

INSTITUTIONAL CHANGES IN THE ELECTORAL SYSTEM IN THE CONTEMPORARY RUSSIA IN LIGHT OF THE PARLIAMENTARY ELECTIONS IN 2016: METHODOLOGICAL, LEGAL AND DOCTRINAL ASPECTS

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The article considers the possibility of the analysis of the institutional changes of modern Russian electoral system within interdisciplinary methodology of social sciences. The modern conceptual grounds of the election system, doctrinal and legal aspects of the modern transformation of the electoral system at the stage of the launch of the federal parliamentary elections in Russia are being analyzed; risks, problems of legal regulation of the electoral system, the trends of institutional changes and perspectives of their comprehension for understanding of the status and trends of the evolution of the electoral system in modern Russia are identified. Paradigmatic contradictions in the development of the modern Russian legal theory and doctrine are revealed, the current confrontation between the theoretical heritage of the Soviet law and specific modern Russian concepts, projecting the development of natural law theory and defined as “conceptual uncertainty” is being analyzed. We consider the consequences of conceptual uncertainty in the development of the modern Russian public law, including the electoral law. Scientific novelty is in the definition of the main areas of application of interdisciplinary methodology of research of institutional changes in the electoral system, including the possibilities of interdisciplinary research of the electoral system on the basis of neoinstitutional approach in the modern social sciences.

Keywords: electoral system, public law, electoral law, elections, elections in Russia, parliamentary elections, institutions, institutional changes, interdisciplinary studies, neoinstitutionalism, concepts of rights, the theory of natural law, legal positivism, conceptual uncertainty in law, political processes, democratic transit, law reforms, parliamentary democracy, civil society.

1. INTRODUCTION

The relevance of understanding the current state and major trends of the institutional changes of the Russian electoral system is conditioned by several factors. First, in September 2016 parliamentary elections will be held in Russia. They will be held on the basis of the electoral law which is significantly different from the one effective at the time of the previous elections.

Second, the study of the institutional changes of the electoral system in modern Russia allows identifying and analyzing conflicting and even multivector development trends of the Russian public law as well as the conceptual uncertainty of the contemporary Russian legal doctrine.

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2. TECHNIQUE

In modern Russia, the development of public law is seriously affected by relativism of concepts about legal theories and paradigms on the basis of which the spectral legislation should be developed, including selective legislation. The biggest problem here is not even the role of the state and state regulations which is significantly exaggerated. The biggest problem is the uncertainty of paradigm choice and of the direction of the system development. Perhaps the reason is the next stage of transformation not of the whole system, but an attempt to reform its individual parts only. In the most general form three groups of legal theories that influence the formation of the legal doctrine can be identified: modern versions of the concept of natural law (V.S. Nersesyants, A.V. Chetvernin), modern versions of legal positivism (M.I. Baytin, V.M. Sirikh), “dialogical” and constructivist theories, in which researchers are trying to resolve the contradictions of the concept of natural law and legal positivism (I.L. Chestnov, A.V. Polyakov).

In general, the conceptual contradiction of natural law and legal positivism seriously affected the Russian legal system as a whole: “The end of the 80’s – early 90’s in our country was marked by the rejection of the ideology and some methodological directions typical of the Soviet legal understanding. If you do not take into account the theory of state and law, the most ideologically deterministic science of state law was the greatly influenced by natural law doctrine which is dominant in “Western democracies”. In fact, a paradigmatic revolution occurred, but it has mainly affected ideology (allegedly deideologization occurred), and the content of individual legal institutions. Yet, methodological tools were not affected by the impact that is typical of a paradigm shift. Of course, there was a mass rejection of the Marxist-Leninist approach, which was not unfortunately a full-fledged approach to research and is reduced to quasi-scientific “ritual” procedures, which deprived it of the true value of research [...] phenomenology, hermeneutics, anthropology, synergetic of the right, communicative and dialogical theories do not claim to be paradigmatic status and are very little used by domestic branch sciences in which positivism dominates to this day” (1). In the first stage of the democratic transition in Russia and reformation of public law the conceptual contradictions in approaches to the formation of the new legislation laid the foundations of the contradictions in the theory and practice of the Russian law, causing in some cases fictivity of a number of important democratic reforms.

