

RUSSIA
AND
INTERNATIONAL
ELECTORAL
STANDARDS

Central Election Commission
of the Russian Federation

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ELECTORAL
STANDARDS

Collection of Documents

General editor
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Central Election Commission
of the Russian Federation

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⁴ This document is a new edition of Recommendations for international observers from the Commonwealth of Independent States monitoring elections that were adopted on December 5, 2002 and were initially included in the Russian-language printed version of the Collection (2004). The Russian-language electronic version of the Collection (2005) and this publication include a new edition of the Recommendations.

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INTRODUCTION

Here is the English version of the publication "International Electoral Standards. Collection of Documents" (in Russian) prepared by the Central Election Commission of the Russian Federation in 2004.¹ The book in Russian was warmly welcomed by the readers and we have made an attempt to make it available to the English-speaking reader as well.

The Russian version contained 117 international legal documents available in English (out of the total number of 142 documents of the Russian printed and 154 documents of the Russian electronic version).² The editors found it expedient that the English version of the book should only include the documents that were originally adopted in Russian.

Therefore, this publication comprises English translations of main documents adopted by the Commonwealth of Independent States (Part 1), including those regulating activities of international observers of elections and referenda conducted within the Commonwealth of Independent States (Part 2), as well as international treaties signed by the Russian Federation, decisions of the Constitutional Court of the Russian Federation, and decisions of the Supreme Court of the Russian Federation related to the electoral right and electoral process and application of international electoral standards (Part 3).

The Preface of the Chairman of the Central Election Commission of the Russian Federation, Alexander A. Veshnyakov, addressed to the reader, as well as appendices to the Collection, have also been translated into English.

The complete list of documents translated from English (Sections 1–10 of the Russian-language edition) and published in the Russian-language version of the "International Electoral standards. Collection of Documents" is provided in Appendix No. 3 hereto. English versions of these documents may be found in electronic databases of corresponding international organizations (electronic addresses are provided in Appendix No. 2).

The English version of this Collection provides a foreign reader with a stratum of international legal documents adopted by the Commonwealth of Independent States and Russian Federation that reflect and implement the primary principles and norms of the international law in the area of electoral rights and freedoms of a human being and citizen and conduct of free and democratic elections. The Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States deserves special attention. This document is one of the first specialized international legal acts in the area of the election right and electoral process that is legally binding, that has unified and revealed the essence of democratic electoral standards within the boundaries of the Commonwealth

¹ *Mezhdunarodnye Izbiratelnye Standarty. Sbornik Dokumentov* // Edited by Alexander A. Veshnyakov (General Editor) and Vladimir I. Lysenko. Moscow: Izdatelstvo VES MIR, 2004. 1152 pp.

² *Mezhdunarodnye Izbiratelnye Standarty. Sbornik Dokumentov* // Edited by Alexander A. Veshnyakov (General Editor) and Vladimir I. Lysenko. Published by the Central Election Commission of the Russian Federation and "CORDIS & MEDIA" Co., 2005 (CD-ROM).

of Independent States, and that provides for the creation of a mechanism ensuring guarantees of election rights and freedoms of citizens in the CIS states. The Convention took effect on November 11, 2003 and demonstrates the willingness of the Commonwealth states to further democratize the electoral process, create a new regional system of international guarantees of electoral rights and freedoms of election participants, ensure stability of political development, and develop international electoral standards.

Enforcement of the Convention enabled one to substantially particularize and enrich provisions of the Recommendations for International Elections and Referenda Observers in the Commonwealth of Independent States, which apply not only to elections but also to such an important institute of direct democracy as referendum, on a solid international and legal basis.

This publication includes decisions of the Constitutional Court of the Russian Federation and the Supreme Court of the Russian Federation practically ensuring application of international electoral standards in protection of electoral rights and freedoms of a human being and citizen, as well as all participants of the electoral process.

The alphabetical and subject index included in the Collection will help the reader to locate the required document, as well as notions and terms contained therein.

We believe that this publication will be useful for election law specialists, election officials, all those who are interested in the issues of international legal regulation of electoral rights and freedoms of man and citizen, as well as international electoral standards used to conduct free and democratic elections.

Editors

FOREWORD¹

This book is a Collection of international bills and other documents related to the election law and electoral process. *International Electoral Standards. Collection of Documents* includes primary documents of the United Nations Organization and its bodies, Organization for Security and Cooperation in Europe, the Council of Europe and European Court of Human Rights, European Union, Commonwealth of Independent States, and other international organizations ensuring and protecting electoral rights and freedoms of a human being and citizen, and regulating organization and administration of democratic elections. International documents included in the Collection in aggregate present the following:

first, international standards in the area of the election law and electoral process (international electoral standards) – the right to elect and be elected to bodies of state power and local self-government on the basis of universal principles of the election law – universal equal direct suffrage by free and secret ballot in combination with other procedures ensuring free expression of citizen's will on the basis of periodic and mandatory elections and their free, genuine, fair, open, and transparent nature;²

second, such important conditions ensuring a democratic electoral process as respect for and observation and protection of democratic rights and freedoms of a human being and citizen, partisan and ideological diversity, stability of legal norms regulating elections and their simultaneous dynamic and democratic development;

third, procedural guarantees – organization of voting and tabulation of ballots by independent election bodies or other specifically authorized bodies, availability and effective functioning of mechanisms protecting electoral rights and freedoms of all participants of the electoral process, ensuring the right to contest vote returns and election results in judicial and other authorized bodies, effective civil control and impartial international monitoring of elections, including such important electoral actions as organization of the voting process, tabulation of ballots, publication of election results, and adjudication of election-related grievances;

fourth, modern methods and forms of organization of the electoral process that relies on application of the most advanced technological achievements, technical voting and vote tabulation means;

fifth, efforts of international operations and bodies undertaken to further enrich and legally develop existing international electoral standards, coordination of joint efforts in this important direction to ensure electoral rights and freedoms of a human being and citizen. In this connection, the Collection includes decisions on some important draft documents that are being developed by a number of international

¹ This Forward was written for the Russian-language printed version of the Collection (2004) and its electronic version (2005).

² In international documents the term "standards" is used in various combinations and with various meanings. For example, one may come across such phrases as "international human rights standards", "internationally recognized standards of administration of justice", "principles and standards provided for by the international law", "international standards of democratic elections."

organizations which gives the reader an idea of the key trends and directions in the contemporary development of international electoral standards.

Documents included in the Collection encompass the period that begins at the moment of establishment of corresponding international organizations and bodies and ends on August 1, 2004. Naturally, during such a long period of time, e.g., the UN or the Council of Europe have adopted a large number of documents, but the Collection does not include all of them but only the most important ones, as well as those that have been adopted recently. The Collection includes a total of 142 international bills and other documents relating to the election law and electoral process and presenting international electoral standards on administration of democratic elections.¹

Structurally, the Collection consists of 11 sections. For convenience, all documents included in the Collection are grouped primarily by the leading international organizations and bodies that have adopted, approved, or are developing them. A special section is dedicated to organization of international monitoring of elections. Resolutions characterizing operation of the Constitutional Court of the Russian Federation and the Supreme Court of the Russian Federation in application of generally recognized principles and norms of the international law and international treaties of the Russian Federation in their law-enforcement activities are also singled out into a separate section which allows one to more vividly demonstrate contingency of the Russian election legislation with generally recognized principles and norms of the international law regulating administration of democratic elections. In a number of sections of the Collection documents are presented in appropriate specialized subsections and, as a rule, are given in chronological order of their adoption. To facilitate operative search for required norm, provision, title, notion, term, or document an alphabetical-subject index is included. In addition, there is a list of electronic addresses of international organizations and other institutions whose documents are included in the Collection. This publication is designed for election officials, representatives of legislative, executive, and judicial power bodies, political parties and other public associations, mass media, lawyers, political scientists, all those who are interested in international electoral standards as one of the effective instruments used by the international community and national legislative and law-enforcement bodies to create conditions required to conduct democratic elections.

The answer to the question what international electoral standards are needed for is very simple and understandable – a state that is democratic in form and ruled by law in essence can hardly exist without free and democratic elections that comply with generally recognized international criteria of electoral rights and freedoms of a human being and citizen, as well as all participants of the electoral process. That is their imperishable value for the democratic society and the aspiration of the world community to ensure the rights and freedoms of a human being and citizen. After World War II the international community recognized the right of the people for self-determination, the

¹ In view of a significant volume and complex character of some documents dedicated to human rights and freedoms, and due to the legal status and primary activities of international organizations and bodies, the Collection includes only those key provisions that directly relate to international election standards. Documents provided in their entirety present a more comprehensive idea of not only conditions of development and functioning of international election standards, but also of the development of the democratic atmosphere within which electoral rights and freedoms of a human being and citizen and other participants of the election process may be implemented to the utmost and protected most adequately, where free and democratic nature of elections is ensured.

right of the citizen to equal access to state service, to participate in the government of the country, to elect and be elected as fundamental human rights, and developed a number of international standards in this area. These standards evolved and grew more defined as the states were acknowledging the importance of democratic electoral rights and freedoms, guarantees of their implementation and international protection.

Thus, on the basis of the fundamental rights and freedoms of a human being and citizen the most important principles of the election law were defined – the universal and equal suffrage by direct and secret ballot or facilitated through other voting methods ensuring freedom of expression of one's will mutually connected with elements of functional parameters of elections the main of which is the free, fair, genuine, and regular nature of elections.

Initially, however, the principles and categories mentioned above were not determined and elaborated in international and legal documents definitely and comprehensively enough. The first attempt to reveal the essence of the said principles of the election law was made in 1962 in a resolution adopted by the UN Subcommittee for prevention of discrimination and protection of minorities pursuant to which the principle of the universal electoral right provides that every citizen has the right to vote at any national elections and referenda conducted in their country. In addition, the right to participate in voting does not depend on the level of voter's literacy or any other educational qualification. The equal electoral right provides that every citizen has the right to participate in elections on the basis of equality and all votes are equal in their force. In addition, every citizen must have equal legal possibilities to nominate their candidacy in elections. Observation of the principle of the direct electoral right implies that citizens vote in elections for a candidate and/or list of candidates respectively, or against a candidate and/or list of candidates directly. Voting by secret ballot implies that each voter must be granted a possibility to cast their ballot in such conditions that would not result in disclosure of information about voter's choice, made or intended. At the same time, no voter may be coerced to publicly announce, including in the court of law or otherwise, their choice, made or intended, and no one may solicit from voters, directly or indirectly, information about their voting choices, made or intended. As far as such a functional parameter as periodicity is concerned, international documents, as is known, do not establish concrete terms for periodic conduct of elections but their periodicity must be determined on the basis of the fact that governmental power must reflect the will of the people that is the foundation of legality of governmental activities, at all times.

Other functional parameters of elections began to emerge later on – free, fair, genuine, organized and administered by independent election bodies. Free elections ensure that citizens and other participants of the electoral process make their choices with respect to their participation or non-participation in the elections using forms and methods allowed by law, free from any pressure, coercion, threats of being coerced, or any other illegal influence, not being afraid of punishment or any pressure or influence regardless of vote returns and election results. Fair elections provide all participants of the electoral process equal legal conditions for participation in the election campaign. Genuine elections provide voters with the right to make a real choice, identify the freely expressed will of the people, and lead to its implementation. Preparation and administration of elections, ensuring and protection of electoral rights and freedoms of citizens and control over their observation must be delegated

to appropriate election bodies that are independent within their jurisdiction and authority and are able to operate effectively.

Later, the world community began to focus its attention on availability and quality of the normative base regulating organization of the electoral process which is understood as activities of individuals, bodies, organizations, and groups associated with preparation and administration of elections, that are regulated by law and other normative documents. This normatively regulated activity consists of certain stages positioned in an established temporal sequence. These stages are: call for elections, registration of voters, formation of election districts and determination of their boundaries, identification of electoral precincts and polling stations, formation of electoral bodies, nomination of candidates, election campaigning, voting, determination and publication of election results. To that end, the state must dispose of legislation that precisely and clearly defines terms and conditions and the order of implementation of the said key stages of the electoral process.

A serious step in further development of international legal norms in the area of the election law was rule-making activities of regional international organizations – the Council of Europe, the European Court of Human Rights, the European Union, the Organization for Security and Cooperation in Europe, Organization of American States, Organization of African Unity (African Union – since 2002), the Commonwealth of Independent States and others, whose documents expanded and particularized a number of regional electoral standards supplementing the generally recognized principles and norms of the international law governing democratic elections. Documents passed by these organizations are included in corresponding sections of this Collection. Each of the international organizations has been able to make a fundamental contribution in the formation of the contemporary democratic international legal base governing free elections.

Among the greatest achievements of the United Nations Organization one should specifically distinguish development of international standards in the area of rights and freedoms of a human being and citizen, including the electoral right and electoral process.

As is known, one of the first UN documents in this sphere was the Universal Declaration of Human Rights adopted on December 10, 1948, that declared fundamental rights and freedoms possessed by all men and women, including the right to participate in state government, the right to elect and be elected.

The Universal Declaration is one of the fundamental documents that lay the international foundation for further development and adoption of more than 80 conventions and declarations on human rights, including the International Covenant on Economic, Social, and Cultural Rights adopted on December 16, 1966 and enforced on January 3, 1976, and the International Covenant on Civil and Political Rights adopted on December 16, 1966 and enforced on March 23, 1976. The Covenants are comprehensive and legally binding international human rights treaties and together with the Universal Declaration of Human Rights make up the core of the International Bill of Human Rights that provides, in particular, that every citizen must have the right and possibility to participate in management of state affairs both directly and through freely elected representatives free from any discrimination and unjustified limitations, as well as to vote and be elected in genuine periodic elections conducted on the basis of the universal and equal electoral right by secret ballot that ensures free expression of voters' will.

Upon the whole, the Universal Declaration of Human Rights, implementation of which is the task of all peoples and states, is the source of inspiration and a foundation for the United Nations Organization in ensuring further progress in the establishment of *standards provided for by the current international human rights treaties*, including the previously mentioned Covenants.¹

Today, the efforts undertaken by the United Nations Organization, its bodies and institutions specializing in human rights and freedoms, focus on practical implementation of the established norms, as well as on provision of assistance in administration of elections to states that are currently required to resolve internal political conflicts.

The practice of international resolution of ethnic, social, and political conflicts by means of the institute of elections under international control or by direct efforts of international organizations has posed a new problem before the international community: provision of assistance in the development of contemporary national election legislations and conduct of national election campaigns in compliance with universally recognized principles and norms of the international law. In this connection the UN General Assembly acknowledged in its Resolution No. 48/131 that in order to ensure continuous and stable democratization process the UN must provide relevant assistance to certain states both before and after elections. In each particular case of provision of assistance in the development of election legislation and conduct of free and fair elections UN specialists proceed from provisions accounted for by international documents on fundamental human rights and freedoms, rely on the principle of non-admission of discrimination and mandatory compliance with requirements of the universal equal electoral right by secret ballot, as well as provisions accounted for by international documents defining the principles of sovereignty of states, and states' international responsibilities accounted for by international documents they have signed.

The UN Commission on Human Rights as one of the bodies of the UN system holds public hearings to review observation of human rights by the states, to adopt new standards and encourage human rights worldwide, and prepares draft resolutions on particular issues for the UN General Assembly. In this connection, relevant documents concerning protection of electoral rights and freedoms of citizens have found their place in this Collection.

It is required that in administration of elections one must respect the principles accounted for by Article 2 of the UN Charter, in particular, the principle of respect for national sovereignty. Participation of the UN in election-related events is accounted for by its responsibility to cooperate with UN member states in order to encourage observation of the fundamental rights listed in the UN Charter and the Universal Declaration of Human Rights. The guiding principle of UN activities in the election area is provision of assistance to governments at their request in order to ensure that peoples they govern could play a free and active role in election of their governments. Primarily, the UN provides four categories of election-related assistance: a) technical assistance; b) organization and administration of elections; c) monitoring and control over elections; d) presence in locations where elections are expected to play an important role at the stage of political negotiations associated with development of the

¹ See *Vienna Declaration and Program of Action* (adopted by the World Conference on Human Rights on June 25, 1993).

world. Such assistance is offered provided that the following two political conditions are in place: within the context of political stability and in the course of or immediately following resolution of a conflict. As a rule, technical assistance is provided within politically stable conditions, whereas assistance in organization and administration of elections is offered almost exclusively in conditions immediately following resolution of a conflict. The fourth category of assistance – participation within conditions of peaceful negotiations – is relatively new.

On this basis, in 1992, the UN Secretariat created Electoral Assistance Division within the UN Department of Political Affairs – initially Electoral Assistance Unit – whose task was to provide technical assistance to the Under-Secretary-General on Political Affairs appointed by the UN Coordinator on Electoral Assistance.

The Division's key task is to appraise requests for electoral assistance; establish and comply with UN electoral standards; organize needs assessment missions; provide assistance to organizations operating within the UN system, as well as other organizations in preparation of events conducted under electoral assistance projects, development of election-related strategies within the framework of peacekeeping operations; to facilitate organization of international monitoring of elections and ensure continuity within UN election-related activities. Pursuant to Resolution No. 46/137 of the UN General Assembly adopted on December 17, 1991, the Division maintains a common official Roster of election experts for the entire UN system which, as of January 1, 2004, consisted of approximately 1,100 persons representing each region of the world possessing various language skills, knowledge, and experience; almost 25% of all the experts included in the Roster are women. The Division also puts together statistical reports on UN activities within the area of provision of electoral assistance on a yearly basis.

Among the new areas of international cooperation and assistance within which the Division operates there are, for example, voting regimes for individuals residing abroad, local elections, long-term education programs for population on issues related to functioning of the civil society and participation in elections. The Department of Political Affairs of the UN Secretariat and the UN Development Program have prepared and adopted updated Guidance on Provision of Electoral Assistance pursuant to which governments or elective bodies must officially petition to the UN Electoral Assistance Coordinator and request assistance at least four months prior to the scheduled election date which is a prerequisite of effective participation.

