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REMOTE ELECTRONIC VOTING: SEARCH FOR LEGISLATIVE FORMALIZATION

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The subject. Normative acts which are the legal basis for remote e-voting conducted as an experiment on a single voting day on September 8, 2019 in Russia. New electoral technologies, including positive and negative forecasts of the success and necessity of this vote, are also in the focus of research.

The purpose of the study is to consider the state of the legal framework for conducting the remote electronic voting experiment in the Russian Federation and its further development. We are aimed also to find out what laws have become the basis for remote electronic voting, what is the degree of by-laws regulation.

The methodology. The main research method is comparative legal method, which allows revealing the concept of the remote electronic voting experiment and its procedural and technological features, as well as such general scientific research methods as analysis, synthesis, induction and deduction.

The main results of the study and their scope. The concept of the experiment, its procedural and technological features are revealed. Skeptics say about the potential danger of this system in the scope of data storage and transmission. One can object to this by referring to the widespread use of Internet banking for transactions, as well as to the demand for the Moscow portal of public services among millions of people. With a high degree of probability it can be concluded that the remote method of voting will be in demand mainly among voters who are regular users of the Internet. Empowerment monitor the process of electronic voting will increase people's trust in this form of participation in the elections will have a fruitful impact on strengthening the institution of social control, which in the preparation for the experiment on remote electronic voting organized wide expert and public discussion, with participation of representatives of public and human rights organizations are not subjects of the electoral process. Skeptics say about the potential danger of this system in terms of data storage and transmission. Meanwhile, Internet resources are subject to similar threats used by millions of people for transactions (Internet banking, Internet portal of public services). With a high degree of probability it can be concluded that the remote method of voting will be in demand mainly among voters who are regular users of the Internet. The expansion of opportunities for monitoring the process of electronic voting will help to increase people's confidence in this form of participation in elections, will have a fruitful impact on the qualitative strengthening of the institution of public control. The necessary provision of success is proper preparation for the experiment on remote electronic voting, including large-format expert and public discussion, in which representatives of public and human rights organizations that are not subjects of the electoral process are involved. The world experience of a similar procedure shows contradictory results, but in the future it is hardly possible to abandon the technologies that contribute to the democratization of the electoral process. The electronic voting procedure in Russia, regulated by federal laws and by-laws regulation after the elections of 8 September 2019, will be improved taking into account the experience gained.

Conclusions. The experiment of remote electronic voting in Russia will contribute to the development of the electoral process.

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1. Introduction

The impact of the scientific and technological revolution on public life, including such a sphere as the electoral process, has put before modern legal science the problem of radical transformation of scientific rationality, changing the scientific picture of the world. Gradual implementation in the practical activities of election commissions of new software and hardware-complexes of processing of ballots (technical means of counting votes), complexes of electronic voting, QR-codes, video surveillance, voting systems at the location ("mobile voter"), etc. - requires not only a qualitatively new scientific understanding, but also necessitates empirical research, practical verification of the latest achievements of the theory of scientific legal thought.

Of great scientific interest for the implementation in the electoral process modern information technologies became a basis for several theoretical and applied studies [1; 2], which is very interesting from scientific and practical point of view, proposals such as the creation of new technical devices for voting [3].

One of the sites for scientific experiments of this kind was Moscow. Thus, at the mayoral elections in Moscow in 2018, for the first time in the country, a large-scale experiment was conducted to create extraterritorial polling stations [4], which became possible thanks to the adoption of the relevant law.

The activity nature of a scientific experiment as an empirical study is manifested in a real action artificially created by man [5]. Following the General constitutional provisions on legality, the rule of law, any experiment in the field of public law should be legalized. In other words, any scientific experiment in the field of the electoral process should be preceded by the formation of an appropriate regulatory framework.

