

КОНСТИТУЦИОННОЕ ПРАВО; КОНСТИТУЦИОННЫЙ СУДЕБНЫЙ ПРОЦЕСС; МУНИЦИПАЛЬНОЕ ПРАВО

PROBLEMS OF CARRYING OUT LOCAL REFERENDUM IN THE RUSSIAN FEDERATION

D.O. Ezhevski

The Department of Constitutional and Municipal Law
Law Institute of the Peoples' Friendship University of Russia
6, Miklukho-Maklaya st., Moscow, Russia, 117198

In this paper, the author analyzes the recent changes in the electoral law of modern Russia. The development of modern Russia and constitutional rights is impossible today to imagine without the institution of the referendum. This institution has a serious impact on the entire history of the state, however, Russia has a lot of problems and initiate local referendums. Also some unsolved problems still persist, for example in the field of judicial protection of electoral rights of citizens or the responsibility of deputies to the voters. On the basis of the study the author proposes a number of measures to harmonize the entire body of legislation on elections of deputies and administration responsibility to the electorate.

Practice showed that the referendum institute as a form of democracy and direct participation of the population in the solution of global social and economic and political affairs gets accustomed and operates in our country. The referendum not only allows to reveal public opinion on the most wide range of the most important questions for country life, but also to consider it in political practice, in the course of acceptance and carrying out in life of political decisions. In view of evolution of development of institute of a referendum in Russia, it should be noted that in process of society democratization this institute makes serious impact on all historical way of development of the state, gives the chance to state authorities to reveal those questions which decision allows to smooth the social conflicts. Development of modern Russia and constitutional law can't be imagined today without institute of the referendum which has strongly taken the place among other state and legal institutes.

Key words: referendum, electoral law, the electoral system, elections, democracy, public authorities, public control, local government.

After acceptance in 2003 The federal law «About the general principles of the organization of local government in the Russian Federation» in many regions of the Russian Federation borders of municipalities were changed. About it in some municipalities local referenda were held.

So, for example, in Tula region passed a local referendum concerning separation of Novomoskovsk from the Novomoskovsk area which took place on 2005.

The voter turnout made about 56% on the average around the city and to the area. Novomoskovtza the vast majority of voices (about 90%) supported separation of the city from the area. The considerable part of peasants, on the contrary, voted

against isolation of the regional center — about 70%. As the opinion of residents and the village in such cases is considered separately, objections of inhabitants of settlements, villages and villages of the Novomoskovsk area concerning office of the city give the grounds to deputies of the Tula regional дума to refuse to citizens to transform their claims Novomoskovsk to the city district. But the local referendum had no validity as Federal Law Art. 24 «About the general principles of the organization of local government in the Russian Federation», granting to municipalities the right to their carrying out, at that time didn't come into force yet (in force only since January 1, 2006).

Practice of carrying out local referenda in the Kemerovo region is known, namely: in the cities of Mariinsk and Fire chambers. On March 31, 2002 in the Kemerovo region two regional referenda took place. Questions were such: whether to unite to the cities of Mariinsk and Fire chambers with the areas with the same name? On March 31 the population of the cities and areas amicably (an appearance over 60%) and unequivocally (more than 80%) supported association.

According to Election commission of the Kemerovo region referenda are recognized taken place, the majority of inhabitants of these territories expressed pro association. The greatest activity at vote was shown by inhabitants of Mariinsky and Topkinsky areas where took part according to 88,5% and 83,3% of voters. In the city of Mariinsk the appearance made 62,48%, in the city of the Fire chamber of 57,99%. pro association of Mariinsk and the Mariinsky area in uniform territorial education voted according to 81,33% of citizens and 94,25% of peasants. pro association of. A fire chamber and the Topkinsky area in uniform municipality 85,66% of city and 94,91% of rural voters expressed. Besides, passed vote concerning adoption of Charters of new territorial educations. So, the Charter pro of the incorporated territory «The city of Mariinsk and the Mariinsky area» 81,14% of citizens and 94,12% of peasants voted. The charter of the incorporated territory «The city of the Fire chamber and the Topkinsky area» approved 81,14% of city and 94,12% of rural voters.