On August 4, 2003, the UN Secretary General presented a report at the 58th session of the UN General Assembly entitled "Strengthening of the Role of the United Nations in Raising the Effectiveness of the Principle of Periodic and Genuine Elections and Promotion of Democracy" which contained a description of activities undertaken by the UN within the previous biennium to provide electoral assistance and, in particular, to implement Resolutions No. 54/173 and No. 56/159 of the General Assembly. It also contains, in particular, analytical framework within which one appraises the role of elections in the achievement of Organization's goals, including prevention of conflicts and global development. In addition, it emphasizes the role of the United Nations Organization as coordinator of activities undertaken to provide electoral assistance, and reviews how various subdivisions of the UN system closely coordinate their effective and timely efforts providing electoral assistance and using experience accumulated during the previous decade.

The Collection includes 51 UN documents on electoral rights and freedoms of a human being and citizen, and organization of a democratic electoral process.

Many documents included in the Collection have been published by the Organization for Security and Cooperation in Europe. During the time that has elapsed since 1975, when the Helsinki Final Act was signed, the Conference for Security and Cooperation in Europe (CCSE) re-designated in December of 1994 as the Organization for Security and Cooperation in Europe (OSCE) has developed a wide spectrum of international commitments in the area of human rights, democracy, and the rule of law. Such principle documents as the Copenhagen Document of the OSCE Conference on Human Dimension of June 29, 1990, and the Paris Charter for the New Europe of November 21, 1990 have enabled OSCE to formulate a number of other important provisions required for contemporary understanding of the human dimension. It is important to remember that OSCE uses the term "human dimension" to denote a number of commitment-related provisions and types of activities associated with human rights and democracy.

It is known that covenants, conventions, and treaties are legally binding instruments in the states that have ratified or joined them. Declarations, principles, guidelines, recommendations, and other similar OSCE documents are not legally binding unlike, in particular, the European Treaty on Human Rights. OSCE documents are international political commitments of OSCE member states. Such documents may vary by status but their politico-legal significance is beyond any doubt as is their place within the system of universally recognized international rights of a human being and citizen – they are international documents supported by politico-legal, organizational, technical, and other resources of the international organization itself. As a rule, OSCE commitments are formalized as documents adopted by consensus reached by OSCE member states at summits and meetings of other political levels. Each of such meetings is held within a certain political context. While some meetings, especially those held in the early 90s of the XX century, have resulted in the development of a wide spectrum of new and important norms, others have limited themselves with amending and supplementing them. The OSCE normative base consists of all documents in the aggregate, i.e., as new documents are adopted those already existing do not lose their force; they rely upon each other and constitute what can be called the OSCE property. These documents have been adopted on the basis of consensus and are politically binding for all OSCE member states. This fully applies to newly admitted OSCE member states – as they join the Organization they make a commitment to recognize and utilize this property.

One of the key OSCE institutes responsible for issues related to the human, including electoral, dimension, is the Office for Democratic Institutions and Human Rights. Since 1991 when the Bureau for Free Elections (re-designated in 1992 as the ODIHR OSCE) was established its primary goals have been provision of assistance to OSCE member states in the development of open democratic society structures, strengthening of democratic institutes, promotion of human rights and the rule of law, support for the development of civil society, and promotion of free democratic elections. Today, international monitoring of elections, provision of support in administration of democratic elections by means of implementation of projects that account for in-depth monitoring of elections and provision of assistance to improve election legislation and eliminate defi-

ciencies of the election administration practice, are among key ODIHR activities.

Over the past decade, ODIHR has become a recognized leader among organizations involved in monitoring of elections within the OSCE region, first and foremost, in Europe and Middle Asia. ODIHR has monitored preparation and administration of more than 110 elections. As a rule, preliminary results of monitoring are announced on the next day after elections and within a short period of time a final election observation report containing appropriate recommendations on state's implementation of international election-related commitments is put together and published. ODIHR plays a certain role in international observation of implementation of OSCE human dimension commitments by OSCE member states, because at the Istanbul Summit of 1999 OSCE member states made a commitment to "immediately respond to election-related assessments and recommendations of OSCE" contained in reports that it publishes upon completion of observation of each election. This Collection includes 17 key OSCE documents, including some of the primary documents of the OSCE High Commissar on national minorities, as well as the OSCE Office for Democratic Institutions and Human Rights.

The oldest regional European organization is the Council of Europe within the framework of which more than 150 conventions and protocols related to various aspects of human rights and freedoms have been adopted. The most important of them, undoubtedly, is the European Convention for the Protection of Human Rights and Fundamental Freedoms. It was adopted by the Council of Europe on November 4, 1950. Together with optional protocols, and first and foremost, Protocol No. 1 adopted on March 20, 1952, the Convention took effect on September 3, 1953.

What is the power of the aforementioned documents? They are the modern international legal base that serves as the foundation for the European electoral legacy, the entire European system of protection of human rights and fundamental freedoms, including electoral ones, because they provide that parties to the said Convention undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature (Article 3 of Protocol No. 1). In addition, ratification of the Convention and fulfillment of commitments imposed thereby is one of the prerequisites of admission to the Council of Europe. Analysis of the Convention and the said Protocol thereto proves that the Convention is valuable not only because it secures human rights and freedoms, but also because it provides for a special mechanism of their implementation. Initially, this mechanism entailed a number of bodies that were responsible for ensuring observation of commitments made by member states of the Convention, such as the European Commission of Human Rights, the European Court of Human Rights, and the Committee of Ministers of the Council of Europe. Since November 1, 1998, once Protocol No. 11 to the Convention took effect, the first two bodies have been replaced with one – the permanently operating European Court of Human Rights.

The primary goal of the European Court of Human Rights, which is a judicial element of a conventional executive mechanism, is to exercise judicial control over compliance with commitments imposed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. The European Court of Human Rights began its operation in 1959 and by the end of 2003 it had reviewed over a thousand cases most of which had been initiated on the basis of grievances submitted by citizens.

It is worth mentioning that Section 3 of Article 46 of the Constitution of the Russian Federation provides that everyone shall have the right to appeal, according to international treaties of the Russian Federation, to international bodies for the protection of human rights and freedoms, if all the existing internal state means of legal protection have been exhausted. This provision and membership of the Russian Federation in the Council of Europe enables citizens of the Russian Federation to petition to the European Court of Human Rights in a variety of circumstances that include situations when the citizen has exhausted all domestically available means of legal protection and reinstatement of violated electoral rights and freedoms accounted for by the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as by previous decisions of the European Court itself.

Having begun its activities in 1959, the European Court of Human Rights had reviewed over a thousand cases by January of 2004; the overwhelming majority of those cases had been initiated on the basis of citizens' grievances. Reviewing electoral disputes the European Court relies on provisions of Article 3 of Protocol No. 1 and Article 10 of the Convention securing the freedom of expression of one's opinion. It should be noted that this Collection includes only those decisions of the European Court that concern protection of electoral rights of citizens that have been translated into Russian.¹ It should also be born in mind that to correctly convey juridical meaning of legal positions assumed by the Court is not an easy task. Practical lack of a system of official certification of translations of judgments of the European Court of Human Rights results in the fact that the same texts exist in two, three, and even more translated versions. It often remains unclear on which of these unofficial translations national judicial and other bodies must rely. In addition, there is a problem associated with publication of court judgments.²

Reviewing institutes of the Council of Europe specializing in protection of rights and freedoms of a human being and citizen one should mention the European Commission for Democracy through Law established pursuant to a 1990 agreement of the Council of Europe, that is also known as the Venice Commission. This consultative body specializes in constitutional law, consists of independent experts from more than 50 countries, and cooperates with member states of the Council of Europe and other states providing its expertise and legal assistance in the area of constitutional reform,

¹ The Collection does not include election-related decisions of the European Court of Human Rights that have not been translated into Russian, including: *Ahmad & Others v. United Kingdom*, ECHR Reports 1998 – VI; *Gaulieder v. Slovakia*, App. #36909/97, Judgment of 18 May 2000; *Hilbe v. Liechtenstein*, ECHR Reports 1999 – VI; *Incal v. Turkey*, ECHR Reports 1998 – IV; *Iwanczuk v. Poland*, App. #251196/94, Judgment of 15 November 2001; *Labita v. Italy*, ECHR Reports 2000 – IV; *Lopes Gomes Da Silva v. Portugal*, ECHR Reports 2000 – X; *Pierre-Bloch v. France*, ECHR Reports 1997 – VI; *Podkolzina v. Latvia*, App. #46726/99, Judgment of April 9, 2002; *Stankov & United Macedonian Organization Ilinden v. Bulgaria*, App. #29221/95 and 29225/95, Judgment of October 2, 2001.

² To a certain extent, this problem is offset by the "Bulletin of the European Court of Human Rights" – a Russian-language journal that has been published in the Russian Federation since 2003 (as a rule, judgments are provided in abridged form). In addition, judgments of the European Court of Human Rights available in the Russian language, as well as the Russian translation of the European Convention for the Protection of Human Rights and Fundamental Freedoms have been published on CD-ROMs: *Key Judgments of the European Court of Human Rights*. Electronic Encyclopedia. // Information project of the Council of Europe, European Court of Human Rights, and "Garant." 2001; as well as: *European Convention on Human Rights. Law and Practice*. // Information project of the Council of Europe and "Garant." www.echr.ru. 2003.

election laws, and protection of human rights and freedoms. On November 8, 2001, the Permanent Commission of the Parliamentary Assembly of the Council of Europe (PACE), acting on behalf of the Assembly, adopted Resolution 1264 (2001) in which it instructed the Venice Commission to develop a code of principles underlying European election systems, as well as practical norms in election-related matters, including norms regulating preparation of elections, administration of elections as such, and the period immediately following elections. Pursuant to this instruction, in 2002, the Venice Commission prepared a document – "Code of good practice in electoral matters. Guidelines and explanatory report" – that was approved by the PACE on January 30, 2003. Pursuant to PACE Resolution 1320 (2003) of January 30, 2003, the "Code of good practice in electoral matters" is a serious step towards harmonization and unification of standards in organization and observation of elections, as well as development of procedures and conditions for organization of the electoral process within the framework of the European electoral legacy concept.¹

This Collection includes 20 primary documents of the Council of Europe and 13 judgments passed by the European Court of Human Rights to resolve concrete electoral disputes, including judgments on grievances submitted by Russian citizens in connection with elections in the Russian Federation.

A noteworthy document is the Charter of Fundamental Rights of the European Union adopted on December 7, 2000. It should be noted that one of the reasons behind its development was the lack of a comprehensive catalogue of rights and freedoms within basic instruments of the European Union. This document is interesting because of the fact that unlike previous charters of fundamental rights (both national and international) that had been adopted primarily to protect man from arbitrariness of the state power, the Charter of Fundamental Rights of the European Union is designed to protect rights and freedoms from possible violation by another subject – supragovernmental bodies of the European Union itself.

In addition, Article 39 of this Charter provides citizens of the European Union with the right to elect and be elected to the European Parliament (one of the primary legislative bodies of the European Union). Citizens of the Union exercise their active and passive electoral right in elections to the European Parliament at their place of residence in any of the member state of the Union on the same terms and conditions as citizens of the state in question. Pursuant to Article 40 of the Charter, citizens of the European Union have the right to vote and to stand as a candidate at municipal elections in the member state in which they reside at the time of elections, free from any discrimination on the basis of their nationality, i.e., under the same conditions as nationals of that state.

After disintegration of the Soviet Union and creation of the Commonwealth of Independent States, an important task of the new interstate formation is to ensure human rights and fundamental freedoms in the member states of the Commonwealth

¹ In its Declaration on the Code of Good Practice in Electoral Matters adopted at the 114th meeting on May 11-13, 2004, the Committee of Ministers recognizes the importance of the Code of Good Practice in Electoral Matters as an advisory document of the Council of Europe in organization and administration of elections reflecting the principle of European electoral legacy, as well as the foundation for possible further activities in preparation of the basis of democratic elections in European states. In addition, the Committee of Ministers encourages governments, parliaments, and other bodies and organizations of member states to take into account national democratic traditions and consider the Code in the development and application of election legislation, as well as undertake appropriate measures to widely promote it within relevant circles.

in compliance with universally recognized principles and norms of the international law and provisions of the Charter of the Commonwealth of Independent States. Pursuant to the Resolution to improve and reform the structure of Commonwealth bodies of April 2, 2000, member states of the Commonwealth have the right to independently decide whether or not to sign particular resolutions and international treaties. As a rule, in order for most of the documents adopted within the framework of the Commonwealth to take effect they must be ratified by at least three members.

One of such documents included in this Collection is the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States. It was signed on October 7, 2002 in the city of Cisinau by heads of seven out of 12 member states of the Commonwealth, namely: presidents of Armenia, Georgia, Kyrgyz Republic, Moldova, Russia, Tajikistan, and Ukraine. The Russian Federation ratified the Convention on July 2, 2003. On August 1, 2003 the Convention was ratified by the Kyrgyz Republic, on October 8, 2003 – by the Republic of Tajikistan. Ratification of the Convention and subsequent submission to the depositary for safekeeping of notices on implementation of all required intrastate procedures by three states mean that the Convention is now in force to which effect the CIS Executive Committee notified the ministries of foreign affairs of the Commonwealth member states by issuing a corresponding Memorandum on November 24, 2003. On July 16, 2004 the Convention was ratified by the Republic of Moldova.

The Convention is unique in the sense that for the first time in the global practice democratic electoral standards have been codified within an interstate formation – the Commonwealth of Independent States – and secured in the format of an international legal act – a legally binding convention.¹ It is especially important for states that develop their election systems and law-enforcement practice on the basis of the concept and model of legal regulation of democratic rights and freedoms of a human being and citizen.

Similar to the European Convention for the protection of Human Rights and Fundamental Freedoms, the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States provides for a control mechanism ensuring fulfillment of commitments imposed by the Convention by member states. This mechanism is the Interstate Election Board of the Commonwealth of Independent States whose primary goals are to provide support in implementation of provisions of the Convention and fulfillment of related international commitments of the states in the area of free democratic elections, support in organization of monitoring of compliance with provisions of the said

¹ Development of the draft Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States (took effect in November of 2003), draft Election Monitoring Recommendations for International Observers from the Commonwealth of Independent States (took effect in December of 2002), draft provision on the Interstate Election Board of the Commonwealth of Independent States (approved in April of 2004 at the 23rd plenary meeting of the Interparliamentary Assembly of the CIS States and forwarded for review to the Council of Heads of CIS member states) have been included in the Perspective plan of model lawmaking and approximation of national legislations in the Commonwealth of Independent States for the period until 2005 of the Interparliamentary Assembly of the Member States of the Commonwealth of Independent States at the initiative of the Central Election Commission of the Russian Federation and developed by the Temporary Group of Authors presided by V.I. Lysenko, member of the Central Election Commission of the Russian Federation, Doctor of Law (Institute of the State and Law of the Russian Academy of Sciences).

Convention, international monitoring of elections, creation of conditions for broad and objective coverage of preparation and administration of elections, support in provision of electoral rights and freedoms of a human being and citizen, and promotion of democratic and legal education of voters and other election participants.

The Convention has served as the initial legal base for the development of a number of documents of the Commonwealth of Independent States that are expected to become supplementary international legal instruments ensuring observation of democratic electoral standards, electoral rights and freedoms of citizens, other election participants, and international monitoring of elections in member states of the Convention. Thus, at its 20th plenary meeting held on December 7, 2002, the Interparliamentary Assembly of CIS member states approved Election Monitoring Recommendations for International Observers from the Commonwealth of Independent States developed on the basis of the said Convention, which Recommendations are an auxiliary methodological document for organization of international monitoring of elections by international observers of the Commonwealth. The said Recommendations are already actively used by missions of international observers of the Commonwealth assigned by the Executive Committee of the Commonwealth of Independent States to monitor preparation and conduct of elections in Commonwealth member states. In particular, they have been used in international monitoring of elections in Ukraine, Armenia, Azerbaijan, Russia, and Georgia.

Based on the decision of the Council of Heads of CIS member states of May 30, 2003 the CIS Executive Committee developed a Provision on the Mission of CIS observers of presidential and parliamentary elections and referenda in CIS member states that was approved at the meeting of the Council of CIS Ministers of Foreign Affairs in March of 2004. It also relies on the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States and Election Monitoring Recommendations for International Observers from the Commonwealth of Independent States.

In addition, the Collection includes documents adopted by the Inter-Parliamentary Assembly of the Member States of the Commonwealth of Independent States on issues of interstate electoral integration. The Collection includes a total of six primary documents and resolutions of the Commonwealth of Independent States and its charter bodies.

The Collection also includes documents of other regional international organizations, in particular, the Organization of American States (with reference to the American Convention on Human Rights adopted at the Inter-American diplomatic conference in Costa Rica on November 22, 1969) and Organization of African Unity known as the African Union since 2002 (the African Charter on Human and People's Rights, adopted on June 26, 1981).

For example, pursuant to Article 23 of the American Convention on Human Rights, every citizen has the right to vote and to be elected in genuine periodic elections conducted on the basis of universal and equal suffrage by secret ballot that guarantees the free expression of the will of the voters. At the same time, the law may regulate the exercise of these rights and opportunities only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings. This norm of the Convention is also supported

by the fact that guaranteed conduct of democratic elections is the prerequisite of state's membership in the Organization of American States. For example, pursuant to Article 9 of the Charter of the Organization of American States, a member state of the Organization whose democratically constituted government has been overthrown by force may be suspended from the exercise of the right to participate in the sessions of the General Assembly, the Meeting of Consultation, the Councils of the Organization and the Specialized Conferences as well as in the commissions, working groups and any other established bodies.

The African Charter on Human and People's Rights also contains a list of regional electoral standards but in a more limited form. For example, the African Charter does not mention such election law principles, as the universal and equal electoral right, voting by secret ballot, or even the guarantee of a free expression of voters' will, nor does it provide for such a principle as periodic elections.

The Inter-Parliamentary Union that unites parliaments of more than 130 states has been paying an ever growing attention to elections to representative bodies of power as the most important element in strengthening of democracy. In 1994, this organization initiated a study on criteria of free and fair elections that resulted in the development of certain guidelines for international election observers, as well as national election administration bodies. Based on results of this study Declaration "On the Criteria of Free and Fair Elections" was adopted. This Declaration comprised election practices and experiences, defined priorities and key elections criteria, and encouraged governments and parliaments of all countries to adhere to principles and norms established therein. This document has also found a place in this Collection.

