

ELECTIONS AND REFERENDUMS IN THE CONSTITUENT ENTITIES OF THE RUSSIAN FEDERATION: CURRENT ISSUES AND AREAS FOR IMPROVEMENT

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Abstract: The article is devoted to the analysis of the system of elections and referendums in the constituent entities of the Russian Federation as component parts of a single federal state. The analysis of both federal and regional legislation on elections and referendums was made in the work. Not only the amendments to the existing normative legal acts of the Russian Federation and its subjects are offered, but also the introduction of new forms of direct democracy at the regional level – a referendum on changing the borders of the Russian Federation subjects and the improvement of the voting procedure for the recall of the regional government elected officials - is justified. Also, the article justifies the improvement of the legislative consolidation of the primaries procedure in the regional elections and the application of electronic democracy methods in the electoral process of the Russian regions.

Keywords: Elections, referendums, suffrage, recall of elected officials, voting, electoral responsibility, election campaign, candidates for deputies, candidates for elected office, political parties, region, constituent entity of the Russian Federation, electoral legislation, primaries, observers, agents of candidates, electoral associations, changing borders of the regions, election commissions, electoral process, electoral legal relations, rights of the voters, absenteeism.

INTRODUCTION

The relevance of considering the current situation and the main areas for the improvement of the legislation on elections and referendums in the constituent entities of the Russian Federation (RF) is due to the following circumstances.

The existing at the present stage of development of the Russian legislation on elections and referendums in the RF constituent entities incompleteness in the legal and regulatory consolidation of a number of electoral procedures, the actual lack of procedures, taking into account the views of the population on the crucial issues of development of the region of residence, and the lack of transparency measures and measures for democracy in elections and referendums stipulate the need to improve normative legal acts and enforcement procedures, strengthen measures for constitutional and legal responsibility of the organizers of the electoral process and actualize the selected topic of the study.

The relevance of the topic of the study is also due to the fact that the participation of citizens in election campaigns acts today as a significant indicator of political activity or passivity of the population of the Russian regions and an indicator of attitudes of citizens to the institutions of state power, which stipulates the importance

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of the most transparent and legitimate course of campaigns for elections and referendums.

METHODS

The methodology of the present work is based on the general scientific and special legal methods of the study. The analysis of the system of constitutional and legal norms establishing the order and procedures for the regional elections and referendums was carried out on the basis of systemic functional, systemic structural, formal logical and formal legal methods. In particular, the formal legal approach based on the rules of formal logic and legal technique allowed us to identify gaps in federal and regional legislation regulating the institution of elections and referendums in the RF constituent entities and find ways to improve the institute.

We adhere to the viewpoint of the majority of Russian constitutionalists – experts in the field of electoral law and procedure (S.A. Avakyan, V.V. Komarov, I.V. Mukhachev, L.A. Nudnenko, etc.) - that the elections and referendums in the RF constituent entities are a single legal institute including several elements:

- norms governing the legal relationship arising from the holding of regional elections;
- norms governing the legal relationship arising from the holding of regional referendums;
- norms governing the legal relationship arising from the holding of regional voting on the recall of regional government elected officials in the RF constituent entity.

We note that there is a different view on the content of electoral legal relations in modern Russian science. For example, there is a sufficiently substantiated approach, according to which the subject of regulation of suffrage is only elections, and concerning their holding the electoral legal relations arise; at the same time, the referendum and referendum relations represent a kind of plebiscite relations (Yu.A. Dmitriev), respectively, elections and referendums cannot form a coherent institutional whole. With all the advantages of this approach, we should point to the formal legal issues of its application: the Russian legislation on elections and referendums regulates them as a single institutional whole. We can, no doubt, indicate the non-obviousness of the advantages of such an approach, its methodological, theoretical and doctrinal fallacy, but the analysis of the current legislation cannot come from the theoretical provisions not corresponding to the realities. It has to be based on normative reality and empirical data.

RESULTS

Let us consider the most relevant, requiring urgent address, problems of regional elections and referendums.

Changing the borders of constituent entity territories of the federal state is impossible without its consent. The interaction of the RF constituent entities with the Federal Assembly on the issue of changing the borders of constituent entities does not involve participation of the population of the RF subjects in the solution of this question.