Thus, positive experience of carrying out a local referendum in the cities of the Kemerovo region: Fire chambers and Mariinsk exists. What true price of a referendum, knows only the governor and his environment. It is obvious that in case of success experience of mariinets and topkinets will be widespread on Yurga, Anzhero Sudzhensk, Belovo, Leninsk — Kuznetsk etc. While in the Kemerovo region live under the charters of 39 municipalities. In the light of policy of strengthening of a power vertical it is a set ceased to be achievement of democracy and it appeared the large certificate of an inefficiency of management.

Main «minus» of carrying out referenda is the low appearance of the population on referenda. So, for example, on May 22, 2005 passed a referendum in the city Light the Kaliningrad region. On a referendum voters should answer the following questions:

– Whether you agree with terminal construction on transfer of oil products on Krzhizhanovskogo St., 4 within the city Light?

– Whether you agree with reconstruction and building of bunkerovochny base under a bunkering of vessels fuel and oil transfer tankers on Rybatskaya st., 1 within the city Light?

The referendum is recognized cancelled as 50 percentage attendance barrier wasn't overcome. The voter turnout on sites of vote made 48,5%. In order that results of a referendum were recognized, there were no 1,5%.

Unfortunately, it not the unique «low-attendance» example in to practice of local referenda.

One more interesting example — experience of carrying out a local referendum in the city of Novokuznetsk. In the Charter of the city of Novokuznetsk there is article devoted to a local referendum: the decision on carrying out a referendum accepts city council on own initiative, or on request of not less than 5% from number of the residents possessing an electoral right; the order of appointment and carrying out a referendum, acceptance and change of its decisions, their introductions in validity is established by the legal act of city council according to the law of the Kemerovo region; on a referendum questions of the budget, local taxes and fees, emergency and urgent measures for providing a public order and safety of the population can't be taken out; the decisions accepted on a referendum, are obligatory for execution by bodies and officials of city self-government, the enterprises, establishments and the city organizations, citizens [4. P. 32].

Citizens or group of the citizens, initiated carrying out a city referendum, should collect signatures under the requirement about carrying out a referendum in number of not less than 5% from number of voters. For petition it is possible to create initiative groups. It is necessary to notify local government on the petition beginning. In this case the local government grants the registration certificate to the citizen or initiative group and samples of subscription lists that, in essence, is permission to the petition beginning. Local governments with the consent of initiators of a referendum can specify the formulation of the question which is taken out on a referendum [5. P. 127].

If all signatures are collected correctly and in necessary quantity, handed over with observance of all points of order, the representative body of local government is obliged to make the decision on carrying out a referendum.

In the city of Novokuznetsk the unique referendum devoted to a question of adoption of the Charter of the city which passed on December 17, 1995 on October 18, 1995 initiative group was held began a collecting signatures in support of carrying out a local referendum. On November 1 the head of administration of the city signed the order «About purpose of a referendum of Novokuznetsk».

Sociologists noted that not less than a third of the population of the city were adjusted to the project negatively. On enlarged meeting of the Advisory board of public associations of the city fell shaft of remarks according to the project. The administration went on creation of the conciliation commission which task to find the compromise solution.

On November 23–24 the commission considered all arrived remarks to the project and managed to find the acceptable decision.

With a view of achievement of a public consent according to the draft of the Charter of the city and considering wishes, the decision on introduction of the following changes is made:

– number of structure of city meeting — 19 deputies. A term of office of deputies — four years;

– the first deputy mayor is the official of city administration appointed and dismissed by the mayor. Appointment is made for a term of office of the mayor»;

– deputy mayors are the officials of city administration appointed and dismissed by the mayor. Appointment is made for a term of office of the mayor. Thus, change levels terms of office of the mayor and deputies of city meeting that provides balance of the power in the city; the second provides appointment as the mayor of the first deputy and deputies for the term of the powers, and thus again elected mayor receives the lawful bases for a choice of the deputies.

The financial expenses connected with preparation and carrying out a referendum, were carried out at the expense of means of the city budget. For carrying out vote and counting of votes on a referendum the city shared on sites which were formed taking into account administrative-territorial division. The administration provided the accounting of the citizens having the right to participation in a referendum, and transferred to precinct election commissions of data about living in the site territory the citizens having the right to participation in a referendum, necessary for list drawing up. Vote was carried out in day of a referendum from 8 to 22 o'clock. It was necessary for citizens to answer a question: whether they agree with adoption of the Charter of the city of Novokuznetsk, and to give the answer: «yes» or «no».