Let us mark the methodology for the analysis of institutional changes in the electoral system and first of all, let us determine the properties of the electoral system, allowing its analysis within the framework of neoinstitutional approach.

In our opinion, neoinstitutionalism allows the comprehension of the influence and significance of situational changes of electoral legislation dictated by the political conjuncture and qualitative changes in the electoral system in general, changes in democracy and transparency of the system, long-term trends and the

reversibility of situational changes, and, in the future, it will allow consideration of the electoral process as a whole, without separating legislative changes, appearance of new prohibitions and new “windows of opportunity” from its own electoral campaigns and election procedures, from subsequent research and public evaluation of their results, their political and social consequences. Methodology of neoinstitutionalism in the domestic science is associated primarily with Ronald Coase’s works “Problem of Social Costs” (2) and “Firm, Market, Law” (3) with Oliver Williamson’s work “Economic Institutions of Capitalism: Firms, Markets, Relational “Contracting” (4), in which the concept of institution is significantly expanded, “blurred”, deformed, the concept of “change” and “transaction costs” is being introduced (the whole theory of transaction costs appear), the increasing importance of informal rules that have a significant impact on the attitude about the use of limited resources is justified, they point to the increasing importance of informal rules and practices. Such rules and practices after a long phase of “over-regulation” of the electoral process in Russia appear as significant ones not only for political relations but also for the enforceability of legal norms. These rules and practices mark the emergence of additional democratic procedures in the framework of the party law-making (e.g., primaries) and the increasing importance of procedural events after the ten years’ domination of “static” which severely restricted the possibility of interactions of the legislation. The electoral system in Russia today as an institution may well be described by the definition of the Institute of U. Nile – the basic rules, standards of conduct and thinking patterns that determine them (5). Note actualization of procedural models of the society. Thus, P. Shtompka points to the increasing importance of models that do not reproduce the norms, relations, status but event-pictures of social reality, the dynamic state, volatility, mutability, the vectors and trends of institutional changes (6). This fully corresponds to the situation in the electoral system of modern Russia.

D. North proves the complexity of the process of institutional changes by the following circumstances: “... the marginal changes (changes at the margin) may be a consequence of changes in the rules, informal constraints, in the methods and effectiveness of enforcement of the rules and restrictions. Moreover, the process of institutional change is generally incremental rather than discrete in character. An explanation of how and why incremental changes occur and why even discrete changes (such as revolution and conquests) are never completely discrete is in acceleration of informal constraints in society” (7). The source of institutional change by D. North is “the perception of the organization (correct or incorrect) available within the existing institutional environment and opportunities.

Saving or changing of the institutional environment depends on how the organization will estimate “pros” and “cons” of the decisions made. The direction of institutional changes is determined by the trajectory (path dependence) (8).

These “pros” and “cons” are sufficiently situational and opportunistic in the electoral system of modern Russia, which, however, does not mean only a purely negative impact of decisions on the development of the electoral system as a whole, to its openness, democracy and transparency in particular.

3. RESULTS

3.1. The current state of normative regulation of the electoral system

The current stage of the reform of the regulatory framework of the electoral legislation of Russia began in spring, 2012. The regulation of the activities of political parties electoral system reform was started by the adoption of two federal laws: the Federal Law of April 2, 2012 No. 28-FZ “On Amendments to the Federal Law “On political parties” (9), and the Federal Law of May 2, 2012 No. 41-FZ “On Amendments to Certain Legislative Acts of the Russian Federation in connection with the release of the political parties from collecting signatures of voters in the election of deputies to the State Duma of the Federal Assembly of the Russian Federation to state authorities of the Russian Federation and local authorities” (10).

