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Is it Possible to Abolish the Serf Suffrage in Russia?

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active electoral right, place of residence, place of temporary stay, federal, regional and municipal elections, the people, constitutive power of the people, territorial public collective

Introduction

In May 2017 two new federal laws, which broadened territorial opportunities of realizing the active electoral right, were adopted in the Russian Federation¹. These laws, in the figurative expression of the Chairman of the Central Election Commission E.A. Pamfilova, allow “to bring people out of this, so to speak, serf suffrage” (emphasis mine – V.Ch.)². However, even after their entry into force, many Russians did not get the opportunity to participate in the elections because of the existing electoral qualification of residence³. In this article we attempt to state and investigate this problem of the territorial serfdom of the voters and also consider some possible ways of its solution.

¹ Federal law dated 01.06.2017 No. 103-FZ; Federal law dated 01.06.2017 No. 104-FZ.

² The Shorthand Transcript of the plenary session of the State Duma, May 19, 2017. URL:<http://cir.duma.gov.ru/docs/duma/302/2783907?QueryID=6971745&HighlightQuery=6971745> (accessed: 21.12.2017).

³ The electoral qualification of residence is considered as the limitation of electoral rights of the citizens related to the registration at their place of residence.

Statement of problem

The point is that the Russian citizens (hereinafter – citizens) under a *general rule* have an active electoral right in the territory of the electoral district where they are registered by place of residence. Due to the fact that the territory of the electoral district is divided into some electoral precincts, the district “attachment” of the citizens is supplemented by their “attachment” to a particular precinct at which they are included in the list of voters.

Thus, everyone shall possess their active right exactly within the electoral district where they are registered by place of residence, and if on the voting day they are outside the electoral precinct in which they are included in the lists of voters, but within the limits of this district or even outside the district, they should be given the opportunity to vote in this election (let us call it a general norm).

Previously this opportunity was provided by early voting or using absentee certificates. Now, after adopting the new laws, in two types of elections – presidential and regional ones – those voters who are on the voting day within the territory of the electoral district where they are registered by place of residence, but outside their electoral precinct, have a right to vote at their location according to the procedure established by the Central Electoral Commission.

This mechanism, replacing early voting and absentee certificates, as noted, is already installed in the presidential elections, and for its application in elections of the regional authorities (hereinafter – regional elections) it is necessary to make changes in the laws of the subjects of the Russian Federation (hereinafter – regional laws). Consider what is changing in the way these types of elections are carried out in connection with adopting the new laws.

Presidential elections shall be conducted in one federal electoral district comprising the entire territory of the Russian Federation. Voters living abroad shall be regarded as being included in the federal electoral district. In this connection, the Russian citizens who are not limited to other election qualifications shall be entitled to participate in presidential elections and now can vote at any electoral precinct at their location. This means that if on the voting day our citizens are out of their registration place of residence, they might come to any electoral precinct in any settlement of Russia and use their constitutional right to participate in the elections of the Head of the State without early voting or using absentee certificates. With that said it is possible to believe that in the presidential elections the territorial serfdom is really eliminated completely.

The use of such a mechanism in the regional elections (after it is established by the regional laws) will also allow the people to vote at any electoral precinct, of course, subject to their presence in the territory of the electoral

district⁴. Thereby, and in the regional elections the conditions for “precinct emancipation” of voters within the electoral district at the place of residence are really created.

However, if citizens live factually outside the electoral district where they are registered at the place of residence, the legislative innovations for the implementation of their active electoral right shall not be applied. According to the above *general rule* they shall possess an active electoral right on the registration place of residence and have the opportunity to vote there when in that territory the regional and municipal elections are conducted.

In this connection let us ask a question whether these citizens have the opportunity to participate in the elections conducted in the territory where they in fact live. This question seems to be a serious matter because a significant number of people live factually not where they are registered at the place of residence. Therefore, they study and work, participate in public life and pay taxes in other federal subjects and municipalities which are often located at a considerable distance from the registration place of residence. Their number, according to the calculations by the Central Election Commission ranges from 5 to 15 million people⁵, and an active electoral right might be provided to them in the territory of their factual residence by laws governing concrete elections: the federal laws – for federal elections; the regional laws – for regional and municipal elections (let us call it a special norm). Consider how these provisions are applied in different types of elections.