According to the chairman of the city commission more than 235 thousand residents participated in a referendum (54,6% from all voters). According to the provision on a referendum, for referendum recognition taken place, there are enough 25 %. «yes» to the Charter of the city 52% of citizens told.

The question of a new platform for the Novokuznetsk city dump was similarly solved. It is planned to hold a referendum in the city of fund raising on construction of waste recycling plant which would solve a question of a city dump and kept from pollution environment. That is, today in Novokuznetsk, as well as in other cities of Russia, there are questions which it is necessary to answer residents [4. P. 33].

Thus, from the stated follows that the highest form of democracy at municipal level is the local referendum which is led with a view of the decision by directly population of questions of local value.

The local referendum is expedient for carrying out on the most important questions of local value or on the questions which decision is very important and local governments don't want to accept it without support of inhabitants as it is difficult procedure.

For comparison we will address to foreign experience.

So, since 1990th years of the country of the European Union especially actively resorted to a referendum with a view of identification of opinion of the population on topical issues of life of community. On a referendum the question (more rare — some questions), assuming positive «(yes)» or negative «(no)» the answer of the voter is, as a rule, taken out. Other option when voting the choice from several possible decisions (is offered such way is possible also practises, in particular, in Switzerland). In this case the voter can choose one of decisions or answer in the affirmative on some options, the decision will be defined by a majority of votes: it is considered it the option

which has gathered the greatest number of affirmative answers. All other options even if they will collect a considerable poll, are considered as the rejected.

The question which is taken out on a referendum, or set of offered options is called as a referendum formula. The legislation of the majority of the countries establishes limits of admissible use of institute of a referendum. The questions of extreme or urgent character demanding special knowledge can't be submitted for vote of voters, and also such, the answer on which is known in advance (for example, about decrease in taxes, salary increase etc.). Questions of the budget, amnesty, personnel questions and others can't be taken out on a referendum. Also, it should be noted that the question (or a number of questions) taken out on a referendum should be accurately formulated, shouldn't contain double value as the population can have problems at vote, therefore, the decision accepted on a referendum can have unsatisfactory character. The referendum can't be carried out in the conditions of extreme, military, a state of siege, can't be carried out twice on the same question or the second time on this matter only through a certain period (for example, in Spain in 3 years) can be carried out. Thus, the legislation enters accurate restrictions on carrying out a referendum. All this is connected with the importance of the decision made on a referendum, and also consequences which this decision can bear [2. P. 124].

The organization of a referendum is similar to the organization of elections, but in this case the voter votes not for any candidate or the list of candidates, and for the offer containing the draft of the solution of any question. As well as on elections, the broadcasting time and a place in periodicals is free of charge provided to the political groups which are acting for or against offered decision (time and a place in editions is provided to all equally or, as in Spain, in proportion to number of parliamentary fractions).

Vote is carried out only by means of the official bulletins made by representatives on those by state authorities. Resort also to use modern computer and means. If under the law vote on elections is obligatory, it is obligatory and for a referendum. Sanctions are similar, because the legislation on elections and referenda are closely connected, proceed, as a rule, from one basic provisions.

Definition of results of a referendum is very important procedure. As a rule, the referendum admits taken place if the majority of the registered voters took part in it, and the decision is deemed accepted, if the majority of them (50% plus one voice) positively answered an offered question. Sometimes, however, for decision-making 3/4 voices with affirmative answers are necessary 2/3 or even. In certain cases in order that the decision was deemed accepted, established not percent of a voter turnout, and percent of positive answers.

The tendency and to increase in quantity of local referenda is obviously traced. In German Bavaria in nine years of action of the right to a referendum about 500 local votes were carried out. In the USA for the last 100 years the quantity of the carried-out local referenda reached record, in comparison with other countries, marks in 10 000 [9. P. 201].

The main share of the referenda passing in the western democracies, is connected with questions of arrangement of city life. So, in 2002 inhabitants of the

American small town Kay-Vest (State of Florida) took out on a referendum a question of creation of independent board of citizens for control of city hall activity.

