

## CLASSIFICATION OF THE BASIC KINDS OF LEGAL RESPONSIBILITY IN ELECTORAL PROCESS

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The subject. The legal institution of legal responsibility in electoral process in general as well as its basic subtypes: constitutional, criminal and administrative responsibility.

The purpose of the article is to identify the main kinds of legal responsibility in the electoral process.

Methodology. The author uses such general theoretical and specific scientific methods as comparative analysis, generalization, interpretation and classification as well as systemic analysis and formal logical methods.

The main results of the research. The author takes into account the opinions of academic lawyers and analyzes the legal institution of legal responsibility in electoral process in general. The author considers and examines the classification of constitutional, criminal and administrative responsibility in the electoral process, reveals and analyzes the essence of such fundamental concepts as legal responsibility, kinds of legal responsibility, electoral rights of citizens. The article describes the special and distinguishing characteristics of different kinds of legal responsibility. The author also gives reasons for the necessity of a special set of state coercive measures in order to make the electoral process transparent. As far as the Russian Federation law “On elections and referenda” does not contain any specific measures of legal responsibility and has references to other laws, the author sees it important to fill this gap for future codification of electoral legislation. Constitutional legal responsibility is peculiar in electoral process. It means that responsibility is realized in procedural form, which is enshrined not only in Federal laws, but in subordinate laws, such as instructions of the Central Election Commission of the Russian Federation.

Conclusions. Legal liability in the electoral process has the following characteristics: it is expressed in the obligation to undergo measures of state enforcement; its basis is the violation of material and procedural norms of the electoral law; it is associated with various kinds of unavoidable negative consequences; the guilty person will be subjected to restriction of personal and other property rights; the offender is charged with the obligation to restore the violated right or compensation for damage.

**1. Essence and interpretation of concepts: legal responsibility, types of legal responsibility, citizens' suffrage.**

Society's demand for legal justice, the purity and transparency of the electoral process is becoming increasingly important. One of the important results of observing the rule of law in the organization and conduct of elections is the legitimacy of the formation of state and local government bodies.

Under these conditions, we believe it is important to try to analyze and systematize scientific knowledge about the main types of legal responsibility in the electoral process.

There is no legal definition of legal liability in Russian law. The theory of law also does not contain a single definition due to the multiplicity of scientific approaches to this topic.

Their works to this subject was devoted to such prominent scientists as S. S. Alekseev, I. S. Samoschenko, Avakyan S. A., Bratus S. N., Ioffe O. S., Denisov Yu. A. [1-6]. Among modern authors, their works were dedicated to the problems of responsibility by YV Yachmenev, V.D Perevalov, A.V Vengerov, Chernyavsky, A. G., Rassolov, M. M., Serkov, P. P. [7-13].

Without entering into a polemic, let us compare two definitions proposed by Russian scientists of the past and present. According to S. S. Alekseev, legal liability is "the obligation of a person to undergo measures of state enforcement for the committed offense in the form of deprivation of personal, organizational or property order" [1, p. 182].

Modern authors offer an interpretation that focuses on the onset of adverse consequences for the violator. Thus, P. p. Serkov formulated the following definition: "legal responsibility is a special legal reaction of society to protect public interests, formed by a set of material and procedural rules, in order to

impose on the offender the obligation to undergo adverse consequences for him" [13, p. 49].

For our part, we propose to Supplement this definition with the following features: state enforcement measures are implemented against the offender in administrative and judicial proceedings, and the ultimate goal of enforcement measures is to prevent the Commission of new offenses and restore violated rights.

From the proposed definitions, the following signs of legal responsibility are seen: responsibility is expressed in the obligation to undergo measures of state enforcement; the basis of responsibility is the violation of material and procedural norms; responsibility is always associated with various kinds of unavoidable negative consequences; the guilty person will be subjected to restriction of personal and other property rights; the offender is charged with the obligation to restore the violated right or compensation for damage.

Before classifying the types of legal liability in the electoral process, it is necessary to determine the object of regulated public relations-the electoral right of a Russian citizen.