According to the Federal Law “On Amendments to Certain Legislative Acts of the Russian Federation in connection with the release of the political parties from collecting signatures of voters in the election of deputies to the State Duma of the Federal Assembly of the Russian Federation to state authorities of the Russian Federation and local authorities”, all political parties are exempted from the collection of voters’ signatures during any election, except for the election of the President of the Russian Federation. This rule applies to elections of the Heads of the constituent entities of the Russian Federation, as defined in sub-paragraph “b” of paragraph 3 of Article 1 of the Federal Law from May 2, 2012 No. 40-FZ “On Amendments to the Federal Law “On general principles of organization of legislative (representative) and executive bodies of State Authorities of the Subjects of the Russian Federation “and the Federal Law “On basic guarantees of electoral rights and the right to participate in a referendum for citizens of the Russian Federation” (11).

The result of the reform of 2012 was a radical reduction of requirements to the number of members and to financial statements of political parties and is accompanied by a sharp increase of their role in the regional political process.

In 2014, the transformation of the electoral system in the area of parliamentary elections at the federal level made a sort of U-turn at three hundred and sixty degrees, returning to the order of formation of the Russian State Duma which was in effect during the period from 1993 to 2005. According to the Federal law dated 22.02.2014 No. 20-FZ (as amended on 09.03.2016) “On elections of deputies of the State Duma of the Federal Assembly of the Russian Federation” the electoral

system was changed from the proportional where party lists are formed by political parties to the mixed one where half of the deputy seats is distributed upon the results of the elections under the proportional system and another half is distributed due to the results of the elections by the majority system in single member constituencies.

In addition to the transformation of the regulatory foundations, new procedural forms of institutional change appear. For example, the development of internal party rules of the elections that significantly affect the electoral process with the introduction of well-known foreign experience. Here, first of all, it is necessary to specify the primaries of the political party “The United Russia”, which involves both party members, party officials and nonpartisans. Primaries of “The United Russia” are held according to the open model, they are obligatory for members of the party willing to be elected and re-elected, they are open for nonpartisans who compete with party members for the right to be nominated by party lists and in single-mandate majority constituencies. The procedure of primaries of “The United Russia” is used since 2011; it has been changing significantly over time taking into account the experience (including negative experience). By the date of the parliamentary elections in 2016 an open model has been formed opening the “social elevators” to a real policy for the population, causing widespread public discussion and vivid interest, as well as criticized in this part as a kind of political PR-technology which is not available for a number of parties competing due to its high costs (according to various estimates the cost of the primaries of the parliamentary elections to be held on 22 May 2016, will constitute from 200 to 500 million rubles) (12). However, the open model of the primaries in a certain sense violates the rights of Party members who do not have more advantages over nonpartisans in the selection process for the nomination for election.

The content of the regulatory framework and the formation of the legal doctrine are influenced by research and analytical institutions engaged in public political and legal expertise of the election legislation and its compliance with modern democratic standards. In the modern world, lobbyism can be specified among the mechanisms of influence capable of transferring of the conceptual foundations to the legislative level, lobbyism is, however, officially banned in Russia, the impact through the interpretation, expertise and formation of the legal methodology and doctrine. However, the impact by means of various kinds of informal influence and shaping the agenda of discussion and evaluation has signs in the frameworks of traditional Russian ideas about the state and law, these are not as much signs of the formation of informal norms and institutional interactions but the character of “institutional arbitrariness”. This dictates the authors of institutional interactions the need to formalize any politically significant procedures.

The course of the electoral process is affected by the analytical structures that comprise ratings of political parties and of candidates for key political positions,

ratings of heads of regions, etc. Of course, these mechanisms are as well used by governmental institutions as a form of public dialogue between the actors of the political power.

Increasing openness of the system does not only mean increase of its democracy and transparency, but also increase of the threats and abuse. For the electoral process the following items are significant: financial abuse, violations of electoral rights of citizens to have equal access to participate in the state administration, possible discrimination against members of political parties by means of intraparty rules and regulations, unequal opportunities for political parties to participate in the election campaign including unequal opportunities in the implementation of the election campaign. Open system is as well open for such processes as regionalization, professionalization, ethnization of parties, making clienteles and even “parties for sale”, “fully constructed parties” by the time of regional and even federal elections.