Two experiments related to the introduction of modern information technologies into the electoral process will be conducted at the elections on September 8, 2019: remote electronic voting in the elections of deputies of the Moscow city Duma of the seventh convocation and the creation of digital polling stations. The legislative basis of this experiment is the Federal law of May 29, 2019. No. 102-FZ "on conducting an experiment on voting at digital polling stations established in the Federal city of Moscow, at by-elections of deputies of the State Duma of the Federal Assembly of the Russian Federation of the seventh convocation and elections of senior officials of the subjects of the Russian Federation (heads of the Supreme Executive bodies of state power of the subjects of the Russian Federation) held on September 8, 2019" (hereinafter - Federal law No. 102-FZ); Federal law of May 29, 2019 No. 103-FZ "on conducting an experiment on the organization and implementation of remote electronic voting in the elections of deputies of the Moscow city Duma of the seventh convocation" (hereinafter - Federal law No. 103-FZ). Along with Federal law No. 103-FZ, the legal basis for this experiment is the Law of Moscow of May 22, 2019 "on conducting an experiment on the organization and implementation of remote electronic voting in the elections of deputies of the Moscow city Duma of the seventh convocation", adopted on the basis of the Federal law.

Let us consider the legal basis and content of the so-called "pilot vote".

2. The concept of remote electronic voting

First, let's define what is meant by remote electronic voting. It is in this combination, and there should not be a substitution of concepts, although it is quite easy to get confused, since there are both electronic and remote forms of voting.

The concept of "electronic voting" is enshrined in the Federal law of June 12, 2002 No. 67-FZ (as amended on May 29, 2019) "on basic guarantees of electoral rights and the right to participate in the referendum of citizens of the Russian Federation" as "voting without the use of a ballot made on paper, using a technical means". This formulation is set out in accordance with the amendments made by the Federal law of may 29, 2019 No. 104-FZ, and for the first time this concept was introduced by the Federal law of July 21, 2005. No. 93-FZ where instead of today's streamlined "technical means" it appeared: "with use of a complex of means of automation of state automatic

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station "Elections". In Russia, voting by means of an electronic voting system is well known.

There is no legislative definition of the term "remote voting", but a remote form of voter participation in voting is provided. This is an opportunity to vote by mail. The form of voting by mail as a kind of remote participation in elections in Russia has not taken root, so we can consider the Internet and mobile communication as the most optimal means for remote voting.

The novelty of Federal law No. 103-FZ, combining both forms of voting, fixed the term "remote electronic voting", which means voting without the use of a ballot made on paper, with the use of special software.

As we can see, the conceptual apparatus is not yet fully formed. In this regard, we can highlight some of the proposals formulated by scientists.

Thus, A. V. Pavlushin and A. E. Postnikov proposed to consider remote electronic voting of voters as a kind of electronic voting [6, p. 8].

N. N. Teleshina believes that the following types of electronic voting are distinguished in the literature:

- means of electronic counting of votes (complexes of processing of ballots);
- electronic voting facilities;
- voting with the help of terminals installed at polling stations (complex for electronic voting);
- remote voting: via the Internet (using disks and social cards) and mobile communication.

It is also proposed to generalize all these types under the name "means of electronic voting", which includes three main elements: the voter's computer, the communication channel and the official website for voting [7, p. 439].

3. Activities carried out for the preparation of remote electronic voting. Voting procedure

The content side of the experiment is as follows.

1) to organize remote electronic voting, it was necessary to determine the electoral districts for the experiment. Three such constituencies out of 45 were chosen: single-member constituencies for the election of deputies of the Moscow city Duma No. 1, No. 10, No. 30 . Electoral districts for the experiment were not chosen arbitrarily – the main criterion for the choice was the opinion of voters. So, at first the decision of local councils of deputies was required, then voting on the portal of city referendums "the active citizen" was organized. The territories that received the most votes were included in the experiment .

2) Preserving the centralized hierarchical system of election commissions established by the Federal law "on basic guarantees of electoral rights and the right to participate in the referendum of citizens of the Russian Federation", the Moscow city election Commission determined the numbers of special precinct election commissions for remote electronic voting, as well as established higher territorial election commissions for these polling stations . Then the higher territorial commissions will form the corresponding polling stations and will form the composition of precinct election commissions for remote electronic voting in the General order.