Taking into account the views of the population of the RF constituent entities should be carried out in accordance with the constitutions (charters) of the RF subjects on the basis of general principles of holding of referendum on the issue of changing the borders of the subject established by federal law. According to paragraph "a" of Part 1 of Article 102 of the Constitution of the Russian Federation, the approval of changing the borders between the RF constituent entities falls within the jurisdiction of the Federation Council. The procedure for decision making on changing the borders between the RF subjects to introducing the respective representation to the Federation Council is not set in the Constitution. The decision on changing the borders is taken by the highest officials of the RF constituent entities (heads of supreme executive bodies of state power of the RF subjects), the borders between which are intended to be changed by signing an agreement (contract) on the change of borders as approved by the legislative (representative) bodies of state power of these RF constituent entities. Thus, currently, the procedure for changing the borders of the RF constituent entities does not provide for participation of the population of the RF subjects in the solution of this question. Since the decision on changing the borders between the RF constituent entities significantly affects the interests of the population of the RF subjects, it is proposed to amend the legislation establishing the need for taking into account the views of the population of the RF constituent entities. Currently, at the level of the RF subjects, taking into account the views of the population is not envisaged by the federal legislation, and it is not provided by the legislation of the Rostov Region. It is necessary to consolidate provisions in the federal legislation (Federal Law "The Electoral Rights and Right to Participate in Referendums Act", Federal Law "On General Principles of Local Self-Government in Russia", Federal Law "On General Principles of Organization of Legislative (Representative) and Executive State Authorities of Constituent Entities of the Russian Federation") on the mandatory taking into account of the views of the population of the constituent entities in changing the borders of the RF subjects in the following cases:

- if these changes affect the identity of rural settlements – by voting or the people's assembly of the population of the settlements;
- if these changes affect the identity of urban settlements – by voting of the population;
- if these changes affect the identity of the urban districts and (or) municipal districts – by submitting the question to a referendum of the RF subject.

The issue of the procedure for changing the borders of the RF constituent entities is actualized by the following circumstances.

On June 27, 2011, the Federal Assembly of Russia by the adoption of the Federal Law No. 166-FZ “On Ratification of the Agreement between the Russian Federation and the Azerbaijan Republic on the State Border” ratified the “Agreement between the Russian Federation and the Azerbaijan Republic on the State Border” signed on September 3, 2010 in Baku (Collection of Legislation of the Russian Federation, 2011). The experts noted that, in fact, the transfer of territories with several settlements – the villages of Khrakh-Uba and Uryan-Uba, which were considered the Russian enclaves in Azerbaijan before, took place in the Russian history for the first time, and this created a whole range of problems for local residents (Avksentyev, Aksyumov and Gritsenko, et. al. 2011).

Another problem is the choice of methods for counting votes in elections in the RF constituent entities.

It should be noted that the “federal model” of organization and activity of legislative (representative) bodies of state power of the RF subjects leaves a considerable scope for the subjects in establishing the order of formation of the considered body, establishing the requirements for the minimum and maximum number and the requirements for applying the proportional system for election of at least a quarter of the number of deputies as mandatory ones. However, in addressing this issue the RF subjects are very conservative (Lyubarev, 2010), although in this case it is appropriate, it appears, to move in the direction of increasing the democratic nature by introducing more progressive elements of majority and proportional systems, such as “open” lists, preferential voting, panachage (Alekseev, Trofimov & Belyavsky 2014) into the practice of state-building and apply the most advanced modern methods for distribution of mandates, as indicated by many researchers (Lyubarev 2009).

Thus, the analysis of regional legislation shows that the technique for counting the votes cast for the lists of candidates, virtually similar to Imperiali highest average (Shalaev 2009), is established in the elections of deputies of regional parliaments. It concerns, for example, the Stavropol Territory and the Rostov Region. This method is not the most perfect; researchers have noted that it is the “most advantageous” for large parties contrasting it to the Hare-Niemeyer method (Lyubarev 2011) recommended by the Central Election Commission (CEC) of the Russian Federation.

Another promising area for the improvement of the legislation is strengthening measures for responsibility of the organizers and authorized participants (observers and agents of candidates) in the regional elections and referendums. Growing absenteeism is also a problem of the Russian citizens.