The essence of the concept of electoral law as a legal institution in General and two forms of its implementation as a subjective right (active and passive) is considered in detail by well-known experts in this field Kim A. I., Knyazev S. D., Lebedev V. A., Zinoviev A.V., Veshnyakov A. A. [14, 15, 16, 17, 18].

Taking into account the opinion of these scientists, we can determine that the electoral law as a legal institution should be considered in its two meanings: objective and subjective [19, p. 22].

"In an objective sense, electoral law refers to the system of legal norms regulating public relations related to the election of state and local self-government bodies. The objective

of the electoral law regulates the electoral system as a whole. In a subjective sense, the right to vote is an opportunity guaranteed to a citizen by the state to participate in elections of state bodies and local self-government bodies", i.e. the right to elect and be elected (active and passive right) [14, p.129].

The current electoral legislation, or more precisely, article 2 of the Federal law of 12.06.2002 N 67-FZ "on basic guarantees of electoral rights and the right to participate in a referendum of citizens of the Russian Federation" (hereinafter – the Federal law) defines these two forms of realization of the right: active electoral law - the right of citizens of the Russian Federation to elect to state authorities and local self - government bodies; passive electoral law-the right of citizens of the Russian Federation to be elected to state authorities and local self-government bodies.

The Russian electoral legislation, which enshrines the electoral rights of citizens and regulates the electoral process, consists of the following main normative legal acts:

- Constitution of The Russian Federation;
- Federal constitutional law of 28.06.2004 N 5-FKZ "On the referendum of the Russian Federation»;
- Federal law of 12.06.2002 N 67-FZ "On basic guarantees of electoral rights and the right to participate in a referendum of citizens of the Russian Federation»;
- Federal law of 10.01.2003 N 19-FZ "On elections of the President of the Russian Federation»;
- Federal law of 22.02.2014 N 20-FZ "On elections of deputies of the State Duma of the Federal Assembly of the Russian Federation";
- Federal law of 26.11.1996 N 138-FZ "On ensuring the constitutional rights of citizens of the Russian Federation to elect and be elected to local self-government bodies»;

- Federal law of 06.10.1999 N 184-FZ "On General principles of organization of legislative (representative) and Executive bodies of state power of the subjects of the Russian Federation»;

- Federal law of 06.10.2003 N 131-FZ "On General principles of local self-government organization in the Russian Federation".

Some researchers suggest dividing legal responsibility in the field of the electoral process into two separate types: 1) responsibility for violating the electoral rights of citizens;

2) responsibility for violating the procedure for organizing and conducting elections [20, p.35]. We should agree with this point of view, since the subject matter of these types of liability also differs.

Legal responsibility takes a special place in the electoral process. On the one hand, it guarantees the implementation of legislative requirements by all participants in the electoral process, on the other hand, it ensures the application of state enforcement measures to persons who have committed electoral offenses [21, p.57].

In our opinion, given the importance of the sphere of public relations regulated by the electoral law, we should adhere to the definition of legal responsibility proposed by a number of authors [22, p. 517, 23, p. 307-309, 24, p. 29-31]. Thus, legal liability in the electoral process should be understood as the use of state enforcement measures by authorized state bodies (in judicial or administrative proceedings) that impose restrictions on the offender of a personal or property nature, determined within the framework of a specific type of legal liability and implemented in accordance with the law. We believe that this definition is complete and covers all the signs of responsibility in this area.

The norms of the current legislation of the Russian Federation on elections and

referendums do not contain specific measures of legal responsibility and are referential, for example, article 79 of Federal law No. 67-FZ and article 7 of Federal law No. 138-FZ of 26.11.1996. It is important to eliminate this gap in the future codification of electoral legislation.

In the theory of law, as a rule, when studying responsibility as a legal institution in a particular area, it is generally accepted to distinguish constitutional-legal, criminal, administrative, civil-legal, disciplinary and other types of responsibility.

We will describe three types of legal responsibility in the studied area: constitutional, criminal and administrative.