Finally, the Collection includes international treaties of the Russian Federation with member states of the Commonwealth of Independent States (nine treaties), resolutions of the Constitutional Court of the Russian Federation that refer to universally recognized principles and norms of the international law and international treaties of the Russian Federation in review of electoral disputes on the basis of the Constitution of the Russian Federation and norms of the international law and contain legal positions of the Constitutional Court, as well as resolutions of the Plenum of the Supreme Court of the Russian Federation, "On certain issues of application of the Constitution of the Russian Federation by courts in administration of justice," "On application of universally recognized principles and norms of the international law and international treaties of the Russian Federation by courts of general jurisdiction," and "On court judgment," which contain basic initial guidelines for administration of justice by courts of general jurisdiction.

Given that the lists of rights and freedoms guaranteed by the Russian and international laws are practically identical, the Constitutional Court protects them relying on provisions of the Constitution of the Russian Federation and adhering to the universally recognized principles and norms of the international law. Thus, review of activities of the Constitutional Court of the Russian Federation demonstrates that universally recognized principles and norms of the international law and international treaties are applied in procedures of concrete and abstract control of norms in verification of constitutionality of the federal and regional legislation and interpretation of provisions of the Constitution of the Russian Federation. In a significant part of its judgments the Court resorts to the universally recognized principles and norms of the

international law and international treaties, as well as rulings of the European Court of Human Rights, first and foremost in its appraisal of legislation governing protection of rights and freedoms of a human being and citizen. For example, as of January 1, 2004, these positions were found in the motivated part of more than 180 judgments, including those concerning protection of electoral rights and freedoms, and they impacted the final conclusions on whether or not the contested normative acts comply with the Constitution in their operative parts.¹ Decisions of the Constitutional Court of the Russian Federation contain over 200 references to international documents of various levels. In fact, every third resolution is motivated with assistance of references to international legal acts and judgments of the European Court of Human Rights. Norms of the international law are applied by the Constitutional Court for legal reasoning and support of its legal positions on issues arising, among others, from electoral legal relationships. Doctrinal mastery of forms and methods of application of universally recognized principles and norms of the international law and international treaties by the Constitutional Court has great practical importance for law enforcers as well.

Upon the whole, the potential of international and international legal sources is used by the Constitutional Court of the Russian Federation and courts of general jurisdiction as an important toolkit for justification of their positions in the development of judgments on a wide spectrum of issues.

This Collection includes 12 decisions of the Constitutional Court of the Russian Federation on cases of verification of constitutionality of federal laws and laws of subjects of the Russian Federation regulating organization and administration of elections in consideration of their compliance with universally recognized principles and norms of the international law and international treaties of the Russian Federation.

The mastery of the legal international universal and European environment by the Constitutional Court of the Russian Federation is accepted and taken over by courts of general jurisdiction in their law-enforcement practices. Recognition of the priority of ratified international treaties by the Russian Federation over domestic laws is becoming judicial practice in the Russian Federation. Certain experience in this respect has been acquired by the Supreme Court of the Russian Federation which is supported by the already mentioned resolutions of the Plenum of the Supreme Court of the Russian Federation.

Resolutions of the Plenum of the Supreme Court of the Russian Federation confirm that pursuant to universally recognized principles and norms of the international law and international treaties of the Russian Federation, human rights and freedoms are directly effective within the jurisdiction of the Russian Federation. They define the meaning, content, and application of laws, activities of the bodies of legislative and executive power and local self-government, and are secured by administration of justice. At the same time, it is noted that as a state signatory to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Russian Federation recognizes the jurisdiction of the European Court of Human

¹ See materials of the all-Russian conference "Universally recognized principles and norms of the international law and international treaties in the practice of constitutional justice" with regard to application of universally recognized principles and norms of the international law and international treaties within the practice of the Constitutional Court of the Russian Federation and constitutional courts of subjects of the Russian Federation. – M.: December 24, 2002.

Rights to be mandatory in terms of interpretation and application of the said Convention and Protocols thereto if the Russian Federation is found to have violated commitments accounted for by these treaties after they took effect with respect to the Russian Federation (Article 1 of Federal Law No. 54-FZ of March 30, 1998 "On Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols Thereto"). Therefore, the aforementioned Convention must be applied by courts in consideration of the practice of the European Court of Human Rights to avoid any violation of the Convention for the Protection of Human Rights and Fundamental Freedoms. Finally, these resolutions of the Supreme Court of the Russian Federation are also important because for the first time these documents identify activities of courts with respect to application of norms of the international law, including international electoral standards. In particular, courts must act within their jurisdictions in such a fashion so as to ensure fulfillment of state's commitments accounted for by participation of the Russian Federation in the European Convention for the Protection of Human Rights and Fundamental Freedoms and other international legal acts.

Finally, the aforementioned resolutions of Plenums of the Supreme Court of the Russian Federation are quite relevant because in their election-related petitions to judicial bodies a growing number of citizens refer to violations of electoral rights and freedoms accounted for, in particular, by Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The most recent example to support this statement is the judgment of the Civil Judicial Board of the Supreme Court of the Russian Federation of December 6, 2003 passed on case No. 45-GOZ-31 which states that the principle of free elections implies, in particular, provision of citizens and other participants of the electoral process with a possibility to make their choice with respect to their participation or non-participation in elections using forms and methods accounted for by law, unaffected by pressure, violence, threat of violence, or any other illegal action.

International standards of democratic elections are further developing and evolving as the backbone for improvement of the national election legislation. In particular, this is supported by the efforts undertaken by the ODIHR OSCE to implement a project entitled "Current commitments of OSCE member states on the conduct of democratic elections" that provides for development of a normative act regulating further evolution of commitments of OSCE member states in organization and conduct of democratic elections.

The report of the Central Election Commission of the Russian Federation commissioned by the President of the Russian Federation, "On the improvement of election legislation of the Russian Federation" (December 2000) states that considering profound political changes in Europe and experience in administration of democratic elections accumulated in various countries of the world it is high time that international electoral standards be codified through systematization of current norms in their more precise formulation, reflection of international customs in contractual format, as well as development of new norms. International legal codification of electoral standards would not only help promote application of electoral democracy principles and guarantees of electoral rights and freedoms of constitutional states on the European continent, but it would also ensure protection from unjustified interference

with internal affairs of states in their resolution of issues that international legal acts have left to their discretion, and provide a guarantee from arbitrary modeling of such standards in conformity with momentary geopolitical interests.

This task is currently being handled by the Association of Central and Eastern European Election Officials (ACEEEO) which has begun, at the initiative of the Central Election Commission of the Russian Federation, the development of a draft European Convention on Democratic Electoral Standards, Rights, and Freedoms as a legal foundation for bringing national election legislation and practice in compliance with international standards. In the same line are Recommendations 1595(2003) of the Parliamentary Assembly of the Council of Europe in which the Committee of Ministers is recommended to prepare an international legal document in the format of a European convention that takes into account previously mentioned documents of the ODIHR OSCE, Association of Central and Eastern European Election Officials (ACEEEO), and the Venice Commission.¹

As far as the Commonwealth of Independent States is concerned, as it has been mentioned before, the development and adoption of the Provision on the Interstate Electoral Board of the Commonwealth of Independent States must become another effective instrument of control over fulfillment of international commitments within the framework of the Convention on Democratic Electoral Standards, Rights, and Freedoms in member states of the Commonwealth of Independent States.

To conclude I would like to note that if following publication of this Collection of Documents, "International Electoral Standards," electoral rights and freedoms of a human being and citizen will become more accessible and understandable to all participants of the electoral process, in which, as we know, the main role is played by the voters, I think that one of the primary goals of this book will be achieved. After all, one says, and not without reason, that the rights of a human being and citizen begin with the right to know one's right.

**Chairman of the
Central Election Commission of the
Russian Federation**

Alexander A. Veshnyakov

¹ The draft of the European Convention on Electoral Standards, Rights, and Freedoms was approved at the 58th plenary meeting of the European Commission for Democracy through Law (Venice Commission) that took place in Venice (Italy) on March 12-13, 2004 – (Opinion no. 253/2003, CDL-AD (2004) 010), which notes, in particular, that adoption of the Convention would be an important step towards harmonization of election legislation on the European continent in compliance with principles of the European electoral legacy, including resolution of the Parliamentary Assembly of the Council of Europe and Recommendations of the Congress of Local and Regional Authorities of Europe to convert the Code of Good Practices in Electoral Matters adopted by the European Commission for Democracy through Law (Venice Commission) into the format of a European Convention. The Venice Commission welcomed the draft European Convention on Electoral Standards, Rights, and Freedoms prepared and presented by the Association of Central and Eastern European Election Officials. At the same time, the resolution of the Committee of Ministers adopted at the 855th meeting of deputy ministers on September 9, 2003 states that given historical reasons election administration and election campaign systems in member states differ significantly, therefore it would be difficult at the moment to prepare a legal document (with a binding effect at that) on this issue. Additionally, in light of the fact that the Code of Good Practices in Electoral Matters has been adopted very recently (in the first part of the session of the Parliamentary Assembly of the Council of Europe in 2003), the Committee of Ministers is of the opinion that at this stage it would be premature to initiate its conversion into a legally binding document.

¹ This Part does not include some auxiliary documents of the Commonwealth of Independent States that originally were included in the Russian-language printed version of the Collection (2004) and its electronic version (2005).

² *Ustav Sodruzhestva Nezavisimykh Gosudarstv // Mezhdunarodnye akty o pravakh cheloveka. Sb. Dok.* (Charter of the Commonwealth of Independent States // International Acts on Human Rights. Collection of Documents.) *Moscow: Norma, 1999. P. 694.*

PART I COMMONWEALTH OF INDEPENDENT STATES¹

1.1 (6.1) RESOLUTION OF THE COUNCIL OF HEADS OF STATES OF THE COMMONWEALTH OF INDEPENDENT STATES²

(Minsk, January 22, 1993)

The Heads of States of the Commonwealth of Independent States have resolved:

1. That the Charter of the Commonwealth of Independent States (appended hereto) be adopted and recommended for ratification.

2. Before entry into force of this Charter the Commonwealth shall function in accordance with the agreements concluded and decisions taken within the framework of the CIS.

Done at Minsk, this 22nd day of January 1993, in the Russian language, in a single original. The original shall remain deposited in the Archives of the Government of the Republic of Belarus, which shall transmit certified copies hereof to each of the signatory States.

CHARTER OF THE COMMONWEALTH OF INDEPENDENT STATES

The States, which voluntarily formed the Commonwealth of Independent States (hereafter "the Commonwealth"),

Based on the historical community of their peoples and the relations which formed between them,

Acting in accordance with the universally accepted principles and norms of international law, the provisions of the Charter of the United Nations, the Helsinki Final Act and other documents of the Conference on Security and Cooperation in Europe,

Striving to pool their efforts for ensuring the economic and social progress of their peoples,

Determined to realize the provisions of the Agreement on the Establishment of the Commonwealth of Independent States, the Protocol to this Agreement, and the provisions of the Alma-Ata Declaration,

Developing cooperation between each other in safeguarding of international peace and security and maintenance of civil peace and accord between nations,

Desiring to create conditions for the preservation and development of the cultures of all peoples of the member states,

Striving to perfect the mechanisms of cooperation in the Commonwealth and

raise their effectiveness,

Have resolved to adopt this Charter of the Commonwealth and agreed as follows:

Section I. Purposes and Principles

Article 1

The Commonwealth is based on the principles of sovereign equality of all members of the Commonwealth. The member states are independent and equal subjects of international law.

The Commonwealth serves to further develop and strengthen the relations of friendship, good neighborhood, accord between nations, trust, mutual understanding and mutually beneficial cooperation between the member states.

The Commonwealth is not a state and does not have any supranational powers.

Article 2

The purposes of the Commonwealth shall be:

to maintain cooperation in the political, economic, ecological, humanitarian, cultural and other spheres;

to promote comprehensive and balanced economic and social development of the member states within the framework of the common economic space, inter-state cooperation and integration;

to assure human rights and fundamental freedoms in accordance with the universally accepted principles and norms of international law and CSCE documents;

to maintain cooperation between the member states in the safeguarding of international peace and security, carry out effective measures for reduction of armaments and military expenditures, elimination of nuclear and other types of mass destruction weapons and achievement of general and complete disarmament;

to assist citizens of the member states in their free association, contacts and travel in the Commonwealth;

to render mutual legal aid and maintain cooperation in the other spheres of legal relations;

to ensure peaceful resolution of disputes and conflicts between the member states of the Commonwealth.

Article 3

In order to accomplish the purposes of the Commonwealth the member states, based on the universally accepted norms of international law and the Helsinki Final Act, shall build their relations in accordance with the following inter-linked and equivalent principles:

respect for the sovereignty of the member states, the inalienable right of peoples to self-determination and the right to determine their fate without outside interference;

inviolability of state borders, recognition of the existing borders and rejection of unlawful territorial gains;
territorial integrity of states and the rejection of any actions aimed at splitting up the territory of the other states;
rejection of the use of force or the threat of force against the political independence of a member state;
resolution of disputes by peaceful means to avoid jeopardizing international peace, security and justice;
supremacy of international law in inter-state relations;
non-interference in the internal and external affairs of each other;
assurance of human rights and fundamental freedoms for everyone, regardless of race, ethnic origin, language, religion, political or other convictions;
thorough fulfillment of obligations assumed in pursuance of the documents of the Commonwealth, including this Charter;
consideration of each other's interests and the interests of the Commonwealth as a whole, provision of assistance, based on mutual accord, in all spheres of their relations;
pooling of efforts and mutual support for the purposes of establishing peaceful conditions for the life of the peoples of the member states of the Commonwealth, assurance of their political, economic and social progress;
development of mutually beneficial economic, scientific and technological cooperation, promotion of integration processes;
spiritual unity of their peoples based on the respect for their individuality, close cooperation in the preservation of cultural assets and cultural exchange.

Article 4

The spheres of joint activity of the member states, which is realized on an equitable basis through the common coordinating institutions in accordance with the obligations assumed by the member states within the framework of the Commonwealth, shall include:

assurance of human rights and fundamental freedoms;
coordination of the foreign-policy activity;
cooperation in the formation and development of the common economic space, the European and Eurasian markets and the customs policy;
cooperation in the development of transport and communications systems;
healthcare and environmental protection;
questions concerning the social and migration policy;
fight against organized crime;
cooperation in the sphere of the defense policy and guarding of external borders.
This list may be extended with the mutual consent of the member states.

Article 5

The principal legal basis for inter-state relations within the framework of the Commonwealth shall be multilateral and bilateral relations in various spheres of the mutual relationships between the member states.

The agreements concluded within the framework of the Commonwealth must conform to the purposes and principles of the Commonwealth and the obligations of the member states under this Charter.

Article 6

The member states shall promote the cooperation and development of ties between state bodies, public associations and economic structures.

Section II. Membership

Article 7

The founding states of the Commonwealth are the states which have signed and ratified the Agreement on the Establishment of the Commonwealth of Independent States, dated December 8, 1991, and the Protocol to this Agreement, dated December 21, 1991, as of the date on which this Charter is adopted.

Member states of the Commonwealth shall be the founding states if they assume obligations under this Charter within one year of its adoption by the Council of Heads of States.

Any state may become a member of the Commonwealth if it shares the purposes and principles of the Commonwealth and accepts the obligations set out in this Charter, by acceding to the Commonwealth with the consent of all member states.

Article 8

Any state which desires to participate in separate kinds of the Commonwealth's activity may accede to the Commonwealth as an associated member by a decision of the Council of Heads of States, on the terms and conditions defined in an agreement on associated membership.

Representatives of other states may attend the sessions of the bodies of the Commonwealth as observers, subject to a decision of the Council of Heads of States.

The questions concerning participation of associated members and observers in the work of the bodies of the Commonwealth shall be regulated by the rules of procedure of such bodies.

Article 9

Any member state may withdraw from the Commonwealth by notifying the depositary of this Charter of such intention 12 months prior to the withdrawal.

The obligations which arise during the period of participation in this Charter shall be binding upon the relevant states until full performance thereof.

Article 10

Violations of this Charter by a member state, systematic non-compliance of a state with its obligations under the agreements concluded within the framework of the Commonwealth or non-compliance with the decisions of the bodies of the Commonwealth shall be considered by the Council of Heads of States.

Measures allowed under international law may be applied in relation to such states.

Section III. Collective Security and Military-Political Cooperation

Article 11

The member states shall coordinate their policy in the sphere of international security, disarmament and arms control, and building of the armed forces, and shall maintain the security in the Commonwealth, *inter alia*, with the assistance of groups of military observers and collective peacekeeping forces.

Article 12

Should any threat arise to the sovereignty, security or territorial integrity of one of or several member states or to international peace and security, the member states shall, without delay, actuate the mechanism of mutual consultations in order to coordinate their positions and take measures to eliminate the threat, such measures including peacekeeping operations and, where necessary, the use of armed forces in accordance with the procedure for exercising the right to individual or collective defense under Article 51 of the Charter of the United Nations.

A decision on the joint use of armed forces shall be adopted by the Council of Heads of States of the Commonwealth or by interested member states of the Commonwealth, subject to their national laws.

Article 13

Each member state shall take appropriate measures to maintain a stable situation at the external borders of the member states of the Commonwealth. Based on the mutual accord the member states shall coordinate the activity of border guards and other competent services which exercise control over, and bear responsibility for, observance of the established procedure for crossing external borders of the member states.

Article 14

The supreme body of the Commonwealth for the questions concerning the national defense and protection of the external borders of the member states shall be the Council of Heads of States.

The military-economic activity of the Commonwealth shall be coordinated by the Council of Heads of Governments.

Interaction of the member states in implementing international agreements and dealing with other questions in the sphere of security and disarmament shall be organized by means of mutual consultations.

Article 15

Concrete question concerning the military-political cooperation of the member states shall be regulated by special agreements.

Section IV. Prevention of Conflicts and Resolution of Disputes

Article 16

The member states shall do everything possible to prevent any conflicts, primarily those on the inter-ethnic and inter-confessional basis, which may result in the violation of human rights.

Based on mutual accord they shall assist each other in the settlement of such conflicts, including within the framework of international organizations.

Article 17

The member states of the Commonwealth shall abstain from actions which may cause damage to other member states and lead to aggravation of possible disputes.

The member states shall, conscientiously and in the spirit of cooperation, endeavor to reach fair peaceful resolution of their disputes by means of negotiations or to agree on an appropriate alternative procedure for resolving the dispute.

