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Working Session II: Ensuring the integrity of elections

Effective settlement of electoral disputes

The laws of the Russian Federation provide for two ways of reviewing electoral disputes – administratively and judicially. They differ considerably in terms of the persons entitled to submit the relevant complaints, the established procedures for reviewing complaints and the legal consequences of the decisions taken.

At the same time, the administrative and judicial procedures for appealing against violations of electoral rights and for settling electoral disputes complement one another as relatively autonomous means, legally speaking, of ensuring the human and civil rights and freedoms guaranteed by the Constitution of the Russian Federation. The following requirements are set out in the Federal Law on the Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum:

Election commissions are obliged, within the scope of their competence, to review any appeals they may receive during an election campaign regarding violations of the law, to verify these appeals and to provide an answer in writing to the persons who have submitted appeals. This is done within a set time-frame, and appeals received on election day or the day after the vote are to be answered immediately;

Election commissions are entitled to request law-enforcement agencies and executive authorities to carry out relevant verifications and prevent violations of the law. These agencies are obliged to take measures to prevent these violations within prescribed time-frames and immediately inform the election commission in question of the results;

In the event of a violation by a candidate or electoral association of the electoral legislation of the Russian Federation, the relevant commission is entitled to issue them with a warning, which will be brought to the attention of the electorate through the media or by some other means.

Election commissions have found a flexible, useful and effective way of resolving conflict situations, namely the establishment of working groups (for information-related disputes and for the preliminary examination of complaints (declarations) regarding the decisions and actions of election commissions and their officials (or their failure to act) resulting in a violation of the electoral rights or the right of citizens of the Russian Federation to participate in a referendum).

The setting up of working groups and their activities falls under the electoral legislation, which provides for the immediate examination by election commissions of the appeals they may receive concerning violations of the law during an election or referendum campaign. The working groups are authorized to make recommendations only: their main task is the preliminary preparation of the material needed for the adoption of a decision by the relevant election commission regarding an appeal.

In addition to contacting the Central Election Commission of the Russian Federation (CEC) by post or in person, citizens may also contact the Commission via its official Internet portal. Appeals received in electronic form are reviewed in accordance with the law. Furthermore, CEC members who have a decisive vote may receive citizens in person.

Decisions taken by a higher commission within the scope of its competence are binding on the subordinate commissions. A commission decision that contravenes the law or exceeds its established competence is subject to repeal by a higher commission or a court. In that connection, the higher commission is entitled to adopt a decision on the matter or to send the subordinate commission whose decision has been repealed the relevant material for renewed consideration. In the event that the subordinate commission does not reconsider the matter, the higher commission is entitled to adopt a decision on the matter.

It should be stressed that transparency and openness come to be characteristic of the reviews of electoral disputes, increasing the liability of the election commissions and obliging them to adopt competent decisions based in law.

Furthermore, there is the possibility of extending the time-frame for appeals against electoral activities with significant legal consequences. For example, after the official publication of election results, appeals against the violation of the electoral rights of citizens that occurred during an election campaign may be submitted to a court within one year of the day of the official publication of the results of the elections in question.

As an additional guarantee that violations of the law will be rectified, election commission members with decisive voting rights draw up protocols on administrative offences in accordance with the Code of the Russian Federation on Administrative Offences on the authority of the relevant election commissions.

It should be pointed out that the current Russian federal legislation and the legislation of the republics and territories (subjects) of the Russian Federation do not refer to the category "electoral disputes" and instead use the term "appeal against violations of the electoral rights of citizens". Since any electoral dispute impacts on the electoral rights of citizens and other participants in election proceedings in one way or another, legal regulation of the procedure for reviewing disputes of this kind through the institution of appeal within electoral law is entirely justified.

Electoral disputes are of particular significance on the basis of the following factors: the special significance of elections as a subject of dispute (electoral relations fall under constitutional legal relations); the special protection of electoral rights from any form of infringement as an integral part of the political rights and freedoms of citizens; the special role of elections as a public institution that confers power; and the characteristics of the electoral process itself, primarily the specific time limits on the actual electoral activities, beyond which voting rights can neither be exercised nor restored.

