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Presentation date: October, 2021
Date of acceptance: December, 2021
Publication date: January, 2022

ABOUT THE ELECTION

CENSE FOR VOTING FOR VOTERS WITH MENTAL PROBLEMS IN RUSSIAN FEDERATION

ACERCA DEL CENSO DE ELECCIÓN PARA VOTAR POR VOTANTES CON PROBLEMAS MENTALES EN LA FEDERACIÓN DE RUSIA

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Suggested citation (APA, 7th edition)

Marmilova, E., Kashirskaya, L., Karabasheva, M., & Kudryashova, E. (2022). About the election cense for voting for voters with mental problems in Russian Federation. *Revista Universidad y Sociedad*, 14(1), 47-52.

ABSTRACT

The article examines the presence in the Russian electoral law of an electoral qualification for voting for people with mental problems. The features of modern legislation are investigated and the differentiation of the degree of legal capacity of voters with mental illness is analyzed. Particular attention is paid to the evolution of the main provisions of the Civil Code of the Russian Federation within the framework of this issue, and the case of I.B. Delovaya, showing the imperfection of suffrage in relation to people with mental problems. The importance of the existence of an intermediate state for voters with mental disorders, who are able to independently make decisions and direct their actions, is revealed. As a result of considering the problems faced by voters with mental health problems in Russia, it is noted that the electoral qualification for voting for voters with mental health problems is based only on the determination of legal capacity through forensic examination.

Keywords: Voters, census voting, mental problems, legal capacity, suffrage.

RESUMEN

El artículo examina la presencia en la ley electoral rusa de una calificación electoral para votar para personas con problemas mentales. Se investigan las características de la legislación moderna y se analiza la diferenciación del grado de capacidad jurídica de los votantes con enfermedades mentales. Se presta especial atención a la evolución de las principales disposiciones del Código Civil de la Federación de Rusia en el marco de esta cuestión, y al caso de I.B. Delovaya, mostrando la imperfección del sufragio en relación a personas con problemas mentales. Se revela la importancia de la existencia de un estado intermedio para los votantes con trastornos mentales, que son capaces de tomar decisiones de forma independiente y dirigir sus acciones. Como resultado de considerar los problemas que enfrentan los votantes con problemas de salud mental en Rusia, se observa que la calificación electoral para votar para los votantes con problemas de salud mental se basa únicamente en la determinación de la capacidad legal a través de un examen forense.

Palabras clave: Votantes, votaciones censales, problemas mentales, capacidad jurídica, sufragio.

INTRODUCTION

The electoral qualification for voting is a special condition during the elections, which greatly limits the acquisition of the right to vote. So, for example, modern Russia is characterized by qualifications based on such signs as age, incapacity and the presence of punishment in the form of imprisonment (Ermoshin, 2020, p. 33).

Currently, according to the World Health Organization (WHO), about a billion people in the world have mental problems. In the Russian Federation, approximately 40% of the population has mental health problems. At the same time, some of them have the opportunity to use their suffrage independently, while others do not have such an opportunity without the intervention of outside help and assistance of other persons. This situation determines the relevance of considering the issue of conducting the right to vote by people with mental problems in Russia and the presence of an electoral qualification for participation in elections.

According to the Universal Declaration of Human Rights, all people have the right to take part in the organization of government, either directly, or by transferring this right to freely elected representatives. The legal basis for determining the status of people with mental problems in Russia in the framework of the electoral process is Art. 32 of the Constitution of the Russian Federation, which proclaims the right of every citizen to participate in the management of state affairs.

The electoral qualification for voting for voters with mental problems in Russia is applied only as a result of the recognition of a person as incapacitated by the results of the judicial procedure (Tsebekova, et al., 2019). Restrictions in voting begin to apply to a person only with the entry into force of a court decision on the further incapacity of this person. It should be noted that every citizen of the Russian Federation who is recognized as having limited legal capacity still has the right to vote and can vote.

Put in other words, at the present stage, the qualification of incapability applies only to persons who have not reached the age of majority or who are not admitted to the electoral process by a court decision. In this regard, it is of particular importance to analyze the conditions under which the court can recognize a person as legally incompetent (Goryushkina, et al., 2019; Voronkova, et al., 2019; Szydowski, 2019, 2020; Kim & Jia, 2020; Vigliarolo, 2020).

A legally incompetent person, according to Russian legislation, is a citizen of the Russian Federation who is in a state of inability to be aware of his actions as a result of mental health disorders (Sych, 2020). In Art. 29 of the Civil Code

of the Russian Federation, there are no other grounds that a person is incompetent, and, accordingly, does not have the right to take part in the electoral process.

MATERIALS AND METHODS

In the course of the study, an analysis of documents on the topic under study was carried out. The documents of World Health Organization, Universal Declaration of Human Rights and Civil Code of the Russian Federation were analyzed.

RESULTS AND DISCUSSION

In addition, in conditions when a person again realizes the consequences of his actions, and his mental health is restored, the court may recognize him as having limited legal capacity.