3.2. Institutional changes in the electoral system

Conceptualization of the category “institutional changes” within the framework of modern social sciences is considerably complex due to the ambiguity of “institution” as a category, and not the least due to the fact that a number of basic research institutions are interdisciplinary by nature, but they consider institutional changes mainly as a sociological phenomenon. However, there are significant grounds for the application of these interdisciplinary methodological orientations in the study of socially significant legal phenomena that have a systemic character not only as a legal institution but also as a social and political institution.

The key features attributing to interdisciplinary character of the electoral system are the increasing role of the procedure in the political and legal space of modern elections. Space of electoral interactions forms a “field”, which includes two groups of elements. These are formal rules: the rule of law, law enforcement acts, acts of interpretation of the rights, legal status of participants in the electoral process. And these are informal rules that significantly affect the electoral process: first, doctrinal interpretation of legislation; second, socially relevant opinions of well-known lawyers and political scientists affecting the legal expertise of bills, perception by politically active part of the society of any changes in the procedures of the electoral process; third, these are the social norms that define the limits of allowable interactions of participants of the electoral process, their social status and roles that influence social enforceability, i.e., the legal reality of their legal status, the feasibility of subjective rights and freedoms for the participants of the electoral process.

Looking at the federal level, the level of constituent entities and the level of local government, we see that the electoral system as well as 10-15 years ago cannot be described exactly as a single system. The vectors of changes at different

levels – federal, regional and local, are not only the same; they have even changed their direction reversely. We see that the democratization of the electoral system at the federal level for the period of 2012-2014 is reflected by reduce of the percentage threshold and simplifying the procedures for participation in the parliamentary elections for the parties, the return of a mixed system instead of a proportional one at the parliamentary elections. The democratization of the electoral system at the regional level is reflected in the return of the model of direct election of heads of regions (constituent entities) by the population (this issue is being solved by the constituent entities; the majority of them have now direct election of heads of regions). At the same time at the level of local authorities the process is developing in the opposite direction: reducing the value of direct elections for local government officials, the use of a proportional electoral system for elections to the municipal councils, municipal amalgamation (e.g., the formation of urban districts on the basis of association of municipal areas – those are large enough and as a rule they include rural and urban communities, with the elimination of village councils and municipal councils of urban communities). There is often such a model of organization of local self-governance (e.g., the legislation of the Stavropol Krai, Sverdlovsk Oblast, Yekaterinburg city), in which the most important executive body of local government – the local administration does not meet the criteria of the local self-government established by the federal legislation: it is not elected and is not formed by the elected body or the official of the local government (12).

4. DISCUSSION

The current state of the electoral legislation and practice of holding elections at different levels allows concluding about situational institutional changes of the electoral system which are based on the transformation of the regulatory framework dictated by changes of the political situation. However, the “center of gravity” of the organization of situational changes moves from the federal and regional lawmakers to political parties. This is a positive trend that means an attempt of government institutions to refuse from monopoly on electoral procedures control, transferring them to the level of political parties. Accordingly, the “party of power” (in Russian, this category is only used in political science, while not legal) is chosen as the conductor of the idea. It should be noted that the party procedures in their current form are far from being perfect as well as from the basic standards of democracy and transparency. Thus, the analysts from the “Center of political conjuncture” note opacity of the procedure of forming party lists and of nominating in single-mandate constituencies as well as an obscure link between this procedure and the actual outcome of the primaries (12). The peculiar features of public legal regulation of interaction between the government and the institutions of the civil society, the character of the regulatory framework of the political debate and boundaries permitted allow the researchers of legal theories setting up versions

about the conditionality of such kind of discretionary transformations – the features of the Russian legal doctrine, such as for example legal positivism that preserves significant influence in sectoral legislation. An adequate level of legal thinking and law-making in the framework of legal positivism paradigm rejects the situational change of rules and regulations under the influence of the political situation, rather than the need to improve legislation. However, the legal positivism and its primitive interpretations provide the fundamentals for situational changes in the electoral legislation today. A number of Russian researchers and theorists of law do not see this process as a departure from the positivist canon, but as an inherent characteristic of legal positivism. For example, researchers attribute modern Russian versions of legal positivism as “legalism” (A.V. Chetvernin), moreover, it is more stigmatizing than the result of the correct use of the term of the modern theory of law, as direct identification of the positivist concepts with the concepts of the medieval period of the lawyers of the Chinese school Zhanguo Shidai (Warring States) is a stigma to the attributes of “Middle Ages” and “arbitrariness”. On the other hand, the major impact of the modern natural law theory on individual institutions of constitutional and electoral law is not always essential by nature, sometimes there are just decorative changes that are fictitious and do not have social feasibility, rules that do not affect social relations in a meaningful way.