If member states do not resolve a dispute using the means indicated in the second part of this Article, they may refer such dispute to the Council of Heads of States.

Article 18

At any stage of a dispute which, if not stopped, may jeopardize the peace or security in the Commonwealth, the Council of Heads of States shall have the authority to recommend to the Parties an appropriate procedure or methods for resolving the dispute.

Section V. Cooperation in the Economic, Social and Legal Spheres

Article 19

The member states shall cooperate in the economic and social spheres along the following lines:

formation of a common economic space based on market relations and free movement of goods, services, capitals and labor;

coordination of the social policy, development of joint social programs and measures to ease social tension in connection with the implementation of economic reforms;

development of transport, communications and energy systems;

coordination of the monetary policy;

promotion of trade and economic relations between the member states;
encouragement and mutual protection of investments;
assistance in standardization and certification of capital goods and other goods;
legal protection of intellectual property;
promotion of the development of a common information space;
joint measures for environmental protection, mutual assistance in the liquidation of the consequences of ecological disasters and other emergencies;
implementation of joint projects and programs in the sphere of science and technology, education, healthcare, culture and sport.

Article 20

The member states shall carry on cooperation in the sphere of law, in particular, through conclusion of multilateral and bilateral agreements on rendering legal aid, and shall work for bringing their national legislation systems closer to each other.

In the event of any conflict between the norms of the national laws of the member states, regulating relations in the sphere of their joint activity, the member states shall conduct consultations and negotiations in order to come up with proposals for elimination of such conflicts.

Section VI. Bodies of the Commonwealth. Council of Heads of States and Council of Heads of Governments

Article 21

The supreme body of the Commonwealth shall be the Council of Heads of States.

The Council of Heads of States, in which all member states are represented at the highest level, shall discuss and decide fundamental issues connected with the activity of the member states in the sphere of their common interests.

The Council of Heads of States shall meet twice a year.

Extraordinary sessions of the Council may be convened at the initiative of one of the member states.

Article 22

The Council of Heads of Governments shall coordinate the cooperation of the bodies of executive power of the member states in the economic, social and other spheres of common interests.

The Council of Heads of Governments shall meet four times a year.

Extraordinary sessions of the Council may be convened at the initiative of the government of one of the member states.

Article 23

Decisions of the Council of Heads of States and the Council of Heads of Governments shall be adopted with a common consent – by consensus. Any state may declare that it is not interested in any given question and this shall not be considered

to be an impediment for adoption of a decision.

The Council of Heads of States and the Council of Heads of Governments may hold joint sessions.

The proceedings of the Council of Heads of States and the Council of Heads of Governments shall be regulated by the Rules of Procedure.

Article 24

The heads of states and the heads of governments shall preside at the sessions of the Council of Heads of States and the Council of Heads of Governments by rotation, in the alphabetical order of the names of the member states of the Commonwealth in the Russian language.

As a rule, sessions of the Council of Heads of States and the Council of Heads of Governments shall be held in the city of Minsk.

Article 25

The Council of Heads of States and the Council of Heads of Governments shall set up working and auxiliary bodies, both on a permanent and on a temporary basis.

These bodies shall be formed from representatives of the member states vested with appropriate powers.

Experts and consultants may be invited for participation in the meetings of such bodies.

Article 26

Meetings of the heads of appropriate state bodies shall be convened to deal with questions concerning the cooperation in separate spheres and to develop recommendations for the Council of Heads of States and the Council of Heads of Governments.

Council of Ministers of Foreign Affairs

Article 27

Based on the decisions of the Council of Heads of States and the Council of Heads of Governments the Council of Ministers of Foreign Affairs shall coordinate the foreign policy activity of the member states, including their activity in international organizations, and shall organize consultations on the questions concerning world politics, in which they have a mutual interest.

The Council of Ministers of Foreign Affairs shall carry out its activity in accordance with a Statute approved by the Council of Heads of States.

Coordinating-Consultative Committee

Article 28

The Coordinating-Consultative Committee shall be a permanently functioning

executive and coordinating body of the Commonwealth.

In pursuance of the decisions of the Council of Heads of States and the Council of Heads of Governments the Committee shall:

elaborate and submit proposals on questions concerning cooperation within the framework of the Commonwealth, development of socioeconomic ties;

assist in the realization of agreements in concrete areas of economic relations;

organize meetings of representatives and experts for drafting documents to be submitted to sessions of the Council of Heads of States and the Council of Heads of Governments;

make arrangements for holding sessions of the Council of Heads of States and the Council of Heads of Governments;

assist in the work of other bodies of the Commonwealth.

Article 29

The Coordinating-Consultative Committee shall consist of duly authorized permanent representatives, two from each member state of the Commonwealth, and the Coordinator of the Committee, appointed by the Council of Heads of States.

The Coordinating-Consultative Committee shall have a Secretariat, headed by the Coordinator of the Committee - the Deputy Chairman of the Coordinating-Consultative Committee, which shall provide the administrative and technical support for the work of the Council of Heads of States, the Council of Heads of Governments and other bodies of the Commonwealth.

The Committee shall operate in accordance with a Statute approved by the Council of Heads of States.

The seat of the Committee shall be the city of Minsk.

Council of Ministers of Defense. Chief Command of United Armed Forces

Article 30

The Council of Ministers of Defense shall be a body of the Council of Heads of States in charge of questions concerning the military policy and military building of the member states.

The Chief Command of the United Armed Forces shall lead the United Armed Forces, as well as groups of military observers and collective forces which carry out peacekeeping missions in the Commonwealth.

The Council of Ministers of Defense and the Chief Command of the United Armed Forces shall operate on the basis of relevant statutes approved by the Council of Heads of States.

Council of Border Troops Commanders

Article 31

The Council of Border Troops Commanders shall be a body of the Council of

Heads of States in charge of questions concerning the protection of, and maintenance of a stable situation at, external borders of the member states.

The Council of Border Troops Commanders shall operate on the basis of a relevant statute approved by the Council of Heads of States.

Economic Court

Article 32

The Economic Court shall operate for the purpose of ensuring the performance of economic obligations within the framework of the Commonwealth.

In accordance with its jurisdiction the Economic Court shall resolve disputes arising from the performance of economic obligations. The Court may also resolve other disputes referred to its jurisdiction by agreements of the member states.

The Economic Court may clarify the interpretation of the provisions of agreements and other acts of the Commonwealth on economic issues.

The Economic Court shall operate in accordance with an Agreement on the Status of the Economic Court and a Statute of the Economic Court, approved by the Council of Heads of States.

The seat of the Economic Court shall be the city of Minsk.

Human Rights Commission

Article 33

The Human Rights Commission shall be a consultative body of the Commonwealth and shall monitor compliance with the human rights obligations assumed by the member states within the framework of the Commonwealth.

The Commission shall consist of representatives of the member states of the Commonwealth and shall operate on the basis of a Statute approved by the Council of Heads of States.

The seat of the Human Rights Commission shall be the city of Minsk.

Sectoral Cooperation Bodies

Article 34

Bodies in charge of sectoral cooperation may be established on the basis of agreements of the member states on cooperation in economic, social and other spheres to elaborate agreed principles and rules for such cooperation and assist in the practical realization thereof.

Sectoral cooperation bodies (councils, committees) shall perform the functions defined by this Charter and relevant statutes, providing for the consideration and decision, on a multilateral basis, of questions concerning cooperation in the corresponding spheres.

Sectoral cooperation bodies shall include heads of the respective bodies of execu-

tive power of the member states.

Within the scope of their competence sectoral cooperation bodies shall adopt recommendations and, in the necessary cases, submit proposals to the Council of Heads of Governments for its consideration.

Working Language of the Commonwealth

Article 35

The working language of the Commonwealth shall be the Russian language.

Section VII. Inter-Parliamentary Cooperation

Article 36

The Inter-Parliamentary Assembly shall conduct inter-parliamentary consultations, discuss questions concerning cooperation within the framework of the Commonwealth and elaborate joint proposals in the sphere of activity of the national parliaments.

Article 37

The Inter-Parliamentary Assembly shall consist of parliamentary delegations.

The activities of the Inter-Parliamentary Assembly shall be organized by the Council of the Assembly, consisting of the leaders of the parliamentary delegations.

The proceedings of the Inter-Parliamentary Assembly shall be regulated by its Regulations.

The seat of the Inter-Parliamentary Assembly shall be the city of St. Petersburg.

Section VIII. Financing

Article 38

The expenses on financing the activity of the bodies of the Commonwealth shall be shared by the member states and shall be established in accordance with special agreements on the budgets of the bodies of the Commonwealth.

The budgets of the bodies of the Commonwealth shall be approved by the Council of Heads of States on the recommendation the Council of Heads of Governments.

Article 39

The questions concerning the financial and economic activity of the bodies of the Commonwealth shall be dealt with in accordance with the procedure determined by

the Council of Heads of Governments.

Article 40

The member states shall independently bear expenses on the participation of their representatives, experts and consultants in the work of the meetings and bodies of the Commonwealth.

Section IX. Concluding Provisions

Article 41

This Charter shall be subject to ratification by the founding states in accordance with their constitutional procedures.

The instruments of ratification shall be deposited with the Government of the Republic of Belarus, which will notify the other founding states of the deposit of each instrument.

This Charter shall enter into force for all founding states after the instruments of ratification have been deposited by all founding states or, for the founding states which have deposited their instruments of ratification, one year after the adoption of this Charter.

Article 42

Amendments to this Charter may be proposed by any member state. The proposed amendments shall be considered by the Council of Heads of States in accordance with the rules of procedure thereof.

Amendments to this Charter shall be adopted by the Council of Heads of States. Such amendments shall enter into force upon ratification by all member states in accordance with their constitutional procedures, from the date of receipt of the last instrument of ratification by the Government of the Republic of Belarus.

Article 43

At the time of ratification of this Charter the founding states of the Commonwealth may make reservations and statements with regard to Sections III, IV and VII and Articles 28, 30, 31, 32, 33.

Article 44

¹ *Konventsiya o standartakh demokraticeskikh vyborov, izbiratelnykh prav i svobod v gosudarstvakh – uchastnikakh Sodruzhestva Nezavisimyykh Gosudarstv // Nauchno-prakticheskii kommentarii k federalnomu zakonu “Ob osnovnykh garantiyakh izbiratelnykh prav i prava na uchastie v referendume grazhdan Rossiiskoi Federatsii”* (Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States// Scientific-Practical Commentary to the Federal Law “On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum.”). Moscow: Norma, 2003. P. 773.

This Charter will be registered in accordance with Article 102 of the Charter of the United Nations.

Article 45

This Charter is done in a single copy in the official languages of the founding states of the Commonwealth.

The original shall remain deposited in the Archives of the Government of the Republic of Belarus, which shall transmit certified copies to each of the founding states.

This Charter was adopted on January 22, 1993 at a session of the Council of Heads of States at Minsk.

Note to the document. The Charter enters into force in accordance with Article 41. Russia has ratified the Charter (Resolution of the Supreme Soviet of the Russian Federation No. 4799-1 of April 15, 1993). The Charter entered into force for Russia on July 20, 1993.

< ... >

1.2 (6.4) CONVENTION ON THE STANDARDS OF DEMOCRATIC ELECTIONS, ELECTORAL RIGHTS AND FREEDOMS IN THE MEMBER STATES OF THE COMMONWEALTH OF INDEPENDENT STATES¹ *(Kishinev, October 7, 2002)*

The member states of this Convention (hereinafter referred to as "the Parties"), considering the aims and principles of the Charter of the Commonwealth of Independent States, reaffirming the importance of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which establish that the will of the people as expressed in periodic and genuine elections shall be the basis of the authority of government, as well as the documents of the Organization for Security and Cooperation in Europe, the Council of Europe and other international organizations on the conduct of free and fair elections,

Convinced that the recognition, observance and protection of human and civil rights and freedoms, the development and perfection of the democratic institutions of expression of the will of the people and the procedures for their realization in accordance with the universally accepted principles and norms of international law on the basis of the national constitution and legal acts are the purpose and obligation of a law-based state, one of the inalienable conditions for social stability and further strengthening of cooperation between the states in the name of the realization and protection of the ideals and principles which constitute their common democratic asset,

Wishing to facilitate the consolidation and improvement of the democratic systems of representative government, democratic traditions of expression of the will of the people in elections, realization of other forms of the power of the people based on the supremacy of law and maximum consideration for the national and historical traditions,

Convinced that elections are one of the political and legal instruments of a stable civil society and sustainable development of a state,

Recognizing the value of the national experience in the legal regulation of elections accumulated by the member states of the Commonwealth of Independent States, guarantees of the electoral rights and freedoms of a human being and citizen,

Determined to assure the combination of the universally accepted election standards and national norms for the regulation of elections, electoral rights and freedoms of a human being and citizen, as well as the guarantees for their realization and protection; implement the provisions of this Convention on the basis of the constitution and national laws and the appropriate state policy,

Wishing to lay down the guarantees for organization of public and international observation of elections in the member states of this Convention,

Have agreed as follows:

Article 1

Standards of Democratic Elections

1. Democratic elections are one of the supreme direct expressions of the power and will of the people, the basis of elective bodies of state power and bodies of local self-government, other bodies of popular (national) representation, elective officials.

2. The Parties recognize that the election standards are the following: the right of a citizen to elect and be elected to bodies of state power and bodies of local self-government, other bodies of popular (national) representation; periodic and mandatory, fair, genuine, free elections based on universal, equal suffrage and held by secret ballot, which ensure free expression of the will of voters; open and public elections; judicial and other protection of electoral rights and freedoms of a human being and citizen; public and international observation of elections; guarantees for realization of electoral rights and freedoms of participants in the electoral process.

3. The right of a citizen to elect and be elected shall be laid down by the constitution and/or laws and the procedure for its exercise shall be established by laws and other legal acts. Legislative regulation of the right to elect and be elected, election procedures (election systems), as well as restriction of electoral rights and freedoms shall not limit or abolish the universally accepted civil and human rights and the constitutional and/or legislative guarantees for their exercise, and shall not be discriminatory.

4. Elections shall be called and conducted on the basis of the constitution and laws.

5. Elected persons, who polled the required number of votes established by the constitution, law, shall assume office in the procedure and at the time established by laws, thereby admitting their responsibility to voters, and shall remain in office until the period of their powers expires or these powers are terminated otherwise, as provided by the constitutions, laws in accordance with the democratic parliamentary and constitutional procedures.

6. The legitimate and public nature of elections, protection and realization of the electoral rights and freedoms of citizens, candidates, political parties (coalitions), participating in elections, implementation of the constitutional principles of organization of the electoral process in law enforcement practices shall be assured by the judicial,

administrative and other means of protection.

7. Foreign nationals, stateless persons, foreign legal entities, international public movements, international organizations shall not be allowed to participate, directly or indirectly, in any activity conducive or obstructive to the preparation and conduct of elections to the bodies of state power and bodies of local self-government, other bodies of popular (national) representation, election to elective offices.

Article 2 **Universal Suffrage**

1. Observance of the principle of universal suffrage means the following:

(a) each citizen, who has attained to the age established by the constitution, laws, has the right to elect and be elected to the bodies of state power and bodies of local self-government, other bodies of popular (national) representation, elective offices, subject to the conditions and in the procedure provided by the constitution and laws;

(b) the right of a citizen to elect and be elected to the bodies of state power and bodies of local self-government, other bodies of popular (national) representation, elective offices is realizable irrespective of any discriminatory restrictions on account of sex, language, religion or faith, political or other convictions, ethnic or social origin, national minority or ethnic group to which the citizen belongs; property status; or other similar circumstances;

(c) each citizen, residing or staying during the period of the national elections outside the territory of his state, has the same electoral rights as the other citizens of his state. Diplomatic and consular missions, their officials shall assist citizens in the realization of their electoral rights and freedoms;

(d) each citizen has a guaranteed right to receive information about his inclusion on a voters list, correct this information so as to ensure the completeness and accuracy of this list, and appeal, in the procedure established by law, the refusal to include him on a voters list.

Article 3 **Equal Suffrage**

1. Observance of the principle of equal suffrage means the following:

(a) each voter has one vote or the same number of votes as other voters; he may exercise his right to vote equally with other voters and his vote (votes) is (are) accorded equivalent weight to that of other voters and the weight of a voter's vote (votes) must not be affected by the electoral system used in the state;

(b) when voting is conducted in single-seat and/or multi-seat electoral districts these districts are formed on an equal basis, so that voting results should reflect the will of the voters most accurately and fully. The criterion of an equal basis may be the approximate equality of single-seat electoral districts with regard to the number of voters or the approximate equality of the number of voters per deputy mandate in multi-seat electoral districts. Deviations from the average representation quota may be allowed for hard-to-reach and remote localities, areas of compact settlement of small indigenous peoples and other national minorities and ethnic groups.

2. Each voter shall have the right to equal and free access to the electoral precinct and to the polling station for exercising his right to participate in free voting.

3. A citizen may be given a possibility to exercise his right to participate in voting through organization of early voting, voting outside the polling station or by means of other voting procedures ensuring the maximum convenience for voters.

4. Each citizen shall have equal legal opportunities for self-nomination in elections.

5. Restrictions connected with special requirements to participation in an election campaign of candidates running for election to an elective office for a new term shall be regulated by the constitution and laws. Compliance with the established restrictions must not prevent deputies, elective officials from exercising their powers and performing their obligations to voters.

6. Candidates shall not take advantage of their position or official status to gain election. The list of violations of the principle of equal suffrage and the responsibility for such violations shall be established by law.

Article 4 Direct Suffrage

1. Observance of the principle of direct suffrage means that in elections citizens directly vote for the candidate and/or list of candidates or against the candidate, candidates, list of candidates or against all candidates and/or lists of candidates.

2. All deputy mandates of one of the chambers of the national legislative body shall be an object of free competition between candidates and/or lists of candidates in the course of general elections.

3. If a national legislative body consists of two chambers and some of or all mandates of the other chamber of this body are not an object of free competition between candidates and/or lists of candidates in the course of general elections, this does not contradict the provisions of this Convention.

Article 5 Secret Voting

1. Observance of the principle of secret voting means exclusion of any control whatsoever over the expression of the will of voters, assurance of equal conditions for making a free choice.