The main question exciting inhabitants of the western cities, — ecology. For example, on June 30, 2001 in the Italian Milan passed a referendum on reduction of number of cars in the city center. And on May 18, 2003 already Swisses voted for automovement prohibition in the capitals of cantons on one Sunday in a quarter.

In November, 2001 inhabitants of San Francisco during a referendum unanimously supported need of the City Council to request a consent of citizens to any large construction in a gulf zone.

For the first time in Europe the latest technologies at local level were used on October 25 2005 in the Swiss city of Byulakh. The city authorities of the shveyskyy city held the SMS — a referendum on which the question of restriction of speed of movement of cars within the city was solved. Each participant of a referendum received in advance by mail the unique identification number. Before performance of the selective duty Swisses should enter the personal code and date of birth. All these measures begin to avoid repeated vote. Byulakh's citizens solved, whether it is necessary to enter restriction of speed (30 km/h) in some districts of the city. As a result this offer was rejected by 2527 voices against 1290. To the Swiss measures, the referendum showed really high voter turnout. According to rules of vote of a voice can move also on the Internet and not just by means of the mobile phone. According to estimates, vote passed without special problems, and, probably, in the near future the SMS-golosovaniya system will be used within all country.

Thus, the highest form of democracy at municipal level is the local referendum which is led with a view of the decision by the population of questions of local value. The local referendum is expedient for carrying out on the most important questions of local value or on the questions which decision is very important and local governments don't want to accept it without support of inhabitants as it is difficult procedure.

It is obvious that in all Russia there is a need for referenda since it is unique possibility to awaken people to serious conversation on problems of the cities and settlements, possibility something to solve.

However, we will note some specific features of carrying out local referenda in Russia.

So, on sense of Art. 22 and 34 Federal Laws «About the general principles of the organization of local government two versions of the referendum differing in the order of initiation and a circle of solved questions are carried out to the Russian Federation» at level of municipalities. Preceding the analysis of the specified forms of direct national will, we will note that from the juridiko-technical point of view their differentiation on procedure in this connection, in our opinion, the pravoprimeritel can have considerable difficulties isn't quite obvious [7. P. 85].

Local referendum for the decision it is direct the population of questions of local value. According to Federal Law Art. 22 «About the general principles of the organization of local government in the Russian Federation» the referendum appoints (within 30 days from the date of receipt of documents on referendum initiation) a representative body of the local government, the relevant municipal election commission or court.

However, it is represented that term imperatively established by the Law (30 days) for purpose of a local referendum doesn't consider need of observance of procedure of promotion of an initiative of the referendum established by item 2–9 and 11 of Art. 36 of Federal Law «About the main guarantees of electoral rights and the rights to participation in a referendum of citizens of the Russian Federation». At the same time, for observance of the called procedure only on the solution of the questions connected with registration of initiative group of a referendum, can leave till 50 days: 15 days on acceptance by election commission of the decision on the direction in a representative body of local government of the petition which have arrived from group for check of compliance of a question of a referendum to requirements of Art. 12 of Federal Law «About the main guarantees of electoral rights and the rights to participation in a referendum of citizens of the Russian Federation» (Art. 36 item 5), 20 days — on check of this compliance (Art. 36 item 6), 15 days — on making decision on group registration after check (Art. 36 item 8). According to Art. 37 item 5 Federal Laws «About the main guarantees of electoral rights and the rights to participation in a referendum of citizens of the Russian Federation» a collecting signatures in support of an initiative of a local referendum are carried out within not less than 20 days from the moment of registration of initiative group. Total, it can be demanded till 70 days. Unfortunately, the Law on local government doesn't consider this term and at the same time doesn't establish more compressed procedure of promotion of an initiative of a referendum.

Local referendum of definition of structure of local governments, an order of election and powers of the head of municipality in case of formation of new municipality in the mezhseleenny territory or as a result of municipality transformation. This version of a local referendum defined by h. 5 Art. 34 of Federal Law «About the general principles of the organization of local government in the Russian Federation», raise the biggest doubts from the point of view of its compliance to the legislation on elections and adaptability to manufacture.

