
Quantitative and Qualitative Indicators of the Criminological Characteristic of Hindrance to Electoral Rights

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Abstract:

In this article quantitative and qualitative characteristics of hindrance to implementation of electoral rights or work of election commissions are allocated and analyzed.

The statistical data concerning the number of the committed crimes are provided in Article 141 of the Criminal Code of the Russian Federation.

Estimating the enormous difference between the statistical volume of administrative and criminal cases, the authors with full confidence claim that the vast majority of the crimes under Article 141 of the Criminal Code of the Russian Federation remain latent.

The conclusion drawn is that indicators of the crime fixed by statistics do not reflect a real picture of infringement of electoral rights. Such type of latent crime over exceeds official data and thorough preparation of the Ministry of Internal Affairs of the Russian Federation to elections is a proof. The high latency leads to the fact that criminals remain unpunished.

Authors point signs mutual for all electoral crimes and notes their coincidence with signs of the organized crime of vested and nonviolent character.

Keywords: *Crime, corruption, extremism, organized crime, administrative offense, hindrance, electoral rights.*

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1. Introduction

Russia is proclaimed as a legal state (article 1 of the Constitution of the Russian Federation), one of the most important conditions for the formation of which is the presence of civil society. The development of civil society institutions involves the free expression of the will of citizens in the implementation of the political right to govern the state. Article 32 of the Constitution States proclaims that "citizens of the Russian Federation have the right to elect and be elected to state and local government bodies, as well as to participate in a referendum". The establishment and operation of a reliable mechanism to guarantee the exercise of these rights is essential for ensuring the realization of these rights. An important role in this is played by criminal law, in particular by article 141 of the Criminal code of the Russian Federation. The effectiveness of the application of the article itself is directly related to the quantitative and qualitative indicators of the criminological characteristic of hindrance to electoral rights or the work of election commissions.

2. Theoretical, informational, empirical and methodological grounds

Criminal liability for the hindrance to electoral rights was established in the Soviet Russia only in 1929 (Art. 91.1 of the Criminal Code of the Russian SFSR, 1926 year) (Spiridonov, 2017). In current legislation the hindrance to electoral rights is described in article 141 of the Criminal Code of the Russian Federation (hereinafter-the Code). Within the frames of criminological characteristic of the hindrance to electoral rights or the work of election commissions, it is expedient to allocate and analyse quantitative and qualitative characteristics of such crime.

For the last two decades, the crimes committed on a basis of electoral process have had insignificant weight both in total amount of the committed crimes, and among crimes against fundamental human rights and freedoms. Specific weight of the crimes connected to violation of Russian citizens` electoral rights, in the total amount of all registered crimes have remained stable (from 0,01% to 0,02%). The vast majority of specified cases terminate at a probe stage: from 2000 to 2002 the amount of registered criminal cases based on the facts of violation of citizens` electoral rights was equal to 104, 38 of them had been terminated by the probe and only 28 had been referred to the courts (Bukharov, 2006).

According to the Central Elections Commission, during the period from 2008 to 2009, 105 criminal proceedings had been opened under Art. 141, 142 of the Code; 6 of them were sentenced under paragraph 2 (hereinafter-para.) of Art. 141 of the Code (Muzychenko, 2014).

In recent years the judicial statistics shows extremely low use of Art. 141. In 2011 under para. 2 of Art. 141 of the Code only 11 people were condemned. In 2012 nobody was condemned for the bribery of voters. In 2013 there was 1 criminal proceeding under para. 2 of Art. 141 and 1 more under para. 3 of Art. 141. There

were no proceedings under Art. 141 in 2014. For 2015, statistics of the condemned persons is as follows: under para. 2 – 1 person; para. 1 and 3 – none. In 2016 under para. 1 of Art. 141 there were no convicts, under para. 2 – 5 people, under para. 3 – 1 person. In the first half of the year 2017, courts of general jurisdiction had brought to trial only 2 persons under para. 2 of Art. 141 of the Code (Judicial department at the Supreme Court of the Russian Federation).