2. The rights of citizens to secret voting shall not be restricted in any way and by anything.

3. Elections shall be held with the use of a secret voting procedure.

4. Election bodies shall ensure observance of conditions, established by the constitution, law, other legal acts, which make it impossible for anyone to control or watch ballots being marked by voters at the place of secret voting, or do any acts violating the secrecy of voting.

Article 6 Periodic and Mandatory Elections

1. Election of elective bodies of state power, bodies of local self-government, other

bodies of popular (national) representation, elective officials shall be mandatory and shall be held within the periods established by the constitution and laws.

2. Elections shall be held at the intervals established by the constitution, laws so that the basis for the elective bodies of state power, bodies of local self-government, other bodies of popular (national) representation, elective officials be always formed by the free will of the people.

3. The period of powers of elective bodies and officials shall be established by the constitution and laws and may be changed only in accordance with the procedure established thereby.

4. No actions shall be taken or calls made which incite, or aim to incite, disruption, cancellation or postponement of elections, electoral actions and procedures announced in accordance with the constitution, laws.

5. In the conditions of a state of emergency or martial law imposed for safeguarding the security of citizens and protecting the constitutional system in accordance with the constitution, restrictions may be imposed by laws on the rights and freedoms, with the indication of their scope and period, and elections may be postponed.

Article 7 **Open and Public Elections**

1. Elections shall be prepared and conducted openly and publicly.

2. Decisions of bodies of state power, bodies of local self-government, election bodies, which are adopted within the scope of their competence and relate to the calling, preparation and conduct of elections, assurance and protection of the electoral rights and freedoms of a citizen, shall be officially published or made known to the general public by other methods, in the procedure and within the period established by laws.

3. Legal acts and decisions affecting the electoral rights, freedoms and obligations of a citizen shall not be applicable unless they have been officially published for general information.

4. Within the period established by the election laws the election body shall officially publish the information about the voting returns and elected persons, in its organ or other media outlets.

5. Observance of the principle of open and public elections must ensure creation of legal conditions for public and international monitoring of elections.

Article 8 **Free Elections**

1. The supremacy of the constitution shall be the basis for holding free elections and for making it possible for citizens and other participants in the electoral process to choose, without any influence, coercion, threat of coercion or any other unlawful inducement, whether to participate or not to participate in elections in the forms allowed by law and by lawful methods, without fear of any punishment or mistreatment regardless of voting returns and election results, as well as the basis for the legal and other guarantees of strict observance of the principle of free elections in the course of the entire electoral process.

2. Participation of a citizen in elections shall be free and voluntary. No one shall compel him to vote for or against any definite candidate (candidates), any definite list of candidates and no one shall compel him to participate or not to participate in elections or prevent him from freely expressing his will. No voters shall be compelled by anyone to declare how he intends to vote or has voted for a candidate (candidates), lists of candidates.

3. Candidates, political parties (coalitions) and other participants in the electoral process shall bear responsibility to the public and the state in accordance with the constitution and law. No candidate, no political party (coalition), no other public association or public organization shall use the methods of psychic, physical, religious compulsion or calls for violence or threats of violence or any other forms of coercion.

Article 9 Genuine Elections

1. Genuine elections shall ensure determination of a freely expressed will of the people and its direct realization.

2. Genuine elections shall make it possible for voters to elect candidates on the basis of the constitution and laws. In genuine elections there is real political pluralism, ideological diversity and a multi-party system realized through the functioning of political parties whose lawful activity is under the legal protection of the state.

3. In genuine elections voters shall have free access to the information about candidates, lists of candidates, political parties (coalitions) electoral process, and candidates, political parties (coalitions) – to the mass information and telecommunications media.

4. Elections shall be prepared and conducted with the use of the official language or official languages of the state and, in cases and in the procedure provided by laws, also with the use of official languages of parts of the territory of the state, languages of peoples and nationalities, national minorities and ethnic groups on the territories of their compact settlement.

5. Elections shall be called and electoral actions and procedures carried out in the procedure and within the periods which allow candidates, political parties (coalitions) and other participants in the electoral process to organize a full-fledged election propaganda campaign.

6. In genuine elections equal and fair legal conditions shall be ensured for registration of candidates, lists of candidates and political parties (coalitions). Requirements to registration shall be clear and free from any conditions which may serve as a basis for discriminatory privileges or restrictions. Arbitrary or discriminatory use of the rules for registration of candidates, lists of candidates and political parties (coalitions) shall not be allowed.

7. Each candidate and each political party (coalition), participating in elections, shall accept the voting returns and results of democratic elections and shall have a possibility to appeal, in courts and/or other bodies, voting returns and election results which violate the electoral rights and freedoms of a citizen, in the procedure and within the period established by laws, international obligations of the state.

8. Persons and bodies falsifying vote count, voting returns and election results,

interfering with free realization by a citizen of his electoral rights and freedoms, including in the form of a boycott or calls for a boycott of elections, refusal to perform electoral procedures or electoral actions, shall be prosecutable under law.

Article 10 **Fair Elections**

1. Observance of the principle of fair elections must ensure equal legal conditions to all participants in the electoral process.

2. Fair elections shall guarantee:

(a) universal and equal suffrage;

(b) equal possibilities for participation of each candidate or each political party (coalition) in an election campaign, including access to the mass information and telecommunications media;

(c) fair and public funding of elections, election campaigns of candidates, political parties (coalitions);

(d) honest voting and vote counting; rapid provision of full information about voting results and official publication of all election results;

(e) organization of the electoral process by impartial election bodies, working openly and publicly under effective public and international observation;

(f) prompt and effective adjudication of complaints about violation of electoral rights and freedoms of citizens, candidates, political parties (coalitions) to be performed by courts and other duly authorized bodies within the time frame of the appropriate stages of the electoral process, assurance of a citizen's right to apply to international judicial bodies for protection and restoration of his electoral rights and freedoms, in a procedure established by the norms of international law.

3. Candidates may be nominated by voters of the appropriate electoral district or may nominate themselves. Candidates and/or lists of candidates may be also nominated by political parties (coalitions), other public associations and other entities which have the right to nominate candidates and/or lists of candidates under the constitution, laws.

Article 11 **Conduct of Elections by Election Bodies (Election Commissions)**

1. Preparation and conduct of elections, assurance and protection of electoral rights and freedoms of citizens and control over their observance shall be entrusted to election bodies (election commissions), with their status, competence and powers being established by the constitution, legislative acts.

2. No other structures (bodies, organizations) shall be formed or allowed to operate which supersede election bodies or perform, fully or partially, their functions, or obstruct or unlawfully interfere with their lawful activity, or appropriate their status and powers.

3. The procedure for the formation of election bodies, their powers, organization of their activity as well as the procedure, grounds, and time for dissolution of an election body or early termination of the powers of its member shall be established by law. The procedure and time of early termination of powers of members of an election

body established by law and appointment by a duly authorized body of a new member of an election body to fill the vacancy shall not prevent the election body from exercising its powers, shall not affect the integrity of the electoral process, delay the performance of electoral actions, violate the electoral rights and freedoms of citizens.

4. The Parties admit that a candidate, a political party (coalition), which nominated a list of candidates, may be granted the right to appoint, in a procedure established by law, one non-voting member to the election body which registered the candidate (list of candidates) and to the lower election bodies for representing this candidate, political party (coalition).

5. A non-voting member of an election body may speak at meetings of the election bodies, make proposals on the questions within the scope of competence of the election body, ask that these questions be put to the vote, submit complaints against actions (omissions) of the election body to the higher election body or to a court, exercise other powers provided by law.

6. Decisions taken by election bodies within the scope of their competence shall be binding on the bodies of executive power, state institutions, bodies of local self-government, political parties and other public associations, their authorized representatives, organizations, officials, voters, lower election bodies, other persons and organizations indicated in laws.

7. The Parties shall, by their laws, impose an obligation on state bodies, bodies of local self-government, institutions, organizations and on their officials to assist election bodies in the exercise of their powers and shall oblige TV and radio companies and print media indicated in the election laws to provide, respectively, free air time and free space for information of voters about the election, progress of the election campaign.

Article 12

Funding of Elections and Election Campaigns of Candidates, Political Parties (Coalitions)

1. The activities connected with elections shall be funded from the budget.

2. In cases and in the procedure provided by the constitutions and laws the state shall, on a fair basis, allocate budget funds to candidates, political parties (coalitions), participating in elections, and shall allow formation of an extra-budgetary fund at an election body or formation of their own funds to finance their election campaigns, using for these purposes their own money and voluntary donations from natural persons and/or national legal entities, in the amount and in the procedure established by laws. The use by candidates, political parties (coalitions) of any sums of money other than those contributed to the said funds shall be prohibited by and punishable under laws.

3. All foreign donations, including those from foreign natural persons and legal entities, to candidates, political parties (coalitions), participating in elections, to any other public associations, public organizations, which are directly, indirectly or otherwise associated with a candidate, political party (coalition) or are under their direct influence or control and facilitate, or assist in, the implementation of the aims of a political party (coalition), shall not be allowed.

4. The Parties shall ensure openness and transparency of all monetary donations

to candidates, political parties (coalitions), participating in elections, so as to exclude donations prohibited by law being made to candidates or to political parties (coalitions), which nominated candidates (lists of candidates) in elections.

5. Candidates, political parties (coalitions), participating in elections, shall, at the intervals established by law, submit to election bodies and other bodies, designated by law, the information and reports concerning receipt of all donations to their election funds, the donors, all expenditures made from these funds to finance their election campaign. Election bodies shall arrange for publication of such information and reports in the mass information and telecommunications media indicated in laws.

6. A special body (bodies) may be organized to control or oversee compliance with the rules and procedures for campaign funding of candidates, political parties (coalitions), or appropriate powers shall be vested in officials or election bodies.

7. A list of violations of the conditions and procedure for making donations, funding the activity of candidates, political parties (coalitions) as well as a list of measures to avert, prevent or stop infractions in election funding and funding of election campaigns of candidates, political parties (coalitions) shall be established by laws, other legal acts.

Article 13

Informational Support of Elections and Election Campaigning by the State

1. The Parties shall ensure the freedom of the search for, collection, dissemination of information about elections, candidates and impartial information coverage of elections in the mass information and telecommunications media.

2. The mass information and telecommunications media are called upon to keep the population informed about elections, nomination of candidates (list of candidates), their election programs (platforms), the progress of an election campaign, voting returns and election results, operating within the framework of the constitution, laws, international obligations of the state.

3. In accordance with law members of the press representing mass information and telecommunications media may:

(a) attend meetings of election bodies to ensure publicity and openness of their activity;

(b) examine documents and materials of election bodies relating to voting returns or election results, make copies of such documents and materials or receive such copies from the election body, pass them on to the mass information and telecommunications media for publication;

(c) attend public campaigning events and cover them in the mass media;

(d) be present at voting, vote counting, establishment of voting returns and election results.

4. Citizens, candidates, political parties (coalitions), which nominated a candidate and/or a list of candidates, other public associations, public organizations shall be guaranteed freedom of campaigning carried out in all forms allowed by law and by lawful methods, in the procedure and within periods established by laws, in the conditions of pluralism of opinions and absence of censorship.

5. In accordance with the constitution, laws all candidates, political parties (coali-

tions), participating in elections, shall have an equal opportunity of access to the mass information and telecommunications media, including such access for presenting their election program (platform).

6. In the course of election campaigning no abuse of the freedom of speech and freedom of mass information shall be allowed, including calls for a violent seizure of power, violent change of the constitutional system and violation of the territorial integrity of a state, warmongering, calls for terrorist or other violent acts inciting social, racial, national, ethnic, religious hatred and enmity.

7. The mass information and telecommunication media of any one member state of this Convention shall not be used for participation in the campaigning when elections are held in the territory of another state.

8. The list of violations of the conditions and procedure for campaigning carried out by candidates, political parties (coalitions) and infractions in the coverage of an election campaign by the mass media, which constitute grounds for bringing the violators to responsibility, shall be established by laws.

Article 14 **Status and Powers of National Observers**

1. Each candidate, each political party (coalition), other public associations (public organizations), each group of voters, other subjects of elections indicated in the constitution, laws may, in the procedure established by laws or by regulations of election bodies organizing the elections, appoint national observers who have the right to carry out observation on voting day, including the day of early voting, at polling stations.

2. The rights and obligations of national observers shall be defined by law.

3. National observers shall be granted the following rights:

(a) to examine election documents indicated in election laws; receive information about the number of voters on voter lists and the number of voters who took part in the voting, including early voting and voting outside the polling station;

(b) to be present at the polling station;

(c) to watch ballots being issued to voters;

(d) to be present at early voting, voting outside the polling station;

(e) to watch vote counting under conditions in which the ballot counting procedure is observable;

(f) to watch an election body drawing up protocols of voting returns and election results and other documents; examine the protocol of voting returns drawn up by an election body, including the redrafted protocol; receive certified copies of the said protocols from the election body in cases and in the procedure provided by the national laws;

(g) to make proposals and comments to an election body concerning organization of voting;

(h) to appeal decisions and actions (omissions) of an election body and its members to the next higher election body or to a court.

4. In cases and in the procedure provided by laws the rights of a national observer may also be granted to agents of candidates, political parties (coalitions).

5. Election bodies and/or other bodies and organizations may be authorized to organize education of national observers and other election participants in the fundamentals of democratic election technologies, national election laws, international election standards, assurance and protection of electoral rights and freedoms of a human being and citizen.

Article 15 **Status and Powers of International Observers**

1. The Parties reaffirm that the presence of international observers is conducive to openness and publicity of elections, observance of international obligations of states. They shall strive to promote access of international observers to electoral processes at levels lower than the national level, down to municipal (local) elections.

2. The activity of international observers shall be regulated by the laws of the country where they work, this Convention, other international documents.

3. International observers shall be granted visas to enter a state in the procedure established by law and, if they have an appropriate invitation, shall be accredited by the relevant election body. Invitations may be extended by bodies duly authorized to do so by law, after official publication of the decision to call the elections. Proposals to extend invitations may be made by the bodies of the Commonwealth of Independent States established under its Charter.

4. The central election body shall issue international observers with an accreditation card of an established form. Such card shall entitle an international observer to carry out observation during the period of preparation and conduct of elections.

5. In the territory of the state where they stay international observers shall be under the patronage of this state. Election bodies, bodies of state power, bodies of local self-government shall, within the scope of their competence, render them necessary assistance.

6. International observers shall carry on their activity by themselves and independently. The activity of international observers shall be technically and financially supported by the organization which sent them and/or at their own expense.

7. International observers shall not use their status to engage in any activity unrelated to monitoring of the election campaign. The Parties reserve the right to withdraw accreditation of international observers who violate laws, universally accepted principles and norms of international law.

8. International observers may:

(a) have access to all documents (except for documents which affect the interests of national security) regulating the electoral process; receive from election bodies necessary information and copies of the election documents indicated in national laws;

(b) establish contacts with political parties, coalitions, candidates, private persons, officials of election bodies;

(c) freely visit all election precincts and polling stations, including on voting day;

(d) observe the progress of voting, vote counting and determination of voting returns under conditions in which the ballot counting procedure is observable;

(e) acquaint themselves with the results of adjudication of complaints (applications) and grievances relating to violation of election laws;

(f) inform officials of election bodies about their observations and recommendations without interfering in the work of election bodies;

(g) publicize their opinion about the preparation and conduct of elections after the end of voting;

(h) present to election officials, bodies of state power and relevant officials their conclusions concerning the results of monitoring of the elections.

9. International observers shall:

(a) observe the constitution and laws of the country where they work, the provisions of this Convention and other international documents;

(b) carry the accreditation card of an international observer, issued in accordance with the procedure established by the country where they work, and produce it whenever requested by election officials;

(c) when performing their functions abide by such principles as political neutrality, impartiality, non-expression of any preferences or opinions with regard to election bodies, bodies of state power and other bodies, officials, participants in the electoral process;

(d) never interfere in the electoral process;

(e) base their conclusions and observations on factual material.

Article 16

Complaints About, and Responsibility for, Violation of Electoral Rights and Freedoms of Citizens

1. In the event of violation of the standards of democratic elections, electoral rights and freedoms of citizens, proclaimed in this Convention, and violation of election laws the injured person or persons shall have the right and possibility to complain about the violation to, and have the violated rights restored by, courts and, in cases and in the procedure provided by laws, election bodies.

2. Persons guilty of unlawful actions (omissions) shall bear responsibility in accordance with laws.

Article 17

Electoral Documentation

1. Ballots, other electoral documents, including documents of bodies of state power, bodies of local self-government, election bodies, relating to the conduct of elections shall be drawn up (published) in the official language of the state and official languages of the parts of the territory of the state where elections are held and, in the procedure established by law, in the languages of peoples and nationalities, national minorities and ethnic groups in the territories of their compact settlement.

2. Electoral documents used to determine voting returns and election results shall be treated as documents of strict accountability and their degree of protection shall be established by laws.

Article 18

Measures Not to Be Considered Discriminatory

1. The electoral rights and freedoms of a citizen set out above may be restricted

by the constitution, laws without being considered discriminatory if they provide for:

(a) special measures taken to ensure an adequate representation of some part of a country's population, in particular, national minorities and ethnic groups, which, owing to political, economic, religious, social, historical and cultural conditions, are unable to enjoy the political and electoral rights and freedoms on an equitable basis with the rest of the population.

(b) restriction of the right to elect and be elected in respect of citizens pronounced to be incapable by a court, persons kept in places of confinement under a court sentence;

2. Restrictions on nomination of candidates and lists of candidates, creation and activity of political parties (coalitions), electoral rights and freedoms of citizens may be imposed in the interests of protection of the constitutional system, national security, maintenance of public order, protection of public well-being and morals, civil rights and freedoms. Such restrictions shall conform to the international obligations of a state.

3. In their wish to democratize the electoral process the Parties proceed from the fact that the existing restrictions on, or advantages with regard to, the realization of electoral rights and freedoms, which are provided by the constitution, laws and do not run counter to the international obligations of a state, shall be abolished as proper national conditions appear, so as to ensure that participants in the electoral process have equal legal conditions for participation in elections.

Article 19

Obligations of Member States of the Convention

1. The Parties shall take legislative and other measures to strengthen the guarantees of electoral rights and freedoms for the preparation and conduct of democratic elections and realization of the provisions of this Convention. The standards of democratic elections, electoral rights and freedoms, proclaimed in this Convention, may be guaranteed through their inclusion in the constitution, legislative acts.