Each of these types of liability differs from each other in the grounds, sanctions, composition, and procedural form of implementation.

## **2. Constitutional responsibility.**

According to a number of authors, responsibility in the electoral law is the constitutional responsibility of the subjects of the electoral process [25, p. 203]. Others consider liability in electoral law as an independent type of legal liability for violation of electoral legislation [26, p. 24]. The point of view that responsibility in electoral law is a type of constitutional and legal responsibility, with its specific types of legal sanctions, composition and special procedural form of implementation seems logical and justified.

Constitutional and legal (or, in other words, provided for by the electoral legislation) responsibility is applied by authorized state bodies to subjects guilty of committing violations of the norms of the electoral legislation, sanctions provided for by the legislation.

These sanctions are specific in nature and are implemented by applying appropriate measures to individual subjects of

constitutional and legal responsibility. Thus, the subjects of responsibility are: a candidate, an electoral Association, an initiative group for holding a referendum, another group of referendum participants, a member of an election Commission, a referendum Commission, an election Commission itself, an observer, or another person participating in the election process. In turn, the subjects of application of these measures of constitutional and legal responsibility are: precinct election commissions, higher election commissions, courts, and internal Affairs bodies.

The Federal law establishes the following measures of constitutional and legal responsibility (sanctions), and we will list some of them:

- 1) warning a candidate, an electoral Association, an initiative group for holding a referendum, or another group of referendum participants about the inadmissibility of violating the electoral law;
- 2) refusal to register a candidate, a list of candidates, or a referendum initiative group;
- 3) cancellation of the decision to register a candidate, list of candidates;
- 4) cancellation of registration of an initiative group for holding a referendum or another group of referendum participants;
- 5) exclusion of a candidate from the certified list of candidates;
- 6) cancellation of the Commission's decision on the results of voting, on the results of elections, referendums, and recognition of the results of voting, election results, and referendums as invalid.
- 7) cancellation of the decision to allow a political party or electoral Association to distribute Deputy mandates;
- 8) suspension or early termination of the powers of a member of an election Commission or referendum Commission.
- 9) removal of a member of the precinct Commission from participation in the work of

the Commission, removal of an observer or other person from the voting premises;

As we can see, the main legal consequence of these measures is the restriction of participants in the electoral process in certain rights, while the offender does not have the "serious" negative consequences characteristic of criminal or administrative responsibility.

We also note another feature of constitutional and legal responsibility. It consists in the fact that responsibility for violations of electoral legislation is implemented in a procedural form, which is fixed not only by the norms of Federal laws, but also by the norms of subordinate acts, such as instructions of the Central election Commission of the Russian Federation.

In support of the scientific approach that responsibility for violation of electoral rights is a type of constitutional and legal responsibility, we will refer to the opinion of some authors. "The application of sanctions to offenders is also aimed at ensuring constitutional norms that the source of power in the country is the multi-ethnic people of Russia, who participate in the management of state Affairs both directly and through their representatives, that referendums and free elections are the highest forms of democracy (article 3 of the Constitution of the Russian Federation)" [27, p. 10].

### **3. Criminal responsibility.**

The basis for criminal liability is the Commission of socially dangerous violations of election legislation that cause significant harm to public relations protected by law in the sphere of citizens' exercise of electoral rights.

Criminal liability in this area is provided for by five articles of the Criminal code of the Russian Federation (141, 141.1, 142, 142.1, 142.2). The main types of criminal acts are:

- obstructing the exercise of electoral rights or the work of election commissions, including unlawful interference in the operation of the state automated system of the Russian Federation "Elections";

- violation of the procedure for financing the election campaign of a candidate, an electoral Association, the activities of a referendum initiative group, or another group of referendum participants;

- falsification of election documents, referendum documents;

- falsification of election results;

- illegal issuance and receipt of the ballot, ballot for voting in the referendum.

The innovation code was "split" by the legislator of the provisions on falsification of electoral documents (article 142 of the criminal code) and falsification of results of voting (article 142.1 of the criminal code).