The condition of crime based on statistical data and expressed in absolute values though serves as a prime indicator of crime scales, nevertheless, is insufficient for comprehensive assessment and understanding of such phenomenon. A certain complexity of the Criminal and Administrative Codes' crime elements differentiation causes a necessity to give statistics of the administrative offenses connected with the hindrance to electoral rights and the work of election commissions.

According to judicial statistics, in the year 2014 1914 cases on administrative offenses of electoral rights had come to the court of general jurisdiction (Art. 5.1, 5.3-5.25, 5.45-5.52, 5.56, 5.58 of the Code of the Russian Federation on Administrative Offences (hereinafter- the Administrative Code)); 48 cases among them were under Art. 5.16 (bribery of voters). In 2015 the amount of legal proceedings under the considered category was equal to 1696 cases; 85 of them were initiated under Art. 5.16 of the Administrative Code. In 2016 2859 cases were initiated, including 77 cases under Art. 5.16. For the first half of the year 2017 there were 670 cases on administrative offenses of electoral rights from which 15 cases were initiated under Art. 5.16 (Consolidated statistical data on the Federal Courts of General Jurisdiction and Magistrates' activity).

Estimating the above-stated significant difference between the statistical volume of administrative and criminal cases, it is obvious that the major amount of the crimes specified in Art. 141 remains latent. That is why a problem of this type of crime prevention is crucial. Criminal cases of the above-stated category are rare for two main reasons: first of all, citizens do not declare such encroachments, considering them as a minor disturbance or having material interest; secondly, the essential value has legislative technic used to determine the elements of a crime, which certainly demands revision and amendment in relation to administrative statutes.

It is necessary to separately discuss localization of the revealed crimes. Proceeding from the studied sentences under Art. 141, it could be noted that the major amount of crimes has been revealed in the regional centers, urban-type settlements, etc., where the number of people registered at their place of residence as well as the appearance of voters in elections is rather small. Such statistics shows that the bigger the community, the higher is latency of such crime. Political struggle with criminal violation of electoral laws in the small community more often becomes public and, therefore, comes to light. However, it would not be correct to state that only

provinces are subjects to the crimes connected to elections, in fact, all regions of the country are equally prone to a "dirty" political struggle.

Thus, indicators of the crime fixed by statistics do not reflect a real picture of electoral rights` infringement. Latent crime of this type exceeds official indicators by a factor of several times. Deliberate attention of the Ministry of Internal Affairs of the Russian Federation to elections is another proof of a problematic situation. For example, on August 21, 2017, during a preparation for the single voting day, the Ministry of Internal Affairs formed a special working group responsible of offenses` prevention. Duties of the group included collecting, analysing and synthesising the information arriving from the territorial authorities of the Ministry of Internal Affairs. The attention of the working group had been focused on the need of rendering the maximum help to election commissions according to competence of law-enforcement bodies (A meeting of Operational staff of the Ministry of Internal Affairs of the Russian Federation on crime prevention).

As considered crimes are of a high latency, part of them remains unpunished. "Thus, the golden rules of criminal liability based on restoration of social justice, prevention of new crimes, inevitability of punishment are being broken. Impunity, undoubtedly, leads to a commission of new similar crimes" (Babanyan, 2014). All of this reveals a necessity to amend Art. 141 and competently correlate Art. 141 with administrative statutes.

The analysed quantitative data on the crimes and offenses connected with the criminal barriers to implementing electoral rights and the work of election commissions, allows noting that the crime situation has been remaining complicated from year to year. Investigating the qualitative characteristics of this type of crime, it is important to note general signs, peculiar to all electoral crimes:

- a significant amount of the reproduced crimes and offenses;
- an involvement of not only individuals, but also the political parties, electoral and other public associations, public authorities and local government, legal entities;
- an existence of the trace information system, which confirms both, single crimes and offenses and a certain type of electoral criminal activity (Antonov, 2013).

It is also possible to mark out the following additional characteristics of the criminal activity encroaching upon electoral rights and the work of election commissions:

- criminal activity disguising by means of corruption, professional legal services of election campaigns, bribery of election commission and judges;
- organized action of criminal activity, roles and responsibilities allocation.