In the system of measures and sanctions, responsibilities of electoral legal relations in foreign countries measures to counter absenteeism (neglect of participation of citizens in elections) are of special interest. The analysis of foreign legislation shows the possibility and permissibility of establishing a constitutional and legal duty to participate in elections and referendums in the electoral legislation without violating the provisions of the Russian Constitution on voluntary participation. Among the types of constitutional and legal responsibility in the laws of the states in the US, we should note a possibility of deprivation of the voter's registration as such, which means impossibility of participating in the elections on the following ground: "...if he did not participate in any elections held by an electoral council in the last two federal elections", and he had the status of a potential voter; during all this time the electoral council did not receive any information from him that he lived in the same county or city (Alekseev, & Tkhabisimova, 2017).

We believe it is necessary to consider foreign experience for improving the constitutional and legal responsibility of participants in the electoral process in the RF constituent entities. The analysis of the foreign experience allowed us to formulate a proposal for establishing the responsibility of voters. The responsibility of voters for refusal to participate in the exercise of suffrage must be not in the form of administrative responsibility prescribed in a number of foreign states, which would violate the constitutional principle of freedom of the will, but in the sanction of constitutional and legal responsibility consisting of the limitation of passive suffrage for a certain period. It is offered to use the above experience of the United States. We propose in this case to establish not deprivation or restriction of suffrage but the denial to stand as a candidate in the next elections of the same or higher level in case of nonparticipation in the absence of a valid reason in the previous elections.

Also, based on the analysis of the foreign experience, the sanction of the constitutional and legal responsibility in the form of temporary restriction on the realization of passive suffrage is proposed. This allows using constitutional and legal measures for coercion to the voters, observers and agents of candidates, will ensure compulsory participation in debates of candidates for elected office, etc. We offer to supplement the sanctions of constitutional and legal responsibility of observers, in addition to dismissal, by the following ones: denial of observer status in the respective elections, the disqualification to act as an observer during the next election campaign, as well as in election campaigns, the holding period of which coincides with the specified period at least partially. We believe it is necessary to impose these sanctions also in relation to international and foreign observers.

The analysis of the foreign experience allowed us to formulate an offer for establishing the responsibility of voters. The responsibility of voters for refusal to participate in the exercise of suffrage must be not in the form of administrative responsibility prescribed in a number of foreign states, which would violate the

constitutional principle of freedom of the will, but in the sanction of constitutional and legal responsibility consisting of the limitation of passive suffrage for a certain period. It is proposed to use the experience of the United States, where there is a possibility of deprivation of a voter's registration if he did not participate in any elections, held in the last two federal elections, while he had the status of a voter. We propose in this case to establish not deprivation or restriction of suffrage but the denial to stand as a candidate in the next elections of the same or higher level in case of nonparticipation in the absence of a valid reason in the previous elections.

One more promising area for improvement is the improvement of the institute of interaction of the population with the highest bodies of state authority by fixing the so-called advance voting or primaries in the regional law.

We should mark in this regard the primaries of the "United Russia" political party held successfully in 2016 during the electoral company for the election of deputies to the State Duma of the Russian Federation. In the developed by the party primaries procedure, both the party members and party functionaries and non-party ones are involved. The "United Russia" primaries are held in the open model, they are obligatory for those wishing to be elected and re-elected members of the party, they are open for participation to the non-party, competing with the party members for the right to be nominated on party lists and in majority single-mandate districts. The procedure for the "United Russia" primaries has been used since 2011 and has significantly changed over time based on the experience (including the negative one). As noted, "by the parliamentary elections of 2016, an open model, opening "social elevators" to the real policy for the population, has developed, causing widespread public debate and increased interest and criticized in this part as a kind of political PR-technology, which due to its expensiveness is not available to a number of rival parties. However, the open model for primaries, in a sense, violates the rights of the party members that no longer have advantages over the non-party ones in the selection process for nomination for the election" (Mukhachev & Gondarenko 2016). The President of the Russian Federation V.V. Putin, speaking on April, 2016 at the Media Forum of the Russian Popular Front, emphasized on the primaries, that "...the system will pop up people interested and willing to work in the interests of society, including in the country's highest legislative body" (Putin: Preliminary Voting Will Determine People Willing to Work for the Good of Society, 2016).

DISCUSSION

We will examine specific proposals to improve the legal regulation of regional elections and referendums.