3) submission of an application by a voter for participation in remote electronic voting. The application is submitted electronically through the Moscow portal of state and municipal services (MPSU) by registered voters with a confirmed account. Terms of application submission are equated to the terms of application submission already tested in practice within the framework of the "Mobile voter" system-not earlier than 45 and not later than 3 days before the voting day (this is necessary for work on the elimination of double registration of voters); the possibility of withdrawal of the application for remote electronic voting by the voter is also provided within the specified terms.

Submission of the application should not create difficulties for citizens, as in the presidential elections of 2018, a similar procedure was provided by the mechanism "Mobile voter" and the majority already have experience.

The remote electronic voting itself will be held on election day on September 8, 2019 during the voting time. The hardware and software complex of remote electronic voting must meet the most stringent security requirements and provide the following: identification and confirmation of the identity of the voter, the secrecy of voting, the impossibility of making changes to the incoming data (blockchain). The relevant requirements are

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formulated in the decision of the Moscow city election Commission of June 17, 2019 No. 96/1 .

At the end of the voting time, a Protocol on the results of the voting is formed on the basis of the data received by the precinct election commissions on remote electronic voting. It is printed out and signed by members of precinct election commissions on remote electronic voting, and then transferred to the higher territorial Commission with observance of standard procedure.

An important feature of the concept of the experiment is that the opportunity to participate in remote electronic voting is provided to the voter as an alternative to the traditional method of voting, which is also used.

Given that at the same time will be voting on paper ballots, special attention was paid to eliminating the possibility of double voting, which directly follows from the constitutional principle of equality (Article 19 of the Constitution) and the offset position of clause 1 of article 3 of the Federal law "On basic guarantees of electoral rights and the right to participate in referendum of citizens of the Russian Federation" on participation in elections on an equal basis. For this purpose, a mechanism is provided for verifying the information on the inclusion of a voter in the list for remote voting and excluding him from the list of voters of the polling station at the place of residence. For this purpose, the deadline for submitting an application is limited-not earlier than 45 and not later than 3 days before the voting day.

4. Digital polling station

The procedural aspects of regulating a digital polling station, also used as an experiment on a single polling day on September 8, 2019, differ. First of all, voters who have registered at their place of residence in another region but are in Moscow on election day can take part in voting at a digital polling station. Given that a single day of voting in 16 elections of heads of subjects of the Russian Federation, in 13 constituent entities of the Russian Federation – election of deputies of the regional Parliament, in addition, mayoral elections will be held in Anadyr, Novosibirsk and Ulan-Ude who want to vote may not be enough. It is fair to provide the voter with the opportunity to vote in the elections of his region, if he is not at this time at the place of residence. The difference from remote electronic voting is that you can vote only by visiting a digital polling station.

According to the Federal law No. 102-FZ under the digital polling station refers to a "polling station determined by the CEC to ensure the voting of citizens of the Russian Federation in day of voting outside the constituency in which they have active suffrage and equipped for these purposes, technical means in accordance with the list of such funds approved by the CEC". The list of digital polling stations is determined by the decision of the CEC. In order to participate in the voting, the voter shall make a corresponding application on the Unified Federal portal of state and municipal services (functions) not earlier than 45 and not later than 3 days before the voting day. Voting at a digital polling station, according to paragraph 3 of article 5 of Federal law No. 102-FZ, is also possible using a paper ballot.

By voting no significant changes, with some exceptions, namely the formation of the precinct election Commission and the possibility of increasing its size by decision of the territorial election Commission; ensuring transparency in the digital polling station, appointment of members of the precinct election Commission with deliberative vote.

Federal law No. 102-FZ provides that certain procedures - the procedure for transmitting information to the relevant election commissions and the procedure for processing voting data, etc. - will be regulated by the by-laws of the CEC of the Russian Federation.