Election commissions are endowed with extensive rights and have a real chance of restoring the electoral rights of citizens in the event that these rights are violated. However, the main onus in the sphere of the protection of electoral rights is on the courts, but a preliminary appeal to a higher election commission is not a prerequisite for appealing to the court.

In accordance with Article 46 of the Constitution of the Russian Federation, everyone is guaranteed judicial protection of his rights and freedoms; this judicial protection is also extended to the participation of citizens and their associations in elections.

The judicial authorities have a central role to play in the State protection of electoral rights at all stages of the electoral process in view of their independence, the full extent of their evidential base, the effectiveness of the mechanism for carrying out judicial decisions, the fact that other state authorities cannot review judicial decisions, the judicial monitoring of the decisions and activities of election commissions (or their failure to act) and of the activities of other participants in election campaigns, the timely review of complaints and adoption of decisions on them, and their power to repeal any decision by an election commission without exception. These conditions and the legal implications of judicial decisions play their part in strengthening the effectiveness of the settlement of electoral disputes.

The decisions of the Constitutional Court of the Russian Federation and the Supreme Court of the Russian Federation have played an important role in the development of suffrage and the improvement of law-enforcement practice. Step by step, in resolving specific legal conflicts and sometimes even correcting the legislator, the judicial branch is expanding the set of tools available for the protection of the electoral rights of citizens.

On the whole, there is maximum transparency and effectiveness in the review of complaints in Russia, whether by election commissions, law-enforcement agencies, courts and oversight agencies (public prosecutor's office).

What is an honest vote count and determination of election results?

An honest and accurate vote count is such a clear and inherent indicator of the democratic nature of elections that this concept (or criteria) does not feature in Russian electoral legislation. In Russia, an "honest vote count" (in the terminology used by the OSCE Office for Democratic Institutions and Human Rights in analysing elections) is ensured by the procedure established by law for the counting of votes, its openness and transparency and the liability for unlawful actions. All of these components are present in Russian electoral legislation.

Russian legislation regulates the procedure for counting votes in the precinct election commissions fairly strictly. For example, since 1997 there has been a norm in force stipulating that during the count the ballot papers are sorted in such a way that the content of the ballot paper is announced and the ballot paper is then presented for visual inspection, and since 2002 there has been a regulation stipulating that the sorted ballots papers be counted by restacking them. The procedures for invalidating unused ballot papers, tallying the data in the voter lists and completing the results protocol are regulated. The law stipulates that the results protocols must contain ratios, in particular, demonstrating the balance of ballot papers.

The State Automated System of the Russian Federation “*Vybory*” (“Elections”) rules out any possibility of external influence on the information transmitted between election commissions on the preliminary results of elections.

Russian procedures for ensuring freedom of the media during election campaigns

It is clear that genuine and democratic elections can be regarded as free if there is a real guarantee of the right to information and freedom of expression during the election campaign. For that reason, every legislator is required to ensure that the right of citizens both to receive and to freely disseminate information on elections and referendums. In that connection, a certain balance must be maintained among constitutionally protected values such as the right to free elections and the right to freedom of speech and information, and no inequality and disproportionality in the established restrictions should be permitted.

The distinction the Federal Law on the Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum establishes between voter information and pre-election campaigning is intended to ensure that the will of the citizens can take shape in freedom and that the elections are transparent, and meets the requirements of the Constitution of the Russian Federation, since it is only when the right to objective information and freedom of expression is really guaranteed that elections can be regarded as truly free.

The current Russian legislation on elections does not place excessive burdens on media organizations. The legal requirements of them are dictated by the need to promote the public interest during elections in the Russian Federation given that elections are the ultimate direct expression of the power of the people, and by the priority of ensuring that the electoral rights of the citizens are fully exercised. The norms of the existing electoral legislation and the laws on the media interact in such a way as to ensure that the rights and legal interests of the media organizations involved in covering elections are sufficiently exercised.

Representatives of the media are entitled to attend election commission meetings, to familiarize themselves with the precinct commission protocol on the vote returns as well as with the protocols of other commissions on the vote returns and election or referendum results, to receive from the relevant commission copies of these protocols and the documents attached to them, to attend campaigning events and cover the holding of such events, to have access to the premises used for voting on election day or days set aside for early voting, and also to take photographs and film events.