It is important to note that the current state of this provision is the result of the evolution of criteria for determining a person's legal capacity. Previously, the legislation provided only two interdependent grounds, within the framework of which a citizen could be considered as having limited legal capacity. Among them, the main ones were the addiction to drugs or alcohol, as well as to any kind of gambling, which inevitably entailed a difficult material situation for a person. Any mention of mental problems as a prerequisite for the status of limited legal capacity was absent in the Civil Code of the Russian Federation.

Put in other words, previously, voters with mental problems recognized as a result of a forensic examination did not have the opportunity to participate in elections, since the legal capacity of such people was limited by two opposite definitions. In such conditions, the number of risks to a person increases significantly in each of the two possible options. Thus, as a result of the recognition of a citizen as legally incompetent, an imbalance occurs between the public and personal interests of a person, and in a situation where the court, on the contrary, retains the legal capacity of the individual, personal interests may be violated in the field of civil law relations.

In addition, mental problems are conditions in which it is impossible to speak of a person as fully capable, since many manifestations of these problems prevent people from effectively performing mental and physical activities. However, on the other hand, one cannot speak of his complete incapability, since a person can still be in a state in which participation in the main life processes is possible.

In connection with such imperfection of the legislation in the field of electoral rights of people with mental problems, these provisions have undergone significant changes. The main driving force in the described situation was

the high-profile case of checking the constitutionality of paragraphs of Art. 29 of the Civil Code of Russia as a result of the complaint of I.B. Delova, suffering from a mild form of mental retardation.

This complaint was based on the fact that in the presence of mental problems in an insignificant form, which did not affect the normal functioning of a person in society and in the system of civil law relations, a woman was completely unable to use her rights, including the field of the electoral process.

As a result of the forensic examination, a decision was made, according to which the legislation of Russia regarding the status of legal capacity should undergo changes, since it is necessary to provide people with mental problems with the opportunity to use the right to vote, in conditions where they can control their actions (Kopish & Marques, 2020; Gapsalamov, et al., 2020; Yumashev, et al., 2020; Yemelyanov, et al., 2020; Belousova, et al., 2021).

Put in other words, the current provisions of the Civil Code in relation to people with mental problems are based on the described precedent and are based on the social nature of Russian legislation. According to the updated Art. 29, the understanding of legal capacity depends on the degree of influence of mental health on a person's ability to make informed decisions within the framework of the electoral process. In this regard, a person who, regardless of the presence of certain psychological problems, is aware of his actions, is granted the status of a citizen with limited legal capacity.

The introduction of the definition of a disabled person allows creating the necessary conditions for voters with mental problems (Shurygin & Krasnova, 2017; Poghosyan, 2018; Saenko, et al., 2019; Dudukalov et al., 2021). This is directly related to the fact that such a status provides for a person a position in which he can use rights on an equal basis with other persons who do not suffer from this type of disorder. In addition, it should be noted that limited legal capacity allows to ensure the interests of the individual, while maintaining confidence in their protection and implementation (Uteva, 2020).

The existence of the status of a person with limited legal capacity in Russian legislation also contributes to the productive functioning of the electoral law, which is associated with the flexibility of legal mechanisms aimed at protecting the interests of the individual. This circumstance demonstrates the effectiveness of legal response instruments in various conditions, based on the degree of the voter's capacity to act. In other words, the emergence and consolidation of such a status makes it possible to

express an intermediate state of competence of people with mental problems. At present, thanks to this differentiation, the existence of provisions of international law based on the principles of democracy and social society is possible within the framework of updating the issue of voting qualifications for voters with mental problems.

In this regard, the number of people who have active suffrage is significantly increasing, since at the present stage, people with mental disorders who are able to realize their actions also have the opportunity to express their position at elections. In other words, voters with minor mental disabilities that do not limit their ability to assess the situation and make decisions can take part in the political life of the country by giving them the right to vote. In addition, according to the Civil Code of the Russian Federation, the voting qualification for voters with mental problems applies only to people recognized as legally incompetent as a result of forensic examination. As far as people with limited legal capacity are concerned, there are no restrictions in Russian legislation for their participation in the electoral process.

As part of considering the conditions under which a person can be declared legally incompetent in court, it is necessary to objectively assess the impact of the disease on the voter's consciousness. Such an assessment is possible only under the supervision of an appropriate examination carried out by court in conjunction with psychiatric institutions, since the conclusion of incapability is provided directly by the psychiatrist, and the recognition of a person as such is possible only as a result of a decision of the judicial authority. At the same time, the entire judicial procedure is carried out as usual, while retaining guarantees for the protection of human rights. The use of expertise is carried out individually, taking into account the peculiarities of the mental disorder and the desire of the voter to retain independence in making decisions and expressing their point of view. Based on this, it should be noted that the differentiation of the degree of a person's legal capacity has a significant effect on his electoral capabilities, since it allows a greater degree of protection and recognition of the rights of people with mental problems, provided that they retain their freedom of expression.

It should also be noted that in order to accurately determine a person's abilities to be aware of the actions, as well as to lead them, it is important to use an individual approach based on the objectivity of the study of each situation. An important role in this current state of electoral law was played by the case of I.B. Delova, described earlier, because thanks to it, Russian legislation established that the consideration and subsequent regulation of the area of influence of mental health on the electoral process

is directly related to the interpretation of the level of perception of reality by a person.