However, it would be a big mistake to consider such changes in the law as impossible, the constitutional transformation of the early 90's of XX century when a lot of what seemed declarative yesterday and “a matter of the future” (in understanding of the serious consequences of immediate implementation) was immediately implemented, for example, cancellation of the institution of registration; following declarations was a priority rather than a real increase of implementation of social rights and freedoms of a man and a citizen. Today we can say with confidence that following specific directory of “standards of democratic transition” has resulted in a kind of attempt to rebuild the legal system without using a real reformation but with the help of artificial introduction of definite ‘benchmark’ features. Signification of right occurred with markers of “freedom and democracy”, but not its transformation into the democratic right that provides freedoms. This gave rise to serious contradictions within the legal system as well as to the contradictions between the declared and real law enforcement. However, this does not mean that the democratic transition of 90's of XX century was apparent. For example, the basic set of subjective rights and freedoms of the individuals was implemented by the highest European standards. Situational transforming simulator of “legal democratic state” affects the legal and political reality and modifies them towards democratization in full compliance with “Thomas's theorem”. For example, D.S. Bieliavsky indicates improvement of democratic legal regulation of religious organizations (13), A.A. Avanesov identifies unreliable trends of increasing of the efficiency of the guarantees of fundamental individual rights and freedoms by the

example of the protection of the rights of refugees and forced migrants which was a very serious problem for Russia in the period of 90's the beginning of the 2000's (14). However, it would be a big mistake to think that "decorative" changes in the law do not have any sort of real consequences. Over time a number of these changes have become more real, having received real normative content conditioned by the presence of actual social needs.

CONCLUSION

In the contemporary Russia the influence of inner party rules and regulations is increased, but other than legal restrictions and prohibitions on the one hand and the additional guarantees for participation in the elections as well as financial support mechanisms on the other hand, guarantee mechanisms are not almost used (they do not affect a significant portion of the political parties) for the parliamentary parties and parties that have overcome three-percent barrier at the parliamentary elections, there are no standards for internal organization and activities of political parties and ensuring equal access of ordinary party members to participate in decision-making party and guarantee of their participation in elections at various levels.

These guarantees would allow linking public funding not only with the results of the implementation of active suffrage but also with the possibilities of realization of passive suffrage, additionally ensuring the legal equality of participants in the electoral process.

In spite of situational, multi-vector and inconsistent legislative reformations of the electoral system in modern Russia, its openness increases as well as the importance of informal (not required by law but not prohibited either) procedures and regulations, the overall trend in the democratization of political life is strengthening. However, situationality of lawmaking is a bright example of positivist situationality and conjunctural conditionality that sharpens the conceptual contradictions in the Russian legal doctrine, hampers doctrinal constructions based on dialogic legal concepts and generally impedes the harmonization of the Russian legislation that is experiencing serious adverse conceptual effect of uncertainty to this day. Meanwhile, situationality and voluntarism are significantly higher in the "area of responsibility" of the regional lawmaker than at the federal level, which is reflected in the local elections showing the regional trend which is opposite to the federal one: to increase secrecy and to decrease the value of elections at the local level.

Even if the transformation of the electoral system is conditioned by the political situation, increasing of its openness is a significant step forward, as a return to the starting position will imply significant political costs for the public authorities.

In fact, every situational change as well as changes dictated by the political situation narrow the possibilities of application of such tools in the future.

The electoral system of Russia, despite some positive developments is again at the beginning of its way from the closure, over-regulation and situationality of changes to openness and dialogue between the government and the civil society, as it was in 1991-1993. However, the institutional changes that are taking place today inspire reserved optimism, as political tradition is being seriously transformed beyond legislation and these alterations are far less reversible than those involved in changing legislation.

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