Media organizations operate in freedom when informing the electorate or participants in a referendum. That means that the content of information material, the time of its release and other similar conditions are determined by the media outlets independently and not in

accordance with any instructions issued by the State authorities or local government and, most importantly, the material is not subject to censorship.

At the same time, an awareness of their role should impose a particular moral responsibility on representatives of the media community covering election campaigns to inform the public about elections in an unbiased and objective manner and to behave professionally and in a manner in fully keeping with the law when covering elections. In recent years, there have been ever louder calls for ethical and professional self-regulation standards among journalists with regard to relationships arising as a result of providing information during the electoral process.

Transparency in the financing of election campaigns

The very fact of the existence of financial resources (limited or unlimited, both State and non-State) as an integral part of an election campaign can create considerable advantages for certain candidates and electoral associations in elections. Legal regulation of the procedure for financing election campaigns promotes equal opportunities for all the participants in the campaigns.

The most important aspects involved in observing the principle of financial discipline are reflected in Russian electoral legislation. Candidates and electoral associations are required to set up their own election funds as the sole source of financing for their election campaign; the use of unlimited financial resources is prohibited, the resources of election funds may be used only for expenses connected with conducting the election campaign, financial operations are effectively monitored and measures have been established for legal liability for violation of the procedure for the financing of an election campaign.

The legal status of election funds is currently determined by the Federal Law on the Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum. The legal status of election funds for regional and municipal elections is regulated in a number of respects by the laws of the republics and territories of the Russian Federation.

The Federal Law on Political Parties invests the Central Election Commission of the Russian Federation and the election commissions of the republics and territories of the Russian Federation with powers to verify the flow of funds of political parties, namely the consolidated financial statement, the information on the receipt and expenditure of funds, including by the party's regional branches, the sources of the generation of the party's assets and the legitimacy of donations received by the party and its regional branches from citizens and legal persons.

The most important principle of an audit is the transparency of the financial activities of political parties, including the financing of their participation in elections, and this is ensured by a system of open information. In accordance with the Federal Law on the Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum, the credit institutions at which special election accounts are opened are required to inform the election commissions about the receipt and expenditure of election funds. At the request of the relevant commission, the credit institution provides certified copies of the original financial documents confirming the relevant operations. Information on receipt and expenditure of election funds is sent to the media for publication

in the manner established by law. Another way of informing the electorate about the financing of election campaigns is the publication of the financial statements of candidates and electoral associations.

The consolidated financial statement of a political party is posted on the official CEC website. The results of the verification of these statements are brought to the attention of the relevant political parties and posted on the CEC website as well as being published in national periodicals.

The strengthening of the role of finances for a successful election campaign and the need to monitor their use have helped to create an important and effective instrument of financial control – the supervision and auditing services at the different levels of election commissions.

The fundamental principles of the legal status of the supervision and auditing services are set out in the relevant federal and regional laws on elections. The procedure for their formation and operations is regulated in detail in the relevant election commission documents. However, their decisions serve purely as recommendations. The final decision of legal significance on the material and documents submitted is taken by the relevant election commission.

Russian legislation contains measures on legal liability for financial violations during election campaigns and the mechanism to implement these measures; this is one of the important guarantees of the observance of the electoral rights of citizens and other participants in elections.

Liability and accountability of election commission members

Legal liability for the violation of election laws is established in Russian electoral legislation.

As regards the liability of election commission members, we would note that the Code of the Russian Federation on Administrative Offences provides for liability (the imposition of an administrative fine) for the violation of a citizen's right to have an opportunity to familiarize himself or herself with the electoral register, violations of the procedure for providing information on voters, unlawful issuance of a ballot paper to a citizen, violation of the procedure established by law for the counting of votes and determination of the election results, failure to provide information on vote returns, etc.

The Criminal Code of the Russian Federation provides for liability for the falsification of election documents and the falsification of vote returns.

Election commission members and staff working for election commissions with access to the information resources provided by the State Automated System "Vybory" who interfere unlawfully in its work will incur disciplinary, administrative, criminal or material liability in accordance with the federal laws.