2. The Parties undertake:

(a) to guarantee protection of the democratic principles and norms of the election laws, the democratic nature of elections, free expression by citizens of their will in elections, reasonable requirements to declaring elections to have taken place and be valid and legitimate;

(b) to take the necessary measures to ensure that the entire election legislation should be adopted by the national legislative body and that the legal standards for the conduct of elections should not be established by the acts of the bodies of executive power;

(c) to strive to ensure that deputy mandates of the other chamber of the national legislative body should be, fully or partially, an object of free competition of candidates and/or lists of candidates in the course of the direct general elections, in the procedure established by laws;

(d) to work for the creation of a system of legal, organizational, informational, guarantees of the electoral rights and freedoms of citizens in the preparation and conduct of elections of all levels; take necessary legislative measures to guarantee women fair and real possibilities, equal to those of men, for exercising the right to elect and

be elected to elective bodies and elective offices, both personally and as members of political parties (coalitions) in accordance with the conditions and procedures established by the constitution, laws; create additional guarantees and conditions for participation in elections of persons with physical infirmities (disabled persons, etc.);

(e) to carry out registration of voters on the basis of a legislatively established non-discriminatory and effective procedure providing for such registration criteria as age, citizenship, residence, availability of the main document certifying the identity of a citizen;

(f) to establish legislatively the responsibility of persons, furnishing information about voters, for the accuracy, fullness and timely presentation of such information, for ensuring confidentiality of the personal data as prescribed by law;

(g) to facilitate formation of political parties and their free legitimate activity; legislatively regulate funding of political parties and the electoral process; ensure that the law and the national policy should provide for separation of party and state and that election campaigns should be conducted in the atmosphere of freedom and honesty allowing parties and candidates freely to present their political views and opinions, their election programs (platforms) and allowing voters to get acquainted with and discuss them and vote "for" or "against" freely, without any fear of punishment or any kind of persecution;

(h) to adopt measures guaranteeing impartial coverage of the election campaign by the mass media, including in the Internet, and making it impossible to erect legal and administrative barriers preventing political parties and candidates from gaining access to the mass media on a non-discriminatory basis; form a unified data bank of public polls connected with elections from which information must be available for examination or copying to participants in the electoral process and to international observers upon their request; introduce new information technologies, ensuring openness of elections and raising the trust of voters in voting returns and election results;

(i) to adopt national programs of civic education and participate in drafting and adoption of similar international programs; make arrangements for acquainting citizens and other election participants with, and educating them in, electoral procedures and rules, for raising their legal culture and for improving professional qualifications of election officials;

(j) to ensure creation of independent impartial election bodies, which organize the conduct of democratic, free, fair, genuine and periodic elections in accordance with laws and international obligations of the state;

(k) to ensure that candidates, who polled the required number of votes established by law, could properly assume office and remain in office until the period of their powers expires or their powers are terminated in some other manner regulated by law;

(l) to take legislative measures to regulate the list of violations of the electoral rights and freedoms of citizens, as well as the grounds and procedure for bringing to criminal, administrative and other responsibility the persons who use coercion, fraud, threats, forgery or other methods to prevent free exercise by a citizen of the right to elect and be elected, realization of other electoral rights and freedoms laid down by the constitutions and laws;

(m) to facilitate, for the exchange of information and joint use, the creation of a unified data bank containing information about national election laws, participants in the

electoral process (with due regard the confidential nature of personal data), law enforcement and judicial practices, legislative proposals for the improvement of the election system, as well as other information relating to the organization of the electoral process;

(n) to promote cooperation between the election bodies of the member states of this Convention, including the creation and/or expansion of the powers of the existing inter-state associations of election bodies.

Article 20

Rights Granted Irrespective of This Convention

1. Nothing in this Convention shall prevent the states from the fulfillment of their international obligations relating to the electoral rights and freedoms of citizens, assumed under international treaties and agreements to which they are a party.

2. The exercise of the rights set out in this Convention shall not be detrimental to the realization of universally accepted human rights and fundamental freedoms by all persons.

3. Nothing in this Convention may be construed as allowing any activity which runs counter to the purposes and principles of the Charter of the Commonwealth of Independent States.

Article 21

Status of the International Electoral Council

The Parties recognize the need to establish an Inter-State Electoral Council on the basis of the election bodies of the member states of this Convention, which will be called upon to facilitate observation of elections in the member states of this Convention.

Article 22

Entry into Force of the Convention

1. This Convention shall enter into force at the date of the deposit of the third notice of the performance by the Parties of the internal state procedures required for its entry into force.

2. As regards the Parties depositing notice of the performance of such procedures subsequently the Convention shall enter into force at the date on which such notice is received by the depositary.

Article 23

Accession to the Convention

1. This Convention shall be open to accession for other states ready to assume obligations thereunder.

2. As regards any acceding state this Convention shall enter into force at the date

of the deposit of the instrument of accession.

Article 24
Withdrawal from the Convention

Any Party may withdraw from this Convention by serving a notice of withdrawal on the depositary.

Article 25
Modification and Amendment

Modifications and amendments may be introduced in this Convention on the basis of a separate protocol which shall form an integral part of this Convention and shall enter into force in accordance with the procedure set out in Article 22 of this Convention.

Article 26
**Resolution of Disputes Arising From Application
or Interpretation of the Convention**

The disputes arising from the application or interpretation of this Convention shall be resolved through consultations and negotiations between the interested Parties.

Done at Kishinev, this 7th day of October, 2002, in the Russian language, in a single original. The original shall remain deposited at the Executive Committee of the Commonwealth of Independent States, which shall transmit a certified copy to each of the signatory states.

For the Azerbaijan Republic

For the Republic of Armenia

R. Kocharyan

For the Republic of Belarus

For Georgia

E. Shevarnadze

For the Republic of Kazakhstan

For the Kyrgyz Republic

A. Akaev

For the Republic of Moldova

V. Voronin

For the Russian Federation

V. Putin

For the Republic of Tajikistan

E. Rakhmonov

For Turkmenistan

For the Republic of Uzbekistan

For Ukraine

L. Kuchma

< ... >

1.3 (6.6) NOTE OF THE CIS EXECUTIVE COMMITTEE NO. 03/1524
*To Ministries of Foreign Affairs of the Member States
of the Commonwealth of Independent States*

The Executive Committee of the Commonwealth of Independent States presents its compliments to the ministries of foreign affairs of the member states of the Commonwealth of Independent States and, acting as a depositary of instruments adopted within the framework of the Commonwealth, has the honor to inform them as follows.

On November 11, 2003, the Executive Committee received a notice from the Republic of Tajikistan about the performance of the internal state procedures required for entry into force of the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States, which was adopted on October 7, 2002 in the city of Kishinev.

In accordance with Article 22 of this Convention, it "shall enter into force at the date of the deposit of the third notice of the performance by the Parties of the internal state procedures required for its entry into force. As regards the Parties depositing notice of the performance of such procedures subsequently the Convention shall enter into force at the date on which such notice is received by the depositary."

The Executive Committee hereby announces that the Republic of Tajikistan is the third state – a Party to this Convention, which has notified the depositary about the performance of the internal state procedures required for its entry into force. Thus, this Convention entered into force on November 11, 2003 and as of November 21, 2003 it has entered into force for the Kyrgyz Republic (November 11, 2003), the Russian Federation (November 11, 2003), the Republic of Tajikistan (November 11, 2003).

The Executive Committee takes this opportunity to renew to the ministries of foreign affairs of the member states of the Commonwealth of Independent States the assurances of its highest consideration.

Minsk

November 24, 2003

¹ Part II does not include some auxiliary documents of the Commonwealth of Independent States that originally were included in the Russian-language printed version of the Collection (2004) and its electronic version (2005).

PART II

INTERNATIONAL ELECTION OBSERVATION¹

2.1 (10.3) RECOMMENDATIONS OF THE INTER-PARLIAMENTARY ASSEMBLY OF THE MEMBER STATES OF THE COMMONWEALTH OF INDEPENDENT STATES FOR INTERNATIONAL OBSERVERS OF THE COMMONWEALTH OF INDEPENDENT STATES REGARDING MONITORING OF ELECTIONS AND REFERENDA (NEW EDITION)

(St. Petersburg, December 4, 2004)

INTRODUCTION

Recognition, observation and protection of the rights and freedoms of the human being and citizen and the development and improvement of democratic institutions used for expression of the will of the people, procedures for realization thereof in accordance with the universally recognized principles and norms of the international law based on the national constitution and regulatory legal acts is the goal and the obligation of a state and an inalienable condition of public security and further improvement of cooperation between states in the name of implementation and protection of ideals and principles that are their common democratic wealth.

Free elections and referenda are the supreme direct expression of the power and will of the people and the foundation of elective bodies of state power, local self-government and other bodies of popular (national) representation and elected officials.

Currently international observation of elections and referenda is one of the most important tasks in supporting democratic process and ensuring basic political rights and freedoms of the human being and citizen, including the right to elect and be elected, the right to freedom of expression, movement, peaceful assembly, and association.

¹ New edition of the Recommendations of the Inter-Parliamentary Assembly of the Member States of the Commonwealth of Independent States for International Observers from Independent States for Monitoring of Elections and Referenda was developed in accordance with the Perspective Plan for Model Law-Making and Rapprochement of the National Laws through 2005 as approved by the decision of the Council of Inter-Parliamentary Assembly of the Member States of the Commonwealth of Independent States on April 16, 2004 by provisional creative team (V.I. Lysenko, Ph.D., Member of the Central Election Commission of the Russian Federation, Honored Lawyer of the Russian Federation (Institute of State and Law of the Russian Academy of Sciences), I.A. Evlanov, advisor, International Department, Central Election Commission of the Russian Federation).

Over the past several years, observation of elections in the member states of the Commonwealth of Independent States has become one of the most important tasks in the process of democratization of the Commonwealth countries.

Creation of proper conditions for effective independent public (civil) and competent international observation of elections and referenda, as well as participation of international observers from the Commonwealth of Independent States along with international observers from international organizations and foreign states in observation of preparation and administration of elections/referenda in accordance with the national legislation and the universally recognized principles and norms of the international law have become one of the most important conditions required to ensure transparency of the election process, realization of electoral rights and freedoms of all election/referendum participants and prevent violations of human rights related to elections/referenda.

The first edition of the Recommendations for International Observers from the Commonwealth of Independent States was approved by the Inter-Parliamentary Assembly of the Member States of the Commonwealth of Independent States on December 7, 2002.

Preparation of the new edition of the Recommendations was conditioned by the following key factors.¹

1. The Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States that was signed by Presidents of seven states of the Commonwealth (Armenia, Georgia, Kyrgyzstan, Moldova, Russia, Tajikistan and Ukraine) at the session of the Council of Heads of States of the Commonwealth of Independent States on October 7, 2002 in Cisinou has been since ratified by the parliaments of three states – Kyrgyzstan, Russia, and Tajikistan and entered in force as of November 11, 2003 in compliance with Clause 1, Article 22 of the Convention which was announced through Note of the CIS Executive Committee No. 03/1524 of December 24, 2003.

As of December 4, 2003 the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States was ratified by four CIS member states: Republic of Moldova ratified the Convention on June 23, 2004. In accordance with national procedures the Constitutional Court of Armenia issued a positive decision in October 2004 on ratification of the Convention by Armenia. It must be noted that the Ministry of Foreign Affairs of the Republic of Azerbaijan notified the CIS Executive Committee on December 9, 2002 on the intention of the Republic of Azerbaijan to examine the issue of joining the Convention.

The Convention entered into force and allowed making some positions of the current Recommendations for international observers from the Commonwealth of Independent States more precise, enriching them on the solid international legal base.

2. Based on and in accordance with the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States, as well as the Recommendations for International Observers from the Commonwealth of Independent States for Monitoring of Elections, on March 26, 2004, the Council of Ministers of Foreign

Affairs of the CIS approved the Regulations on CIS Observation Mission in presidential and parliamentary elections and referenda in the member states of the Commonwealth of Independent States and specified a possibility of international observation during preparation and administration of referenda.

3. On April 17, 2004 the Inter-Parliamentary Assembly of the Member States of the Commonwealth of Independent States in its Resolution No. 23-7 approved the Draft Regulations for the Inter-State Election Council of the Commonwealth of Independent States and sent the draft to the CIS Executive Committee for review by the Council of Heads of States of the Commonwealth of Independent States. Prepared for practical realization of Article 21 of the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States, the Draft Regulations define the status, main goals and missions of the Inter-State Election Council of the Commonwealth of Independent States as a specialized inter-governmental body of the Commonwealth designed to promote monitoring of elections/referenda in the states signatory to the Convention.

4. The Recommendations for international observers from the Commonwealth of Independent States for monitoring of elections were used in practice by CIS observers in respective elections in the Commonwealth countries a number of times: in Ukraine in March of 2002 and in October – November of 2004, in Armenia in February and April of 2003, in Azerbaijan in October of 2003 and March of 2004, in Georgia in January of 2004, in Kazakhstan in September of 2004, and in Belarus in October of 2004 (including the republican referendum).

5. Election observation missions have considerably grown in number. Thus, the CIS Executive Committee brought over 600 observers from the Commonwealth for observation of elections of the President of Ukraine on October 31, 2004. Groups of observers representing different bodies of the Commonwealth, integration associations that are operating in the Commonwealth and different territorial units (regions and subjects of CIS states) are more often invited to participate in international observation missions and the Recommendations have been a valuable training tool for them while acting in the capacity of international observers, as well as while organizing international observer training.

As a result of the above said a considerable practical experience of international observation has been accumulated and reference directions for further improvement of the document have been identified.

1. Upon entering in force of the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States direct inclusion of provisions regarding listing and contents of the standards of democratic elections in the text of the Recommendations was no longer relevant. In this respect the text of the Convention is included as an annex to the Recommendations.

2. The new edition widens application of these Recommendations – it provides for their application during international observation not only in elections but also in referenda that are held in the CIS states, including those that are conducted simultaneously with elections. Thus, a certain collision is removed as the Recommendations

for election observation were used for preparation of observation of a referendum, in particular in the Republic of Belarus in October of 2004.

3. A need to include new provisions on organization and operation of CIS observation missions as a new subject of international observation of elections/referenda was created with the approval by the CIS Council of Ministers of Foreign Affairs of the Regulations for Missions of Observers from the CIS in Presidential and Parliamentary Elections and Referenda in the Member States of the Commonwealth of Independent States.

4. A novelty in the updated Recommendations is a concise Code of Conduct for the International Observer. Thus, unified requirements for international observers as put by CIS institutions and other international organizations like the OSCE Office for Democratic Institutions and Human Rights, Council of Europe and European Parliament, were introduced.

5. The need to include a methodology of observation of operation of technical means of voting and counting of votes cast by voters and referendum participants, as well as observation of determination of election/referendum results in the new edition of the Recommendations was accounted for by a wider use of different automated voting systems.

6. The new edition of the Recommendations is comprised of five sections. Section 1 contains the foundations of the status of international observer and includes the concise Code of Conduct for the international observer; Section 2 includes main objects of international observation during election/referendum campaign; Section 3 is dedicated to long-term observation; Section 4 – to short-term observation; Section 5 offers procedures for summarization of preliminary results of observation and preparation of the final statement on international election/referendum observation.

The Recommendations for International Observers from the Commonwealth of Independent States for Monitoring of Elections and Referenda (New Edition) are a supplementary training document (manual) and are designed to assist international observers from the Commonwealth of Independent States in observation of election/referendum preparation and administration, efficient use of the rights and responsibilities of international observers in their mission of election/referendum observation, to assist them in professional assessment of comprehensiveness and precision of the national election-related legislation, as well as in observation of appointment, preparation, and administration of elections and referenda in accordance with the national constitution, international obligations of the state, the universally recognized principles and norms of the international law in administration of democratic elections and referenda.

The Recommendations for International Observers from the Commonwealth of Independent States for Monitoring of Elections and Referenda (New Edition) were approved at the 24th Plenary Meeting of the Inter-Parliamentary Assembly of the Member States of the Commonwealth of Independent States on December 4, 2004.

Section 1

FOUNDATIONS OF THE STATUS OF INTERNATIONAL

OBSERVER FROM THE COMMONWEALTH OF INDEPENDENT STATES FOR MONITORING OF ELECTIONS AND REFERENDA

1.1. Status of the international observer from the Commonwealth of Independent States for monitoring of elections and referenda

Inviting international observers the state proceeds from the premise that their presence promotes openness and transparency of elections/referenda, ensures fulfillment of international obligations of the state in administration of democratic elections/referenda and helps prevent violations of human rights related to elections/referenda.

1.1.1. An international observer from the Commonwealth of Independent States (CIS) in observation of elections/referenda is a person representing statutory bodies of the CIS– Inter-parliamentary Assembly of CIS member states, the CIS Executive Committee, other bodies of the Commonwealth, as well as integration associations acting in the Commonwealth and accounted for by international legal documents of the CIS (CIS bodies) and legislative, executive and elected bodies of CIS member states.

1.1.2. Bodies listed in Para. 1.1.1, Clause 1.1 have the right to send a group of international observers (mission) from the CIS. The number of observers in the mission, procedure of its formation, and head of the mission (coordinator) must be determined by an appropriate body that sends an international observation mission.

1.1.3. International observers from the CIS are entitled to observe elections/referenda in accordance with the order accounted for by national laws on elections/referenda, international legal documents and international obligations of the CIS member state where election/referendum is administered.

1.1.4. International observers receive permission to enter the state where elections/referenda are administered in the order accounted for by the national legislation. A permission to enter the state is only necessary if a visa is required to cross the state border.

1.1.5. International observers are under the protection of the receiving state while on the territory of the country where election/referendum is administered. This means that the receiving state shall undertake all the measures accounted for by the national legislation to protect the rights of international observers, as well as all the necessary measures against those who violate the rights of international observers to the point of holding them liable in accordance with the national legislation.

1.1.6. Activity of international observers in observation of elections/referenda is based on openness and transparency.

1.1.7. International observers may not use their status to undertake activity not related to observation of elections/referenda, to interfere with the election/referendum process, to poll voters on the voting day prior to or after their casting their ballots, to participate in voting procedures and tabulation of votes and determination of voting results and election/referendum results.