At the present time, the procedures for primaries are set by the local intraparty acts of political parties. The improvement of the procedure for primaries with applying the proportional system in the elections of deputies of regional parliaments

can be fixed in the regional law at least in part of establishing the possibility of its implementation, the limit start and end dates, additional guarantees to the persons participating in the primaries and receiving the support of the population at the end of the primaries.

The improvement of constitutional and legal responsibility involves the following steps.

Based on the analysis of foreign experience, the sanction of the constitutional and legal responsibility in the form of temporary restriction on the implementation of passive suffrage is proposed. This allows using constitutional and legal measures for coercion to the voters, observers and agents of candidates, allows to ensure compulsory participation in debates of candidates for elected office, etc.

We offer to supplement the sanctions of the constitutional and legal responsibility of observers, in addition to dismissal, by the following ones: denial of observer status in the respective elections, the disqualification to act as an observer during the next election campaign, as well as in election campaigns, the holding period of which coincides at least partially with the specified period. We believe it is necessary to impose these sanctions also in relation to international and foreign observers.

The consideration of the practice of elections in the RF constituent entities shows that the election commissions of subjects shirk the duty of reference to the court with the statement for disbandment of subcommissions for non-execution of court decisions subject to immediate execution. It is proposed to expand legislatively the circle of subjects entitled to appeal to court with the statement for disbandment of the commission, including the prosecutor's office, the registered candidates, lists of candidates and electoral associations.

The constitutional and legal responsibility of the candidate for illegal actions of the agents of candidates must "be returned" in the list of kinds of the constitutional and legal responsibility of participants in the electoral process in the RF constituent entity. We offer to supplement the responsibility of the agents of candidates with sanctions of constitutional and legal responsibility: urgent, in the case of repeated violations of election legislation, or, in the case of participation in extremist activities, in respect of which there is a court verdict in force – to relevant conviction expungement.

In the elections to legislative (representative) authorities of the RF constituent entities, it is proposed to establish the constitutional and legal responsibility of the candidates heading electoral lists, the so-called "first three" for the rejection of the deputy mandate not for good reasons. The sanction of constitutional and legal responsibility should be the ban to participate in the next elections to legislative (representative) authorities of the RF constituent entities both by the electoral lists and single-mandate (multi-mandate) districts.

It is submitted in the elections to legislative (representative) authorities of the RF constituent entities to establish constitutional and legal responsibility of the electoral associations for the transfer of the mandate to the candidates from the electoral list in case of refusal or inability to perform the duties of the deputy for good reason, as well as for other reasons provided by law, without obligatory taking account of the sequence of listing (sequence), and without documented consent of the candidate to give a mandate to the person following him in the electoral list. The sanction of constitutional and legal responsibility should be the deprivation of the electoral association handed over with violations of the seat in the legislative (representative) body of state power of the RF subjects.

A promising area for improvement of the institute of interaction of the population with the highest bodies of state authority will be the introduction of e-democracy procedures. First, the elements of direct democracy can be introduced into the above procedure for primaries (advance voting) in the elections of deputies of the legislative body, but not without using websites of political parties or their regional offices, but through the regional portal for state and municipal services. We can specify the positive experience of other RF constituent entities. Thus, in the Stavropol Territory, the procedure for e-democracy was applied in the interaction of the head of the Stavropol Territory with the population in the formation of the Public Chamber of the Stavropol Territory. The adopted on June 23, 2016 Federal Law “About the General Principles of the Organization and activities of Public Chambers of Subjects of the Russian Federation” (Federal Law No. 183-F “About the General Principles of the Organization and activities of Public Chambers of Subjects of the Russian Federation”, 2016) does not prohibit this form of interaction. Also, the regional portal for state and municipal services can be used to file petitions (collective complaints) by the population, to implement legislative initiatives of the population, to submit orders to the deputies and the head of the region, for public comment on bills, etc.

CONCLUSION

So, the analysis of the system of elections and referendums in the RF constituent entities showed the need to improve the existing legislation and helped to suggest amendments to the existing normative legal acts of the RF and its subjects, to justify the introduction of new forms of direct democracy at the regional level – a referendum on changing the borders of the RF subjects and the improvement of the voting procedure for the recall of the regional government elected officials. Also, the improvement of the legislative consolidation of the primaries procedure in the regional elections and the application of electronic democracy methods in the electoral process of the Russian regions are justified.

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