The Russian laws on elections make no formal provision for the accountability of election commission members. At the same time, this kind of accountability may be of an informal nature, for example election commission members are accountable to society, the

electorate and the State, or election commission members with voting rights or a consultative capacity are accountable to the political parties or their regional branches or to the electoral associations that have sent them to election commissions for work in a particular capacity, as established by the laws on elections.

“Transparency” of the electoral process, measures and mechanisms to ensure the right to national and international monitoring

Election monitoring can play an important role in increasing confidence in the electoral process and generally helping to protect and support civil and political rights. Election monitoring enhances the informal accountability of the election organizers (to society, the electorate and the State) and the transparency of the electoral process.

The norms of the international treaties to which the Russian Federation is a party as well as the institution of international election monitoring serve as international guarantees of human and civil rights. Internal State guarantees are established by national electoral legislation and take account of international standards, forming an overall system of State measures to ensure the full exercise of civil rights in elections at various levels.

(a) National monitoring

For all the relevance of international monitoring, it is important not to overlook the practice of national (internal) monitoring, which can also be used to obtain an overview of the conduct of elections at all levels.

In the current Russian electoral legislation, the right to appoint observers rests with the registered candidates, the electoral association putting forward a registered candidate or candidates and the electoral association that has registered the list of candidates. The law may provide for the possibility of the appointment of observers by other public associations. Furthermore, in accordance with their legal status, election commission members with a consultative capacity appointed by candidates or electoral associations in practice serve as national (internal) observers.

At present, the institution of national monitoring in the Russian federation is important both in terms of the practical protection of the electoral rights of citizens and other participants in the electoral process and in terms of raising the public status of internal monitoring. In 2007, the CEC established the Girenko medal in memory of the well-known human rights activist Nikolay Mikhailovich Girenko and a Board of Trustees to award that medal. The medal is awarded twice a year following the results of federal and regional elections in the Russian Federation to commemorate the practical contribution made by observers, election commission members with a consultative capacity and foreign (international) observers towards ensuring free and fair elections, individuals who have shown a principled stance and consistency in the protection of the electoral rights of Russian citizens.

The preparation for and conduct of the Russian presidential elections in 2008 was monitored by more than 160,000 observers sent by candidates and political parties; around a further 54,000 election commission members with a consultative capacity who had been appointed by candidates were also able to monitor the election proceedings, the actual voting, the procedure for counting the votes and the determination of vote returns. During the

elections, on the single day of voting in nine republics and territories of the Russian Federation, on 1 March 2009, there were around 24,000 observers at the polling stations, more than 60 per cent of whom were nominated by electoral associations who had put forward and registered lists of candidates.

The voters themselves and the media also assume an unofficial function of monitoring compliance with the principles of openness and transparency. Telephone hotlines that anyone can call to report violations of electoral rights are set up during federal elections in more than half of the republics and territories of the Russian Federation and also at the CEC.

Openness of the electoral process in terms of the information available is one of the aspects of informal national (internal) monitoring. The Internet is used to that end. In accordance with international norms, documents on electoral legislation, information on current elections and an archive covering past elections and so forth must be posted on the website of an electoral body in any country. The official CEC website is one of the most open in terms of the range and quality of the information presented.

The CEC and the election commissions of the republics and territories of the Russian Federation are open to communication with the media community.

During the Russian presidential elections in 2008, 2,051 journalists, including 183 foreign journalists from 47 countries, were accredited with the CEC "Elections – 2008" Information Centre and the "Elections – 2008" International Information Centre. On the single day of voting in republics and territories of the Russian Federation on 12 October 2008, 3,251 journalists were accredited, 2,765 of them in republics and territories of the Russian Federation. On the single day of voting in republics and territories of the Russian Federation on 1 March 2009, 4,233 journalists were accredited, 3,906 of them in republics and territories of the Russian Federation.

(b) International monitoring

The regulation of the activities of international observers is dealt with in the federal laws on the election of deputies to the State Duma and of the President of the Russian Federation. More than 8,000 foreign (international) observers were present in the Russian Federation for the five federal election cycles consisting of parliamentary and presidential elections between 1993 and 2008. The legislative framework for international monitoring in the Russian Federation has not undergone any significant changes during that entire period.