Let us start with the federal elections of the President and deputies of the State Duma. In the presidential elections, as noted, the general norm is applied, and the special norm does not extend onto them. Elections of deputies of the State Duma are conducted according to a mixed electoral system (225 deputies are elected by a majority system with forming single-mandate districts and 225 members – by the proportional system with forming a federal electoral district). Citizens are included into the voter list automatically when their place of residence is within a particular electoral precinct or at their personal application subject to their registration at place of temporary stay in the territory of this precinct not less than three months before the voting day. Thus both general and special norms determining the territorial limits of an active electoral right are applied in these elections.

In this connection, all the citizens registered at the place of residence or place of temporary stay within the concrete electoral precinct have the opportunity to take part in the vote on the elections of deputies to the State Duma. However,

⁴ It is obvious that, for example, in Moscow, the inhabitants of other regions will not be able to participate in the elections of their regional Governor.

⁵ URL: <http://cikrf.ru/news/cec/2017/04/26/03.html>; <http://www.lpgzt.ru/article/62188.html> (accessed: 21.12.2017).

those citizens who have not passed any registration in the territory where they live factually are not entitled to vote there. And there are a lot of such people in Russia due to the significant internal migration of citizens and because many of them, for instance carrying out their labor activity outside their place of residence, do not pass the registration where they live factually for various reasons.

A peculiar and not simple situation has emerged in the regional and municipal elections, because when they are conducted, an active election right, as mentioned, might be provided (by regional laws) to citizens whose registration of the place of residence is located outside the electoral district. Such a model of legal regulation based on juridical permission does not constitute the duty of the regional legislator to do so. For this reason, an active electoral right in said elections might be given to these citizens depending on the will of the regional legislator. Thus, a solution to the issue of one of the most important constitutional rights, guaranteed by the Basic Law of the Country, is left to the discretion of federal subjects not all of which have used such powers. In some regions the laws stipulate the possibility of including in the voter lists some categories of citizens whose registration of the place of residence is located outside the electoral district, while in others – they are not admitted to.

So, in the Stavropol Territory a rigorous electoral qualification of residence has been established: only the voters who are registered at the place of residence in its territory might participate in regional elections, and all the others do not possess this opportunity.

In the Altai Territory while conducting regional and municipal elections an active election right was given to the citizens whose registration of the place of residence is located within the electoral district. However, apart from this, the fact of temporary stay of a citizen in the territory of this precinct might be considered as the basis for including citizens in the voter lists. In this connection in the regional elections (elections of the Legislative Assembly and the Governor of the Altai Territory) the students enrolled in full-time education and registered at the place of stay in the hostel or at the location of the educational institution are included in the voter lists.

Consider on this example the student participation in voting. In doing so it is necessary to highlight among all the students those who are registered at the place of residence in the city where the higher education institution is located and those who are registered at the place of residence in other localities. Such nonresident students, on the other hand, can be divided into three groups:

- registered at the place of temporary stay in hostels;
- registered at the place of temporary stay in rented apartments;
- not at all registered at the place of temporary stay in the city where the higher education institution is located.

With respect to nonresident students there occur at least two problematic issues. The first is that in the regional elections only those nonresident students who are registered by the place of temporary stay in hostels might vote, while other categories of nonresident students are not given this opportunity. The second issue is that non-resident students who are registered at the place of temporary stay in hostels might be included in the voter lists only in regional elections. In the municipal elections such possibility has not been provided for, and all non-resident students are not entitled to participate.

In Moscow in conducting regional and municipal elections an active election right has been also given to the citizens whose registration of the place of residence is within the electoral district. Students studying full-time might be included in the voter lists only upon their registration at the place of residence in the hostels (at the location of educational institutions), although the order of registration established in our country stipulates their registration in the hostels at the place of temporary stay.

There are a huge number of Russian citizens from all parts of our country who live factually in Moscow without registration at the place of residence in its territory and because of it they are not be entitled to participate in elections of the Mayor of Moscow, municipal deputies and deputies of the Moscow Duma.

These are migrant workers (from among Russian citizens) and nonresident students, as well as many other Russians. They include even those people who believe themselves Muscovites and who work and are constantly situated in Moscow, but are registered at the place of residence in the Moscow Region.

All of them take part in industrial, cultural and psychological relations, uniting the inhabitants of Moscow into a single socio-territorial community. However, despite all the involvement in this collective association, they are excluded from the formation of elected bodies of its power. Such a situation takes place not only in Moscow but also in other regions of our country. Of particular concern is the fact that thousands of nonresident students who acquiring an active election right upon attaining the age of majority far away from home, have no real opportunity to participate in municipal and regional elections. This “ousting” of the students from participation in managing the state affairs creates real conditions for the emergence of the electoral absenteeism, which has been so much discussed lately.