5. Predictions in the application of remote electronic voting

Of course, the experiment on remote electronic voting and voting at digital polling stations will allow to assess the prospect of introducing new technologies into the electoral process, to create additional opportunities for the implementation of the constitutional right of voters to participate in elections, to ensure the further development of the "Mobile voter" system; to identify problematic issues

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in the organization and conduct of voting, to increase the interest of voters in such an election format.

At the same time, like any scientific experiment, the experiment on remote electronic voting is not devoid of a number of controversial points. Thus, skeptics claim about the potential danger of this system in terms of data storage and transmission. One can object to this by referring to the widespread use of Internet banking for transactions, as well as to the demand for ipsu among millions of people. In the case of the portal of Moscow state pedagogical University for receiving state services if the user does so solely for personal purposes and only in relation to himself. In the experiment under consideration, the MPSU will be used as a tool for making a legally significant decision that has a public-legal significance and directly affects the results of voting and election results. Therefore, the requirements for the conditions of the experiment are special.

With a high degree of probability, we can conclude that the remote method of voting will be in demand mainly among voters who are regular users of the Internet. Given the traditional, rather conservative way of life of Russian society, a lot of work will need to be done, including by election commissions and public authorities, to explain to the participants of the electoral process the order of the new system, its advantages and security, to inform them about the electoral legislation and the election campaign . In this context, the empowerment of monitoring the process of electronic voting will increase people's trust in this form of participation in the elections will have a fruitful impact on strengthening the institution of social control, which in the preparation for the experiment on remote electronic voting organized wide expert and public discussion, with participation of representatives of public and human rights organizations are not subjects of the electoral process.

World analogues of remote electronic voting operate in different countries, but the result of their implementation is different.

Estonia is an "electronic Republic", the first European country to adopt the procedure of remote electronic voting, having tested it in 2005 in local elections, and then in 2007 in parliamentary elections. Her experience is considered successful, because, largely thanks to the convenient system, with each election the percentage of citizens who voted increases. Every voter, even those who are abroad, confirms his identity with an ID-card (acts in the country as an identity card) and votes at the "electronic polling station", which opens 4-5 days before the end of the election. A citizen has the right to change his mind and vote before the final day [8]. In Estonia, at the beginning of the XXI century, the regulatory framework was approved, consisting of four legal acts ("on elections to local authorities", "on elections to the Riigikogu", "on elections to the European Parliament", "on referendum"), and the corresponding material and technical infrastructure was created [9, p. 4].

In the UK, voting via the Internet and SMS did not bring the expected result. There were various problems, including the introduction of the electronic register of voters, voter identification [10]. The new form of voting was to relieve citizens of the need to stand in queues at polling stations and raise the percentage of voters. Conducted in 2002 elections using the Internet only slightly increased the percentage of voters, despite the fact that one could vote anywhere: in a supermarket, on the street, a bar-it was enough to call and follow the voice instructions. But the experiment, despite all its advantages, did not give the desired result, in particular because of the security problems of this kind of voting.

The problem of ensuring the security of voting through the Internet, mobile phones and other devices is constantly in the focus of attention of both scientists and technologists in this field: new and improved existing voting programs are being developed. According to scientists, the task is to provide identification, anonymity, at the same time to exclude the possibility of fraudulent manipulation by the administration of the server, the voter and any third party [11, p. 171].

Nevertheless, digital technologies are developing successfully, and it is unwise not to use these achievements for the benefit of democracy. A citizen, being anywhere in the world, having access to the Internet, can easily exercise their right to vote. In a broader sense, electronic voting will also

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eliminate the paper version of the ballot, eliminate the human factor of negative influence on the results of voting, as well as accidental or intentional errors. But for this, of course, it is necessary to improve the technology, which takes time. But the main thing is that today Russia has chosen this way of developing electoral technologies and is aimed at democratizing electoral procedures.

At the time, the former Chairman of the CEC Vladimir Churov said: "...the use of electronic means in elections – the path from which it is impossible to roll", which confirms the continuity of the work of CEC and its current Chairman Ella Pamfilova [12].