1.1.8. National laws may provide that international observers can be removed from voting premises must they interfere with activities of an election (referendum)

commission or with implementation of the right of citizens to vote (to take part in a referendum), or must they violate secrecy of ballot. A decision to such effect may be passed by a precinct election commission or a superior election commission. The respective election commission shall inform the Central Election Commission of the fact and the latter, in turn, shall inform the body that commissioned the international observers.

1.1.9. National legislation may provide for withdrawal of accreditation of those international observers who violate the national Constitution and laws, other legal acts, and the universally recognized principles and norms of the international law.

1.1.10. The Central Election Commission is entitled to withdraw accreditation of international observers must they violate national laws or the universally recognized principles and norms of the international law.

1.2. Procedure of accreditation of international observers

1.2.1. International observers from the Commonwealth of Independent States are accredited by the central election commission of the country where election/referendum is administered on the basis of an invitation issued by authorized state bodies and top officials of the country.

1.2.2. Credentials of an international observer are a document that confirms his/her status. As a rule, the format and description of credentials of an international observer are approved by the central election commission in accordance with the national legislation.

1.2.3. The central election commission issues credentials to international observers in accordance with submitted applications for accreditation, ID documents, and invitation of a CIS body. The credentials entitle international observers to conduct their activities during preparation and administration of elections/referenda.

1.2.4. International observers operate independently. This means that they are entitled to visit election/referendum precincts without special escort and prior approval of their election observation activities by respective election commissions.

1.3. Legal basis of operation of international observers

The following provides for a legal basis of operation of international observers from the CIS in the state where election/referendum is administered: national laws, the universally recognized principles and norms of the international law and international obligations of the state in organization of the election process, and the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States.

1.4. Term of international observation

1.4.1. The term of authorities of international observers begins on the day of accreditation by the central election commission of the country where election/referendum is administered and expire on the day of publication of official election/referendum results.

1.4.2. International observers are entitled to operate at any stage of an election (referendum) campaign but not before the decision of an authorized body or official appointing the date of election/referendum is officially published.

1.5. Authorities of international observers

1.5.1. Activity of international observers is regulated by the national legislation, international legal documents that empower them with authorities that they are entitled to in their activity. Specifically, in accordance with the mentioned legal acts, international observers have the right to:

- Access all documents (except those concerning national security) regulating the election (referendum) process and receive all the required information and copies of election (referendum) documents from election commissions as provided for by national laws;

- Contact political parties, coalitions, candidates, referendum initiative groups, voters (referendum participants), election commission officers, officials and other persons who shall cooperate with election commissions in accordance with election and referendum laws, as well as any other participants of the election (referendum) process;

- Easily access any election (referendum) precincts and voting premises, including on the voting day;

- Observe voting, tabulation of votes and determination of results in places accounted for by election (referendum) laws in the conditions securing visibility of the said election procedures;

- Attend adjudication of complaints (applications) and claims related to violations of election and referendum laws, as well as to review results thereof;

- Inform election commissions of observation, findings, and recommendations;

- Publicly report their opinions on preparation and administration of elections/referenda upon termination of voting;

- Submit their conclusions on observation of elections/referenda to election/referendum administrators, bodies of state power, and respective officials.

1.5.2. Specifically, international observers shall:

- Abide by the Constitution and the laws of the receiving country and of the international documents in organization and administration of election/referendum;

- Carry credentials of international observers and present them upon request of election/referendum administrators;

- Carry out their functions in compliance with the principles of political neutrality and impartiality, refraining from showing any partiality with respect to election commissions, state or other bodies, officials, election (referendum) participants, or any controversial issues arising in the course of elections/referenda;

- Not carry symbols, colors or stickers belonging to any political parties or referendum initiative groups.

1.5.3. Lists of international observers observing elections/referenda or separate stages of the election (referendum) campaign, including observation of voting and tabulation of votes at election commissions, are put together by respective election commissions on the grounds of credentials provided by international observers and

communicated to all individuals that are entitled to being present on the premises of election commissions, voting premises, and premises for tabulation of votes; the lists may be published in the media or in other manner provided for by the law.

1.5.4. Upon termination of observation of elections/referenda, international observers submit their final conclusions on observation results to the body that commissioned them for observation; the final conclusions are published in their official publications.

1.6. Basic requirements for international observers in observation of elections and referenda

1.6.1. International observers must be aware of UN, Commonwealth of Independent States, OSCE, Council of Europe, and European Parliament documents, as well as documents issued by other international organizations that concern democratic elections, protection of electoral rights and basic freedoms of citizens that are ratified by the country where election/referendum is administered.

1.6.2. International observers must be familiar with constitutional provisions that regulate elections/referenda and administration of the election (referendum) process, as well as with laws regulating elections/referenda, and other legal acts.

Attention must be paid to improvement of election and referendum laws (including recommendations of international observers) and their compliance with international obligations of the state. Legislation must provide solid and stable grounds for administration of pluralistic and responsible elections, and transparency and openness of the election (referendum) process.

1.6.3. International observers must be familiar with constitutional and legal provisions regulating participation in the election (referendum) process during adjudication of certain election-related disputes in court, specifically at the Constitutional Court; they are entitled to receive informational, statistic and other reference data regarding the law-enforcement practice in this respect from appropriate state bodies. It must be noted that according to constitutional provisions of some CIS member states, Constitutional Courts settle disputes regarding, specifically, constitutionality of elections; recognition of force-majeure or eliminated obstacles for candidates to elective offices; election results, specifically their validity; validity of election administration or preparation of conclusion on their validity.

1.6.4. International observers must review and assess different stages of the election (referendum) process starting from registration of voters (referendum participants) and beginning of an election/referendum campaign, formation of election districts, election (referendum) precincts, election (referendum) commissions, and ending with final procedures ensuring the voting process, including early voting, tabulation and – if necessary – verification (re-count and control count) of ballots, determination of vote returns and election/referendum results.

1.6.5. International observers are entitled to establish contacts with political parties (coalitions), referendum initiative groups and other groups, political public associations, institutions and organizations specializing in legal training of election (referendum) administrators, voters, election/referendum participants, as well as state and other bodies, specifically, High Commissioners on Human Rights (Ombudsmen)

on cooperation and collection of objective information on preparation and administration of elections/referenda and protection of electoral rights and freedoms of citizens and other participants of the election (referendum) process.

1.6.6. International observers fill in statistical observation (review) forms at election (referendum) precincts, districts, and other election (referendum) territories that they attended and observed. Statistical observation forms may be recommended by the body (bodies) of the Commonwealth of Independent States that commissions international observers.

1.7. Provision of assistance to international observers

Election commissions, local authorities (self-government bodies), other state bodies within their powers and authorities secured by law provide international observers with necessary assistance and create appropriate equal conditions to enable them to implement their functions freely and independently.

1.8. Ensuring operation of international observers

Logistical and financial support of international observers (transportation, accommodation, communication costs, etc.) is ensured by international observers and/or the commissioning party.

CODE OF CONDUCT FOR INTERNATIONAL OBSERVERS

International observers must be strictly unbiased in their operation, must not express bias or preference to legislative or executive bodies of power, parties, candidates or to any questionable issues that may arise during election/referendum process.

International observers must execute their powers in accordance with the national legislation on elections (referenda), universally recognized principles and norms of the international law on administration of democratic election (referenda) and not interfere with the election (referendum) process.

International observers must observe all state laws and rules.

International observers must carry credentials of international observers and present them upon request of election/referendum administrators and other authorized bodies and officials.

International observers must refrain from providing any personal or premature commentaries on their observation to media representatives and other interested persons before termination of voting.

International observers must not carry symbols, colors or other attributes belonging to political parties of candidates.

As a rule, international observers must base their conclusions on documented, authentic, and verifiable facts.

International observers must not interfere with the process of preparation and administration of elections (referenda); at the same time they may draw attention of local authorities and election administrators to noncompliance with certain rules and procedures but they must not issue instructions (directions) or under-

take actions that contradict decisions of election commissions and other authorized bodies.

Section 2

BASIC ASPECTS OF INTERNATIONAL OBSERVATION DURING ELECTION AND REFERENDUM CAMPAIGNS

2.1. Election and referendum campaigns

2.1.1. The state must ensure the freedom to seek, collect, and distribute information on elections/referenda, candidates, referendum initiative groups, as well as unbiased informational coverage of elections/referenda in mass media and telecommunications.

2.1.2. International observers are entitled to examine the calendar plan of activities in preparation and administration of an election/referendum that defines the timeframe for election procedures that are set by the election/referendum law to have an opportunity to determine the duration of an election (referendum) campaign and timeliness of election activities.

2.1.3. International observers act on the basis of legislation that guarantees freedom of expression, meetings, and association. These rights must be permanently protected to ensure formation of political platforms and inform citizens about candidates and their election programs, as well as about issues that are put for a referendum.

2.1.4. Candidates and referendum initiative groups must have an opportunity to distribute their election programs and materials without unwarranted interference in the course of their election/referendum campaigns.

2.1.5. Time is an important factor in administration of elections. The duration of an election campaign must allow enough time for all candidates to present their campaign programs to the voters. The right of self-expression, association and assembly must be timely provided to ensure effective organization and conduct of election campaigning.

2.1.6. The order of coordination (authorization) of assemblies, political rallies and fundraising events must be well developed; the order must have a transparent and public character. Judicial recourse must be legislatively provided to prevent unlawful delay or refusal to issue such authorizations, as well as to ensure prompt consideration of applications requesting authorization of the said events. International observers must note whether or not locations for rallies and assemblies are provided, whether or not access of properly selected candidates and parties thereto is ensured, and whether or not all competing political forces are provided with an opportunity to distribute campaign materials and guaranteed the right of association and self-expression. It has to be taken into account that possible cases of application of force or threats of violence might negatively affect the atmosphere of an election/referendum campaign.

2.2. Nomination and registration of candidates, referendum initiative groups, registration of political parties (coalitions)

Elections must be competitive and pluralistic.

2.2.1. The right of citizens to nominate their candidacy in direct elections without discrimination individually or as representatives of political parties (coalitions) and public organizations (association) is guaranteed by international obligations and national election legislation of member states of the CIS. Any arbitrary or discriminating application of law or omission undertaken to impair certain political forces is against international obligations and must result in a liability accounted for by law.

2.2.2. Every citizen has the right to join a political party on conditions equal with other citizens or organize a coalition on legal grounds in order to take part in elections, including nomination of a candidate or a list of candidates. Every candidate or a political party (coalition) has the right to legal protection of their political and electoral rights and freedoms.

2.2.3. The state must ensure awareness of citizens and other election/referendum participants of legal requirements for procedure of nomination and registration of candidates/lists of candidates, referendum initiative groups, political parties (coalitions); of candidates' status, status of referendum initiative groups, political parties (coalitions) taking part in elections/referendum, of the timeframe for election (referendum) actions and procedures and legal acts and their provisions regulating election/referendum preparation and administration.

2.2.4. Nomination and registration of candidates, lists of candidates, lists of candidates from political parties (coalitions), referendum initiative groups may be accomplished by collecting a certain number of voters' signatures (referendum participants' signatures), or by election (money) deposit, or other procedures that take into account, specifically, the current parliamentary status of a political party (coalition), the number of votes received by a political party (coalition) in the last elections to the national legislative body (parliament) in the cases and in the order set by the national laws, and in accordance with the universally recognized principles and norms of the international law and international obligations of the state where elections are held.

2.2.5. The number of signatures accounted for by law may not exceed the percentage of the total number of voters (referendum participants) of a respective election district determined by the national law; the election (money) deposit must not be exceptionally high for a candidate, political party (coalition); in addition, election deposit is reimbursed if a candidate or a list of candidates from a political party (coalition) acquires a minimum number (percentage) of votes accounted for by law.

2.2.6. The period for collection of signatures and the deadline for submission of signatures for verification, as well as the procedure of verification of signatures and their validation or invalidation must be clearly and exhaustively defined by law. The law may provide for a procedure of verification of all signatures or selective verification of a certain share of signatures.

2.2.7. Registration of candidates, lists of candidates from a political party (coalition) taking part in elections or referendum initiative groups may be reversed by court and/or election administration bodies in the order and within the timeframe accounted for by law.

2.2.8. The state may legislatively limit the number (share) of votes that are necessary for political parties (coalitions) to take part in distribution of mandates based

on election results. The law provides for the order of vote count, determination of vote returns and election results, definition of a candidate that has been elected, as well as for the order of distribution of mandates among candidates (lists of candidates) from political parties (coalitions).

2.2.9. Upon request, central election commissions can provide international observers with lists of registered political parties (public associations, organizations) whose charters are officially registered by national judicial bodies and which are entitled to participate in elections and nominate candidates in the order accounted for by law.

2.2.10. General principles of the election law are applicable to the right to be elected. All political forces must have an opportunity to nominate candidates equally regardless of their sex, race, language, religion, political sympathies, ethnicity or nationality, and socio-economic status. Legal restrictions may apply to those who want to be elected, especially when it comes to one's term of residence in the country. Registration requirements must be clear and predictable and must not include prescriptions that may become a reason for discrimination, e.g., an unjustifiably large amount of election deposit or an unreasonably large number of votes in signature lists. A right to appeal must exist if a party or a candidate is refused registration.

2.2.11. International observers must pay attention to possible discriminative restrictions during review of procedures for nomination and registration of candidates, lists of candidates and referendum initiative groups; learn the level of participation of women, ethnic and national minorities in election/referendum campaigns; determine how efficiently various legal qualifications are identified and applied, specifically, residential qualification and other restrictions of the passive electoral right and the right to participate in a referendum.

2.3. Funding of elections and referenda and funding of candidates' election campaigns

2.3.1. International observers must familiarize themselves with existing mechanisms of funding of elections and referenda and funding of election campaigns of candidates, political parties (coalitions), and obtain information from election commissions on their budgets and/or other funds allocated by election commissions to prepare and administer elections, ensure equal initial financial and legal conditions for election campaigning by candidates and political parties (coalitions).

2.3.2. An efficient campaign requires sufficient and timely funding. Election campaign expenses of a candidate, political party (coalition) or expenses associated with a referendum campaign may include office expenses (election headquarters, headquarters of a referendum initiative group, etc.), transportation expenses, printed and electronic media (spaces or airtime), publication and distribution of election campaign materials and referendum materials. A fair system of provision of funding to all candidates must exist (based on equality) as accounted for by election law or particular legislative (legal) acts.

2.3.3. Candidates, political parties (coalitions) taking part in elections must be provided with budget funds on an equitable (equal) basis, as well as with an opportunity to form their own funds at the election commission or to create their own election funds for election campaigning and use their own funds for this purpose, or

receive voluntary donations of citizens and/or national legal entities in the order and amount accounted for by laws. In order to create equal conditions for all candidates and political parties (coalitions) maximum reasonable limits are determined for election funds of candidates, political parties (coalitions) to which they are entitled in order to conduct their own election campaign.

2.3.4. Use by candidates and political parties (coalitions) of other funds beyond those in election funds may be forbidden by election legislation and may bring responsibility according to the law. It needs to be taken into account that election legislation may set such an order for funding election campaigns of candidates and political parties (coalitions) when corresponding election commissions provide equal amounts of funds for campaigning to all candidates (except those running in party lists); political parties (coalitions) as separate election participants also receive equal amounts of funds for their election campaign. Unlawful (not set by national law or contradicting universally recognized principles and norms of the international law and international obligations of the state) foreign donations, including donations from foreign nationals and legal entities to candidates and political parties (coalitions) taking part in elections or to other public associations, public organizations that directly or indirectly relate to candidates and political parties (coalitions) or which are under their direct management or control and assist in achieving goals of political party (coalition).

2.3.5. In compliance with the legislation on elections the state must ensure an open, transparent, and public order of all donations to candidates and political parties (coalitions) and their expenses so that to exclude donations disallowed by law, or exceeding the set limits, or illegal expenditure of election funds.

2.3.6. Within the timeframe accounted for by law, candidates and political parties (coalitions) taking part in elections submit to election bodies and/or to other bodies specified by law, reports and information on all donations to their election funds and all expenses from election funds for their election campaign. Election bodies ensure publishing of the said information and reports in mass media as accounted for by law.

2.3.7. A special body (bodies) may be set up to control and monitor rules and procedures of funding of election campaign of candidates and political parties (coalitions), or corresponding functions may be vested with election commissions or their officers.

2.3.8. List of violations of conditions and order of making donations and funding activity of candidates and political parties (coalitions), referendum initiative groups, as well as a list of measures preventing violations of election/referendum funding rules and election campaign of candidates and political parties (coalitions) must be accounted for by laws, other legislative acts.

2.3.9. International observers must note facts of financial violations and abuses in conducting election (referendum) campaigns and report to election commissions and other bodies the cases of election corruption, including bribery of voters (referendum participants), illegal charity with the aim to make voters (referendum participants) cast their ballots for or against a particular candidate or all candidates, or referendum issues, to boycott elections/referenda or certain election activities undermining continuity of the election/referendum process.

2.3.10. It needs to be taken into account that state bodies must not use human and material resources, e.g. governmental vehicles, offices and telecommunications to sup-

port candidates of the ruling party or parties, except when all candidates have equal access to such resources.

2.4. Election campaigning

2.4.1. Citizens, candidates, political parties (coalitions) nominating a candidate and/or a list of candidates, referendum initiative groups and other groups, other public associations, public organizations must be guaranteed the freedom of election campaigning in any form allowed by law and in legal methods in the order and within the timeframe accounted for by law; under conditions of pluralism of opinions and free from censorship. All candidates, political parties (coalitions) participating in elections, referendum initiative groups and other groups must be provided with equal conditions enabling them to access mass media to conduct their election campaigns, communicate their election program (platform) or position on referendum issues to voters.

2.4.2. State and local self-government bodies and their officials must provide assistance in organization and conduct of election campaigning to candidates, political parties (coalitions) participating in elections, referendum initiative groups and other groups on equal legal conditions as accounted for by law.

2.4.3. The mission of mass media is to inform the population about elections/referenda, nomination of candidates (lists of candidates), their election programs (platforms), referendum initiative groups and other groups, about the course of election/referendum campaign, vote returns, election/referendum results, and they must conduct their activity within the framework of the Constitution, laws and international obligations of the state.