The list of such examples could go on. However, it is clear that the existing electoral qualification of residence leads to a situation when a significant number of citizens living not where they are registered at the place of residence have no opportunity to exercise their active election right in different types of elections conducted in the territory where they live factually. Moreover, in connection with the remoteness from the registration place of residence many of them are unlikely, at least for financial reasons, to decide to go there to vote in the regional

or municipal elections. As a result, such voters for reasons beyond their control have no real opportunity to participate in voting, although the State guarantees the equality of their rights regardless of their place of residence (part 2 article 19 of the Constitution).

With that said, we reckon it possible to believe that the sharp contradiction between the constitutional guarantees of the right of Russian citizens to elect their representatives to the public authorities and the impossibility of its implementation for many of them in connection with the existing electoral qualification of residence has arisen in our country. This contradiction constitutes the problem of the territorial serfdom of the voters, which has not been solved completely by new federal laws⁶.

Seeking solutions to the problem

Let us start with considering the constitutional model of democracy, revealing the origin and functioning of all the public authority in our country in its relationship with the Russian people. This constitutional model, as known, is based on the principle of “people’s power”, according to which the bearer of sovereignty and the only source of power in the Russian Federation is its multi-national people (hereinafter – the people, the Russian people). The people shall exercise their power directly, and also through the bodies of state power and local self-government. The supreme direct expression of the power of the people shall be the referendum and free elections (article 3 of the Constitution).

In the doctrinal interpretation of the constitutional model of democracy made in our research it is justified that some theoretical provisions need further scientific discussion in the framework of this article, which include the following⁷.

1. The source of public power is a subject of law possessing the legal possibilities to constitute as all the system of public power itself through adopting the constituent document (Constitution, Charter), and concrete bodies of public power through elections.

⁶ In the theory of social cognition the problem is understood as some contradiction requiring its solution; the problem is regarded as its special form. See: A.G. Zdravomyslov, *Methodology and procedure of sociological research*, Moscow 1969, p. 36; V.A. Yadov, *Strategy of sociological research*, Moscow 1998, pp. 71–74; *The hand book of sociologist*, Moscow 2015, pp. 112,113.

⁷ V.A. Cherepanov, *Source of state power of a subject of the Russian Federation: the problem and seeking of its solution*, «Comparative Constitutional Review» 2015, № 6 (109); V.A. Cherepanov, *On people power in Russia: continuation of discussion*, «State and Law» 2014, № 1; V.A. Cherepanov, *The reform of the state power in the subjects of the Russian Federation*, «Law and Legislation» 2005, № 4.

2. The source of power of the Russian State as a whole (source of federal power) are all the Russian people, the source of power of a subject of the Russian Federation (source of regional power) – the people of the subject of the Russian Federation as a part of the Russian people and the source of municipal power – the population of the municipality just as a part of the Russian people.
3. The constitutive power of the people consists in people making direct decisions on the most important issues of the state life. These decisions are binding, they do not require any additional approval or further legitimization, while the basic forms of the constitutive power are referendum and free elections.
4. The people exercising constitutive power act as a single holistic social organism, some kind of a juridical person (juridical creature) that enters into general legal relations on constituting all the system of public power by referendum, and concrete bodies of public power through elections. Based on these general legal relations there appear concrete legal relations concerning participation in the referendum and elections, the subjects of which are concrete citizens, forming in their totality all the Russian people or part of them, living in a certain area.

When considering selected provisions in their systematic interconnection, it is possible to believe that the citizens have the right to elect their representatives in bodies of public power solely because of their belonging to the Russian people, the only who possess the constitutive power. Here, the idea might be helpful of the people as a public territorial collective (association) being a source of power of the corresponding publicly-legal formation which was developed by V.E. Chirkin⁸.

Then the citizens have the right to elect in connection with their involvement in the concrete public territorial collective. Thus, an active electoral right of the individual citizen is derived from the constitutive power of the people as a whole, and a citizen has an active electoral right, not as a separate single physical entity, but only as a member of the territorial public collective, which, being the source of power of the relevant publicly-legal formation, constitutes its own elected bodies of power.

From this it follows the important methodological conclusion that an active electoral right consists in the juridical possibility of members of the territorial public collective to constitute elected bodies of his power.

⁸ V.E. Chirkin, *Publicly-legal formation*, Moscow 2013, pp. 13–50; V.E. Chirkin, *Territorial organization of public power*, Moscow 2017, pp. 42–59.