According to E. Pamfilova, by 2024 Russia will have a technology of voting in elections, "which has no analogues in the world". The advantage of this system will be "transparency, convenience for voters, reliability of fixing the results of the people's will". "The blockchain is one of the aspects of this system."

The head of "Rostelecom" M. Oseevsky is confident in the organization of the technical possibility of remote voting of voters via the Internet in our country .

According to A. Yu. Tsaplin, as a real prospect of remote electronic voting can be considered its introduction in remote and sparsely populated areas [13, p. 349].

A certain share of skepticism in the success of the introduction of electronic technologies in the Russian elections is added by the fact that the economic regions of Russia are developing unevenly. As a consequence, not all citizens have access to Internet resources, and not all Russians are provided with energy resources equally. Interruptions in power supply for some regions it is almost a standard situation. Therefore, it will not be possible to completely abandon the paper Bulletin, no matter how technical services try to develop an electronic system. Today, in foreign countries that use remote electronic voting in elections, the traditional method of voting by paper ballot is not excluded, that is, it is only an alternative method of voting for a number of voters, more convenient for them.

6. Legislative registration of remote electronic voting in the present and future

The basis of legal regulation of remote electronic voting is laid down in two Federal laws: Federal law No. 102-FZ and Federal law No. 103-FZ, in fact, the laws of "one-time" action. At the level of subjects of the Russian Federation, only one region has the appropriate legislative regulation – the Federal city of Moscow, on the territory of which this experiment is carried out. Also, the legal regulation of remote electronic voting is carried out by bylaws, namely the decisions of the CEC of the Russian Federation and the Moscow city election Commission.

It should be noted that the legal regulation of electronic voting began to take shape during the first experiments in 2006. Then the first instructions of the CEC on electronic voting were developed and adopted [14, p. 64].

It is quite obvious that the new procedures need to be "run-in", and then, taking into account the experience gained, it is reasonable to carry out their detail at the legislative level. As it seems, a separate Federal law on remote electronic voting can be abandoned in favor of novelties supplementing the Federal law "on basic guarantees of electoral rights and the right to participate in a referendum of citizens of the Russian Federation", since this law regulates all elections and referendums held in the Russian Federation.

According to A. V. Pavlushin and A. E. Postnikov, " ... this Law should be amended with regard to specific methods of remote electronic voting. At the same time, it is advisable to fix the basic guarantees and provisions on remote electronic voting" [6, p.8]. In particular, the scientists note, the development of these provisions should be carried out in other legislative acts (meaning Federal laws on the election of the President of the Russian Federation and the election of deputies of the Russian Parliament).

If the Electoral code of the Russian Federation is adopted, a place for remote electronic voting must be allocated in its structure [15]. The laws of the constituent entities of the Russian Federation on elections will be supplemented by relevant norms as they are included in the above-mentioned Federal law.

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It is also important to note that the conceptual framework, methodology of electronic voting and basic principles have been developed at the international level. Recommendation R (2004) 11 of the Committee of Ministers of the Council of Europe to member States on legal, organizational and technical standards for electronic voting was the first electronic voting standard for member States. Recommendation R (2004) 11 has now been improved, and the document itself is no longer valid due to the adoption of new Recommendations On electronic voting rules by the Committee of Ministers of the Council of Europe on 14 June 2017. An important component of legal standards is "procedural protection mechanisms", which include transparency, control and accountability, sustainability and security [16, pp. 205-206]. The absolute advantage of the new Recommendations can be considered the developed conceptual apparatus of the electronic voting system, which can be borrowed by States in the development and improvement of legal acts regulating the procedure of electronic voting.

7. Conclusions

The electoral legislation of the Russian Federation in terms of remote electronic voting is just beginning to take shape. Experimental voting is conducted on the basis of new Federal laws adopted specifically for remote electronic voting, for the most part, the procedure and certain technological aspects of voting are regulated by bylaws. The developed practice of legal regulation will be the basis for further development of electoral legislation at the Federal and regional levels. At the same time, it is important to take into account foreign practices of electronic voting and to focus on international standards of electronic voting developed for the Member States of the Council of Europe.

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