be carried out by them directly and through the bodies provided for in this Constitution.

(3) No part of the people, political party or other organization, government institution or individual cannot usurp the sovereignty of the people.

Let this article end with the sentences that conclude the Prime Minister's Address to all Bulgarian citizens to convene a Grand National Assembly to adopt a New Constitution, an initiative supported by only 111 MPs with a required minimum of 160.

"It is time for responsibility and determination! It is time not only to change the political system, but to restart the state. The need to restart the political model can no longer be postponed! "