Then in any elections an active electoral right should be given to all the members of the relevant territorial public collective who are not limited by other electoral qualifications. Moreover, the State, guaranteeing its citizens the exercise of this constitutional law, is obliged to create conditions for its implementation regardless of where they are on the voting day and in what territory their registration place of residence or temporary stay was.

If our arguments are valid (and against them there are no visible principal objections), then to solve the problem of the territorial serfdom it is necessary:

- at first to determine a set of clearly and unambiguously fixed indicators under which we can reasonably claim that the citizens belong to the concrete public territorial collective;
- subsequently – to give the active electoral right to those who comply with such benchmark indicators.

Let us try to gain an understanding of these not simple matters.

In sociological science, as known, the people is regarded as a socio-territorial community united by sustainable economic, political and psychological connections and relations⁹. Therefore, participation in such social relations that bind people together in a holistic social organism might testify to their belonging to this community. At the same time, the empirical indicators of the involvement in the abovementioned collective association could not be the same in different publicly-legal formations.

So, when considering the whole Russian country as a publicly-legal formation, and all the Russian people as a public collective, which is the only source of power, we ought to consider the participation of citizenship of the Russian Federation in legal relations, i.e. the juristic fact of the Russian citizenship, as a benchmark indicator of the involvement of anyone person in such public collective.

Then in all federal elections an active electoral right should be given to all the Russian citizens who form in their entirety the public collective called the Russian people. And it must be done regardless of their presence in any part of the Earth where they are on the voting day and their registration at the place of residence or temporary stay. In the presidential elections, as noted, with the adopted new laws the territorial serfdom is really eliminated completely. To overcome it in the elections of deputies of the State Duma we consider it is necessary, as was done with respect to the presidential elections, to provide an opportunity to all the Russian citizens to decide themselves and at their own discretion where they might exercise their active electoral right, and, in this respect, to legislate the order

⁹ G.V.Osipov, L.N. Moskvichev (eds.), *Sociology. The Foundations of the General Theory: the Textbook for high schools*, Moscow 2002, pp. 298–305.

according to which Russian citizens are included in the voter list automatically when their registration place of residence is within a particular electoral precinct or at their personal application at any electoral precinct at their location on the voting day.

In the regional and municipal elections the situation is quite different because the fact itself of finding everyone on the voting day in the territory of the particular federal subject or municipality is not yet the evidence of their belonging to the appropriate regional or municipal public collective. As criteria of such membership (in addition to the juristic facts of the registration of residence or temporary stay) it is possible to consider their involvement in industrial relations in the territory of the appropriate publicly-legal formation because such relations, as a basic kind of strategic relationships, bring people together in a coherent territorial community. Among them, first and foremost, it is necessary to allocate labor relations and relations in the sphere of education (educational relations).

In this connection, we believe it is necessary to set at the regional and municipal elections such an legal order according to which Russian citizens are included in the voter list automatically when finding their registration place of residence within a particular electoral precinct or at their personal application at the electoral precinct where are their place of temporary stay, working or location of the educational institution where the voters receive full-time education. In our opinion, such a legal order should be established not by regional but only by federal law.

Conclusion

In summary, we note that a conceptual approach proposed in this article allows to look at the formulated problem somewhat differently, since according to the author's concept, the citizens have an active electoral right only as members of the territorial public collective, which, being the source of power of the publicly-legal formation, constitute their own elected bodies. Then enrolment in the number of voters is determined by the involvement in public relations on the territory of the elections and the territorial localization of a citizen is only one of the possible indicators of such involvement, and in some cases not the most important of them.

The legislative embodiment of these proposals, in our opinion, will contribute to creating a legal foundation for the free implementation of the citizens' active electoral right regardless of their territorial localization and thereby it will allow to solve the problem of territorial serfdom of the voters completely.

RÉSUMÉ

In May 2017 two new federal laws, which broadened territorial opportunities of realization of an active electoral right, were adopted in the Russian Federation. However, these laws did not solve completely the problem of the territorial serfdom of the voters, because a significant number of Russians who are not living where they are registered do not possess an active electoral right in the territory of their factual living. Many of them do not also have any opportunity to participate in regional and municipal elections in the registration place of residence because of its remoteness from the place of their factual living. As a result, a real contradiction between the constitutional guarantees of the right of Russian citizens to elect their representatives to the public authorities and the impossibility of its implementation for many of them in connection with the existing electoral qualification of residence has arisen. This problem is stated and investigated, and some possible ways of its solution are considered in the article.

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