As part of the procedure for recognizing a citizen as legally incompetent or partially capable, the judicial authority proceeds from an understanding of the degree of impact of a mental disorder on the consciousness of a person, which subsequently allows it to determine whether a person can independently or with the help of other people make decisions and act on the basis of his own beliefs. For greater efficiency of this procedure, it is important to develop the described division of the degree of competence, starting from the influence of a person's conscience on the electoral process, as well as on relations in various areas of life.

In addition, in order to significantly improve and make more efficient the mechanisms for exercising the rights of citizens, it is necessary to develop the regulatory and legal framework of the Russian Federation in the direction of improving the system of regulating legal capacity in order to preserve the possibility of exercising electoral rights by people.

In other words, at present, in order to provide people with mental problems with all the necessary conditions within the framework of the electoral process, it is important to use the tools of legal response that allow citizens to retain their legal capacity and the ability to make decisions.

Since in Russia the electoral qualification for voting for voters with mental problems is based on the criteria of capability, it should be noted that the incapacity of a citizen cannot be revealed only as a result of the proclamation of the fact of his being in an appropriate psychoneurological institution, since a person is diagnosed unable to describe in detail his ability to be aware of his actions and make decisions.

As it was mentioned earlier, voters with mental problems are deprived of the opportunity to vote not simply due to the statement of illness, since in this situation no one can prevent citizens from exercising their rights. The main reason for the loss of legal capacity of a person is a court decision, entailing the restriction of his electoral activity. Despite the rather clearly formulated provision on voting for people with mental disorders in Russian legislation, patients in special institutions face certain difficulties caused by the inconsistency between the proclaimed disability mechanism and its meaning.

In this case it is most appropriate to say that many people suffering from mental disorders and being observed in neuropsychiatric institutions are not always in a state of capability or incapability. This is due to the fact that mental

illness can be characterized only by temporary conditions in which a person cannot control his actions. So, for example, voters with mental problems can permanently be in a sane state in which they are able to make important decisions, but periodically a short-term change of this state to the opposite is possible, which is often associated with taking medications or exposure to the external environment.

Among such short-term states of insanity, memory loss, a vague sense of reality, accompanied by apathy and fatigue, as well as some impulsive actions, are distinguished. In each of the described circumstances, a person is not able to express his position and adequately assess the situation in which he is. As a result, outsiders have the opportunity to impose their point of view and influence the adoption of appropriate decisions by a person, which fundamentally contradicts the electoral system (Gil, 2019).

Despite this, voters with mental disabilities that manifest themselves in this way are not considered legally incompetent. Due to the fact that people may experience a state of insanity during voting, it is almost impossible to properly assess how free the voter's will was, which shows the imperfection of the legislation in this matter.

At the present stage, only the attending physician can observe the degree of voter's legal capacity. At the same time, he does not have the right to prohibit the patient from taking part in the vote, since this would violate all individual freedoms and would be regarded as a desire to take advantage of the human condition.

In this regard, it is necessary to identify another problem, which consists in the fact that as a result of the treatment of patients with mental disorders, psychiatrists can influence their consciousness. At the same time, it is almost impossible to trace these processes, which increases the likelihood of such an impact.

In addition, people in specialized institutions practically lose the opportunity to get acquainted with the ongoing campaigning work and election campaigns of candidates, which affects the quality of the electoral process. In other words, voters with mental problems cannot adequately evaluate the existing choice, and therefore vote only for those candidates they are aware of. In this regard, it is also likely that unauthorized persons will interfere with the electoral process through their influence on a person.

However, the main problem that exists in modern Russia is the lack of polling stations in a number of specialized psychoneurological institutions. It is rather difficult for patients with mental disorders to take part in voting, since they not only cannot carry out the procedure of detachment from the polling station at their place of residence,

but in many cases they simply do not have access to the place of elections. As a result, the electoral procedure is subject to a large number of violations associated with the transfer of the polling station directly to the ward to the patients.

In order to avoid most of the problems described, it is important to work out the legislative basis for the status of incapacity of people with mental problems in the electoral process. However, it should be noted that the process of recognizing a person as incapacitated also takes a long period of time, since a court decision must go through a number of mandatory instances before it can take effect. In addition, sometimes elections are held during a court decision on the incapacity of a citizen, and since the electoral commission does not have information about this, a legally incompetent person can vote.

CONCLUSIONS

The combination of the listed difficulties that the electoral system may encounter in the framework of voting by people with mental disorders determines the importance of a thorough analysis and possible revision of the main provisions of Russian legislation regarding the legal capacity of citizens with such diseases, as well as the introduction of an appropriate voting qualification.

Based on the above, we can conclude that at the current stage, the foundations of the electoral qualification for voting in the Russian Federation in relation to voters with mental problems have not been adequately studied, since the necessary mechanisms for determining the degree of legal capacity of citizens from - a kind of disease. Accordingly, voting restrictions for people with mental disorders are based only on the electoral qualification of legal capacity, which cannot fully regulate this issue.

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