From Antonov`s point of view, the specified characteristics of this type of crime almost completely coincide with the characteristics of the organized crime activities

with sordid and nonviolent nature. "At first sight, the specified types of criminal activity differ with the fact that a main objective of organized criminal formations is the maximum income within the shortest possible period of time, implying a complete safety of the group's major players. Unlike quintessential organized crime, electoral crime is focused on specific candidate; however, as well as the first specified type, electoral crime is characterized by consecutive functioning and development of several types of criminal activity during the limited period of elections" (Antonov, 2013).

According to sub art. 1 Art. 1 of the Federal law No. 114-FL of July 25, 2002. "About counteraction of extremist activity" the hindrance to implementation by citizens of their electoral rights and the rights for participation in a referendum or the violation of a mystery of vote connected to violence or threat of its application, falls under the definition of extremist activity (The federal law "About Counteraction of Extremist Activity", 2002). Thus, the legislator emphasizes public danger of the criminal activity connected with the hindrance to electoral rights and the work of election commissions, highlighting its extremism characteristics the gist of which consists in infringement of the constitutional bases of the state functioning (Vaske, 2014).

Prosecutor General Office's order No. 19 (November 28, 2007) "About public prosecutor's supervision of the legislation on counteraction of extremist activity" also emphasizes that criminal liability for extremism is stipulated, in particular, in Art. 141 of the Code. Art. 141 establishes liabilities for crimes commitments based on political, ideological, racial, national or religious hatred or hostility or based on hatred or hostility concerning any social group (The Prosecutor General Office's order, 2008).

Kabanov highlights the following manifestation forms of a "criminal political vandalism": deliberate destruction of elective or referendum documents (candidacy lists, electoral registers, ballots, etc.), or the vote equipment (stationary or mobile ballot-boxes, voting cabins), or voting rooms for the purpose of making barriers to the implementation by the citizen or political public organization of their electoral rights or the rights for participation in a referendum. Responsibilities for stated actions are described in article 141 of the Code (Kabanov, 2008). In this case, the author has stated obvious destructive purpose of criminal behavior.

The crimes described in Art. 141 of the Code are referred to the crimes with characteristics of corruption. Corruption crimes and crimes connected with the hindrance to electoral rights and the work of election commissions share common characteristics such as:

- violation of legitimate interests of the government, public, municipal and other services;

– official representative`s lucrative impulse for obtaining material or non-material benefits for themselves and others.

Corruption in the electoral process is understood as the antisocial phenomenon, characterized by bribability of public authority officials registered in accordance with the established procedures as candidates to legislative and executive authorities, territorial entities or local governments of the Russian Federation and as members of election commissions and referendum commissions. Another element of corruption is the use of powers and opportunities determined by official status for obtaining personal, narrow factional or corporate benefits (Chistoborodov, 2010).

The "purchase" of votes (or "bribery of voters") is the most widely spread and the least latent type of political corruption in modern Russian society`s political life. Bribery happens to the candidates for the chosen positions, members of their support groups and, on assignment of the last ones, to other bodies. The last type of bribery is more frequent as a specific way of power acquisition in regional elections of local legislative authorities and governments. The prevalence of this political corruption form in the Russian society is confirmed by numerous publications of national mass media representatives (Kabanov, 2008).

3. Results

The analysis of quantitative and qualitative characteristics of crimes in the sphere of selective legal relationship allows predicting its increase in the forthcoming years. Owing to their high latency, which consequently leads to impunity, it is impossible to forecast any decrease in this type of crimes. In such conditions, the methods banned by the criminal law, such as bribery of voters, will be continuously chosen by the law-breakers for the achievement of their political goals.

The cumulative analysis of quantitative and qualitative characteristics of the crime connected with the hindrance to electoral rights and the work of election commissions allows speaking about public danger, demanding criminal and legal measures of counteraction. The public danger is extremely high due to high prevalence and latency of such crimes. Criminal actions of election participants are subsequently reflected in the life of the whole society; they cause damage not only to certain citizens, but also to the state in general, threatening democratic institutes and a national security of the country.

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