First, initiate this referendum inhabitants of municipality can only. Considering that the relevant initiative should be put forward within one month after coming into effect of the law of the subject of the Russian Federation about establishment of borders of municipality, not clearly, whether representatives will be in time on that bodies to define exact population, to carry out registration and to make electoral registers (in Federal Law «About the general principles of the organization of local government in the Russian Federation» about it it is told nothing, and Federal Law «About the main guarantees of electoral rights and the rights to participation in a referendum of citizens of the Russian Federation» provides registration of voters twice a year — as of January 1 and on July 1). Most likely, this work won't be carried out to so short term, and, therefore, voters of municipality can't create initiative group for carrying out a referendum.

Secondly, the called situation doesn't correspond to item 3 of Art. 14 of Federal Law «About the main guarantees of electoral rights and the rights to participation in a referendum of citizens of the Russian Federation» which provides the right of initiation of a referendum to also electoral associations and other public associations which charters provide participation in elections and referenda [6. P. 127].

Also we will note that inhabitants of again formed municipality according to h. 5 Art. 34 of Federal Law «About the general principles of the organization of local government in the Russian Federation» should form initiative group (on Law terminology «group of voters») in number of not less than 3% from a total number of voters of municipality (that actually excludes carrying out a referendum in large city settlements and municipal areas, besides already noted doubt in operative drawing up of electoral registers). The group within the same month from the date of coming into effect of the law of the subject of the Russian Federation about establishment of borders of new municipality will organize collecting and submission of signatures in support of carrying out a local referendum in election commission of the subject of the Russian Federation which checks compliance of procedure of promotion of an initiative of a referendum to law requirements then appoints a referendum. Carrying out a referendum is provided with public authorities of the subject of Federation.

Thus, big doubts from the point of view of observance of the right to participation in a referendum of citizens of the Russian Federation and adaptability to manufacture are caused by procedure of initiation of a local referendum. As well as procedure of promotion of an initiative of a local referendum in general, it won't be coordinated on terms with the order, established in Art. 36 of the Law on guarantees (70 days against 30). In the light of the foregoing it is represented expedient to prepare and bring the corresponding adjustments in the current legislation, in more detail to paint procedure of initiation and carrying out local referenda in Russia.

As practice showed that the referendum institute as a form of democracy and direct participation of the population in the solution of global social and economic and political affairs gets accustomed and operates in our country. The referendum not only allows to reveal public opinion on the most wide range of the most important questions for country life, but also to consider it in political practice, in the course of acceptance and carrying out in life of political decisions.

In view of evolution of development of institute of a referendum in Russia, it should be noted that in process of society democratization this institute makes serious impact on all historical way of development of the state, gives the chance to state authorities to reveal those questions which decision allows to smooth the social conflicts.

Development of modern Russia and constitutional law can't be imagined today without institute of the referendum which has strongly taken the place among other state and legal institutes.

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СОВРЕМЕННЫЕ ОСОБЕННОСТИ ПРОВЕДЕНИЯ МЕСТНЫХ РЕФЕРЕНДУМОВ В РОССИЙСКОЙ ФЕДЕРАЦИИ

Д.О. Ежевский

Кафедра конституционного и муниципального права
Юридический институт Российского университета дружбы народов
ул. Миклухо-Маклая, 6, Москва, Россия, 117198

В работе автор анализирует недавние изменения в законодательстве современной России. Развитие конституционных прав невозможно сегодня представить без института референдума. Этот институт имеет серьезное влияние на всю историю государства и особенно важен в современном обществе. Однако имеется ряд особенностей при инициировании местных референдумов. Кроме того, некоторые нерешенные проблемы по-прежнему сохраняются, например, в области судебной защиты избирательных прав граждан. На основе анализа автор предлагает ряд мер по гармонизации законодательства.

Практика показала, что референдум как институт демократии и непосредственного участия населения в решении важных вопросов чрезвычайно важен, но недостаточно развит в нашей стране. Референдум не только позволяет выявить общественное мнение по наиболее широкому кругу важнейших вопросов жизни, но и рассмотреть его в политической практике, в процессе принятия и проведения в жизнь политических решений. Ввиду эволюции развития института референдума в России следует отметить, что в процессе демократизации общества этот институт оказывает влияние на все исторические пути развития государства. Развитие современной России и конституционного права невозможно себе представить сегодня без института референдума, который прочно занял свое место среди других правовых институтов.

Ключевые слова: референдум, закон о выборах, избирательная система, выборы, демократия, государственные органы, общественный контроль, местное самоуправление.