The responsibility, established by Article 141 of the Criminal Code aimed at protecting the constitutional rights under Article 32 of the Constitution, which provides for the right of citizens to participate in managing state Affairs both directly and through their representatives; to vote and be elected to bodies of state power and bodies of local self-government and to participate in the referendum.

Any violation of the electoral rights of citizens in the presence of additional elements of the objective side of the relevant crime should entail criminal liability, since these rights are listed in the Federal law.

### **4. Administrative responsibility.**

Administrative liability is one of the most common and frequently applied types of legal liability and differs from all other types in the form of immediate or rapid response to unlawful acts committed by both individuals and legal entities.

The code of administrative offences of the Russian Federation contains more than

thirty articles (articles 5.1 to 5.25 and 5.45 to 5.58) for offences related to violations of electoral legislation.

Their diversity shows the importance of the electoral rights of citizens and the corresponding social relations that are harmed by the offense. The arrangement of these articles is quite orderly - in accordance with the logical sequence of stages of the electoral process: from drawing up the list of voters to counting the results of voting and publishing the election results in the media.

The object of encroachments in these articles is the electoral rights of citizens, which are provided for by the Constitution of the Russian Federation and are regulated in detail in Federal law.

Depending on the nature of the offences provided for in article 5. 1-5. 25, they can be grouped into the following groups:

- violations related to the work of election commissions, referendum commissions;
- violations of the procedure for information support of elections and referendums;
- violations related to the activities of candidates for elected positions and electoral associations, electoral blocs;
- violations of the established procedure for conducting election campaigning.

Subjects of administrative offenses can be both individuals (citizens, officials) and legal entities. In most cases, administrative liability for violations of electoral legislation is still established in the form of an administrative fine.

In our opinion, for the convenience of law enforcement, the listed elements of administrative offenses in the field of electoral law should be concentrated in a separate Chapter of the administrative Code of the Russian Federation.

It should also be noted that the liability of legal persons for violation of electoral legislation, along with the responsibility of individuals, established KoAP of the Russian Federation in 13 cases, for example: for failure to fulfill the decision of the election Commission (Article 5.3); for the violation of the established procedure publication of documents connected with preparation and conduct of elections (article 5.5); for the violation of the conditions of election campaigning through the mass media (article 5.8), and others.

In some cases, it is expressly established that the subject of liability may be the electoral Association itself or, in equal shares, the electoral associations that are (were) part of the electoral bloc, for example, for the illegal use of funds by it (them); for accepting and using illegal material support.

"Analyzing the Institute of administrative responsibility for violations of electoral legislation, we should highlight a number of its features:

- bringing to administrative responsibility persons who have a special legal status;
- fines as the primary sanction for offences in the field of electoral law;
- the absence of a simplified form of proceedings and the obligation to draw up a Protocol on an administrative offense;
- bringing to administrative responsibility only in court;
- reduced terms for consideration of cases" [28, p. 53] (considered within five days from the date of receipt by the judge of the Protocol on an administrative offense and other materials of the case).

## 5. Conclusions.

Compliance with the law during election procedures is impossible without creating a special set of state enforcement measures. One of these forms is the establishment of the institution of legal responsibility.

Legal liability in the electoral process has the following features: it is expressed in the obligation to undergo measures of state enforcement; its basis is the violation of material and procedural norms of electoral law; it is associated with various kinds of unavoidable negative consequences; the guilty person will be subjected to restrictions on personal and other property rights; the offender is charged with the obligation to restore the violated right or compensation for damage.

Legal responsibility, namely its constitutional and legal form, is a guarantee of citizens' exercise of their constitutional rights to elect and be elected. In our opinion, constitutional and legal responsibility is essentially preventive and does not allow for more serious legal consequences for society.

Due to the distrust of some part of our society towards the electoral process and its results (the principle "nothing depends on my vote"), the development of the institution of constitutional and legal responsibility is an effective tool for ensuring legal justice in the election results. At the same time, when analyzing the existing types of legal responsibility in the electoral process, it becomes obvious that they need to be systematically improved.

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