2.4.4. According to the law, representatives of mass media are entitled to attend meetings of election commissions and ensure openness and transparency of their activity; to observe voting, vote count, determination of voting and election/referendum results; to familiarize themselves with documents and materials of corresponding election commissions on vote returns and election/referendum results, make copies of the said documents or receive copies from corresponding election commission and transfer them to mass media and telecommunication for publishing, attend public campaign events and provide their coverage to mass media.

2.4.5. Persons and organizations that are directly or indirectly participating in campaigning are forbidden to corrupt voters: to hand over money, gifts and other material values, organize discount sales, distribute free items (except campaign scarves, t-shirts, hats and other similar objects carrying symbols of candidates, political parties (coalitions) that are paid from the election fund of the candidate or political party (coalition), as well as provide free or discounted services, influence voters (referendum participants) by pledging money, securities and other goods, including services in exchange for election results. The laws set the list of violations and the order for conducting election campaign by candidates, political party (coalition), referendum initiative group or other groups in conducting their campaigning, as well as mass media participating in campaign coverage.

2.4.6. International observers must find out:

- What assistance is provided by state bodies, local self-government bodies, their

officials to candidates, political parties (coalitions), referendum initiative group or other groups in conducting election campaigning and if anything points to illegal assistance provided to certain candidates, political parties (coalitions), referendum initiative group or imposes limitations upon other candidates, political parties (coalitions), referendum initiative groups;

- Whether or not actual (confirmed by documents) cases of impeding election campaigning by the mentioned bodies and officials exist; or violations of campaigning by candidates, political parties (coalitions), referendum initiative groups or other groups, and what consequences of the violations were observed; measures taken for their elimination and holding offenders liable according to the law;

- What measures were taken against violators of election campaign procedures and/or its clients.

2.5. Mass campaign events

2.5.1. Mass campaign events (meetings, demonstrations, marches, etc.) must be conducted in conformity with the purposes stated, within the specified terms and in the specified place. Organizers of events and their participants must abide by the national legislation and observe public order; at the same time, law-enforcement bodies cannot be used for administrative political counteraction of legal conduct of mass campaign events.

2.5.2. It is desirable that international observers directly observe mass campaign events and verify their mass character and organization level; assess actions of various participants of such events (organizers, voters, representatives of authorities and law-enforcement bodies), evaluate the extent to which the mentioned events provide positive or negative effect on democratic character of elections/referenda.

2.6. Distribution of printed and other campaign materials

When assessing campaign activity, international observers must pay attention to:

- Publication of information in printed and other campaign materials (CDs, pennons, pins, etc.) and other products (order number, date and client's name, circulation, etc.);
- Term of production and distribution of campaign materials;
- Places (information stands, etc.) of display of campaign materials;
- Amount of campaign materials per candidate, political party (coalition) as compared to other competitors in elections;
- Cases of destruction of campaign materials (breakage, paste-over, painting, etc.)
- Cases of campaign materials remaining on election day (when prohibited by law)

2.7. Campaigning on TV channels and distribution of campaign materials in collective telecommunications networks

When assessing campaign activity on TV channels international observers must pay attention to:

- Amount of airtime of campaign announcements of election competitors;
- Dates, time, and duration of airtime;

- Facts of hidden (indirect) campaigning (distribution of informational materials on certain individuals and organizations covered positively);
- Forms of campaigning (public service announcements, television debates, etc.);
- Type of campaigning (fair, democratic or aggressive, offensive).

2.8. Inadmissibility of misuse of the right to election campaigning, referendum campaigning

2.8.1. Election and referendum legislation grants unimpeded access to media outlets on the basis of free from discrimination and excessively strict requirements to licensing certain types of information services. The nature of democratic rule requires that voters (referendum participants) be aware and make their choices based on information. To reach this goal it is necessary that all competing viewpoints be represented, including in state-owned media outlets. During election campaigning misuse of the right to freedom of assembly, freedom of association, freedom of speech, and freedom of mass media must not be allowed, including calls for violent takeover of power, violent change of constitutional order and violation of territorial integrity of the state; calls for war propaganda, terrorist and any other violent acts and incitement of social, gender, racial, national, ethnic or religious hatred or hostility.

2.8.2. Media outlets bear special responsibility for balanced coverage of election/referendum campaign and a system of guarantees for provision of equal access to printed and electronic media for all candidates and political parties must be developed. This also implies provision of free airtime and print spaces for campaigning in state-owned media outlets.

At the same time the fashion in which election campaign is covered is important. The incumbent has better access to mass media in covering state problems but he must not take advantage of his official position.

2.8.3. Media outlets must be granted an opportunity to collect and provide objective information and must be granted guarantees that no arbitrary or discriminating pressure or censorship in election/referendum campaign coverage is admitted. In turn, media outlets may develop and follow a code of conduct for journalists, declaring the need to distribute accurate and balanced reports, correction of wrong information, clear separation of information from commentaries, inadmissibility of slander allegations, and respect for the right to privacy and to a fair trial. International observers must pay attention to how the airtime and print spaces are distributed among candidates.

2.8.4. International observers must take into consideration that mass media's interest in the activity of election commissions grows during election/referendum campaign; and election commissions use media more often (statements of heads of election commissions, public service announcements, information reports, etc.) to deliver unbiased election/referendum information to voters. It is important to know in this respect that election commissions are not entitled to any election campaigning and they are obliged only to inform voters/referendum participants about calling of elections/referenda, about the time and place of voting, creation of electoral districts, electoral/referendum precincts with indication of their borders and numbers, location of election commissions, information on candidates and lists of candidates, issues put up for a referendum,

voting and election/referendum results. Representatives of election commissions must refrain from public assessments and forecasts of elections/referenda.

2.9. Inadmissibility of use of administrative and financial resources with the purpose of being elected and for election campaigning

2.9.1. Election legislation must provide that all candidates have equal rights and carry equal obligations, and incumbent candidates in governmental or municipal positions must not take advantage of their positions. At the same time the laws must have clear criteria defining limitations on use of official positions during elections. Specifically, the following may qualify as illegal use of an official position:

- using subordinate personnel or other dependent personnel of state and municipal agencies in their office hours to conduct activities promoting nomination and/or election;
- using premises of state bodies or local self-government bodies to conduct activities promoting nomination and/or election when other candidates or registered candidates are not in a position to use the same premises on the same conditions;
- using telephone, fax and other communication, informational services and equipment of state bodies or local self-government bodies to collect signatures and conduct election campaigning;
- using state- or municipality-owned transportation vehicles to conduct activities promoting nomination and/or election free of charge or at a discount (it may be set by the legislation that this restriction does not apply to those candidates who use the said transportation vehicles in accordance with the federal legislation on state security);
- collecting signatures to support nomination (when this procedure is accounted for by law) and conduct election campaigning of state or municipal officials on their business trips that are paid for with state or municipal funds;
- privileged access (as compared to other candidates) to mass media and telecommunications to collect signatures and conduct election campaigning.

2.9.2. At the same time, legislation may set that compliance with the said limitations must not impede compliance of deputies and elected officials with their obligations with respect to their voters.

2.10. Organization of operation of courts and law-enforcement bodies

2.10.1. Given that an election/referendum campaign is legally limited in time, courts and other law-enforcement bodies must organize their operation in such a way so that to ensure adjudication of grievances against violations of citizens' rights and freedoms within terms set by national legislation on elections/referendum. Operational cooperation must be ensured for that purpose between mentioned bodies and election bodies.

2.10.2. International observers must find out what procedures exist for submission of complaints; how complaints are reviewed during election/referendum campaign and specifically on the election day; what procedures are set for appealing decisions issued and if an opportunity exists for revision (cancellation) of elec-

tion/referendum results based on court decisions.

Section 3

ORGANIZATION OF LONG-TERM OBSERVATION

Observation of elections/referenda does not fit in one day. Observation during the election day alone cannot provide the most objective evaluation of the election (referendum) process. That is why the Executive Committee of the Commonwealth of Independent States reoriented its activity to achieving long-term observation of the election/referendum process and does not limit it to short-term observation during the voting day, as well as during the previous and the following days.

The purpose of long-term observation is to acquire advanced knowledge about various stages of election/referendum cycle. This wider goal requires long-term observers to be present in the country in different periods of election/referendum campaign. The observer must take into account all periods in order to draw conclusions on the course of the election/referendum process: from official setting of the voting day to final stages of elections/referenda, i.e., vote count, publication of election/referendum results and acquisition of office by elected candidate.

3.1. Organization of the CIS observation mission

3.1.1. The CIS Observation Mission is organized and coordinated by the CIS Executive Committee based on invitation of the CIS member state where elections/referenda are held, and the Decision of the Heads of the CIS States of May 30, 2003 that recognized it necessary to continue the practice of sending CIS observers to elections/referenda in member states of the Commonwealth of Independent States.

3.1.2. The composition of the CIS Observation Mission is determined by the CIS Executive Committee. The candidacy for the Head of the CIS Observation Mission is coordinated with the Council of plenipotentiary representatives of the CIS member states with the charter and other bodies of the Commonwealth based on the proposal of the CIS Executive Committee.

3.1.3. Organizational, logistical, legal, and informational support of the CIS Observation Mission is funded by the CIS Executive Committee from the unified budget of CIS bodies.

3.1.4. Logistical support of the CIS Observation Mission is provided by the Headquarters for logistical support of the CIS observers' activity as formed by the CIS Executive Committee.

3.2. Setting up activity of the CIS observation mission

3.2.1. Upon receiving the invitation of the CIS member state where elections/referenda are held, the CIS Executive Committee addresses the member states and the CIS bodies with a suggestion to submit lists of persons to be included in the CIS Observation Mission and then forwards them to the central election commission of the state for accreditation.

3.2.2. As a rule, the Headquarters for logistical support of the CIS observers'

activity is deployed in the state where elections/referenda are held for a long-term and in accordance with the timeframe set by the central election commission of the state where elections/referenda are held.

3.2.3. The Headquarters for logistical support of the CIS observers' activity has the following functions:

- accreditation of members of the CIS Observation Mission;
- monitoring and analysis of campaign activities in mass media;
- preparation of packages of legal acts regulating the election/referendum process;
- provision of logistical support to members of the CIS Observation Mission in places of deployment;
- collection of information from observers and preparation of the statement of the CIS Observation Mission.

3.2.4. The statement is signed by the Head of the CIS Observation Mission and group coordinators. The text is then forwarded to the state bodies of the CIS member states where elections/referenda are held and made public and available to the media.

3.2.5. The CIS Executive Committee informs the Council of the Heads of States of the Commonwealth on the results of the CIS Observation Mission.

3.3. Responsibilities of long-term observers from the Commonwealth of Independent States

3.3.1. The role of long-term CIS observers is important in acquisition of direct information on effectiveness and impartiality of operation of election commissions before elections/referenda, on application of laws and rules on elections/referenda, on campaign substance and political situation on the eve of elections/referenda.

3.3.2. Long-term observers monitor the pre-election/pre-referendum period assisting the short-term observers in receiving information on the entire process of organization and conduct of an election/referendum campaign.

3.3.3. Long-term observers must observe any violations of the law or procedure at every stage of the election/referendum process, including voter (referendum participant) education and voter registration.

3.3.4. Long-term observers must submit interim reports based on their assessment and observation which are used for briefing short-term observers and are part of the statement of the CIS Observation Mission.

3.3.5. Long-term observers must maintain contacts with regional and local election commissions and bodies of government, political parties, referendum initiative and other groups, public organizations and mass media.

3.3.6. In order to provide systemic and objective observation long-term observers are suggested to assess election/referendum process using the following parameters:

- voter awareness and activity of election/referendum participants;
- identification and registration of voters/referendum participants;
- order of creation of electoral districts, electoral (referendum) precincts, criteria for their creation and their borders;
- election commissions (referendum commissions): principles, order and term of their formation (dissolution) and operation, composition and qualification level of election/referendum administrators (commissioners, including those appointed by

candidates or political parties/coalitions);

- format and text of election (referendum) ballots, level of security against their falsification;
- order of submission of complaints and their adjudication;
- maintenance of public order and security during preparation and administration of election/referendum, voting and vote count.

3.4. Voter education and activity of election/referendum participants

3.4.1. State owned mass media or media with partial state and/or municipal participation must provide balanced informational coverage of elections/referenda, election campaigns of candidates, political parties (coalitions) without showing political or other bias or preferences, including ideological ones.

3.4.2. The state guarantees the freedom to seek, obtain, and distribute information on elections/referenda, candidates, lists of candidates, political parties (coalitions) taking part in elections as specified by law, referendum initiative and other groups, as well as unbiased informational coverage of calling, preparing for and administering elections/referenda, election campaigns of candidates and political parties (coalitions) in the national media and telecommunications.

3.4.3. The state may approve special national programs of civic education for election/referendum participants and take part in the development of similar inter-governmental programs; provide conditions for training of citizens and other participants of election campaign on election rules and procedures, improve legal awareness and professional qualification of election/referendum administrators, and pay special attention to provision of information and/or education to disabled and otherwise handicapped persons.

3.4.4. International observers must assess the level and effectiveness of electoral training of voters and other election/referendum participants. Education of voters/referendum participants must imply provision of official, comprehensive, and timely information to citizens on where and in what order to vote in concrete elections/referenda. It is very important that such information should be delivered ahead of time and voters/referendum participants be given enough time to use it or obtain more detailed information. Provision of objective and unbiased information about elections/referenda and election/referendum campaign to voters/referendum participants is an obligation of election commissions and other bodies as accounted for by law. This information must be available to all voters/referendum participants, including politically indifferent population groups.

3.4.5. The state may provide an opportunity to representatives of national minorities and ethnic groups to acquire election-related information specified by law in their native language, and take measures to ensure that disabled and otherwise handicapped persons have full access to special informational materials (prepared and published from budget funds) on elections/referenda, candidates, lists of candidates, political parties (coalitions) and their election programs (platforms), as well as other participants of election campaign, referendum initiative and other groups, as well as an opportunity to fill in voting (referendum) ballots and vote without having to ask for assistance of persons specified by law.

3.4.6. Voters/referendum participants can be educated and kept informed with assistance of modern information technologies, including the Internet. International observers must find out what has been done to that effect and who precisely has benefited.

3.4.7. It is important to observe that election commissions and their members do not conduct election campaigning directly or indirectly on the issues put up for a referendum or lists of candidates and only provide objective and unbiased informational materials on elections/referenda to voters.

3.5. Identification and registration of voters (referendum participants)

3.5.1. The right to vote must be provided to all citizens of the country on common grounds upon reaching a certain age. At the same time the Constitution and laws may deprive certain citizens of their electoral rights (e.g., the electoral rights of those who has been found legally incompetent in the court of law or those who has been convicted in the court of law and sentenced to imprisonment) or restrict the electoral rights of certain citizens partially (e.g. the right to be elected for those who are kept in custody or are under investigation, or defendants). It must be taken into account that election and referendum law in their regulation of active and passive electoral rights may be exhaustive or open (without listing all the cases) in defining the basis for and the cases of limitations of electoral rights of citizens, including temporary limitation, which affects their identification and registration as voters (referendum participants).

3.5.2. The state must set an efficient and non-discriminating procedure for registration of voters (referendum participants) with a clear definition of criteria such as citizenship, age, place of residence, availability of a main ID document and legislatively set responsibility of those officials and bodies supplying information on voters (referendum participants) for its authenticity, completeness and timeliness of delivery, as well as confidentiality of personal data in accordance with the legislation.

3.5.3. Lists of voters (referendum participants) prepared in the order accounted for by law are official documents where all voters (referendum participants) must be entered.

3.5.4. The states must adopt legislation to regulate the method (procedure) and timeframe (period and duration) of registration, qualification and disqualification of participants of the election process on the basis of their age and compliance with residential requirements (term of residence), as well as other parameters; identification methods, registration forms, the procedure for submission of grievances, appeals, publication of registered lists, and provide for opportunities and the right to review voters' lists (lists of referendum participants).

3.5.5. Assessment of the registration process is important for prevention of unjustified restrictions in registration of voters (referendum participants). Such restrictions may be limitations based on race, sex, ethnicity, religion, political convictions, language, and level of literacy, property status or other factors contradicting international commitments of the state. Justified limitations may be accounted for by a variety of circumstances such as one's place of residence, conviction status, and legal capacity.

3.5.6. It must be noted that emigration or internal territorial migration may cause considerable changes in population in between elections and it complicates identification and registration of a large number of voters (referendum participants) who changed the place of residence, suggesting a serious technical work. Voters (referendum

participants) must be removed from the list at the prior place of residence and included in the list at the new place of residence. At the same time, measures must be taken to prevent multiple (double) entries. Measures must be taken to prevent falsification and unauthorized replication of special election ID cards (voters' ID certificates).

3.5.7. The voter registration process becomes more efficient if the list of voters is regularly updated (the personal data on the voter is defined better, e.g. when a new ID is issued). Specifically, election legislation may include a list of ID documents: passport, travel passport, temporary ID of a citizen, diplomatic passport, service passport, sailor's ID, and military ID. Methods of registration in different countries may differ but automation of registration process may assist in verification of accuracy of the lists and provide authenticity and exhaustiveness of the voter registry.

3.5.8. Registration procedures (update of personal data) and lists of voters (referendum participants) must be made open for the citizens to the utmost degree. This is why the list of voters (referendum participants) must be provided for review of voters (referendum participants) before the voting day so that they could verify its accuracy and appeal any wrong inclusions or exclusions, as well as inaccuracies in the list of voters (referendum participants).

3.6. Criteria for creation of electoral districts, electoral (referendum) precincts

3.6.1. All votes must be equal to provide equal representation. It means, as a rule, that each elected candidate represents equal number of registered voters. In the proportional representation election systems the size of electoral districts may vary but the number of representatives from each district must be proportional to the number of voters. During elections of deputies or the highest elected official (e.g. the head of state) in a number of states only one district is formed that includes the entire territory of the country where deputies (or the highest elected official) are elected from party lists.

3.6.2. Election and referendum legislation must contain criteria for creation of election districts, definition of their limits, election (referendum) precincts; set the number of voters per district and per electoral (referendum) precinct taking into consideration natural, administrative and territorial extent of such limits, administrative and territorial organization (division), local self-government, peculiarities of geographical situation of certain areas and territories, as well as the need to ensure representation of national minorities and ethnic groups.

3.7. Election (referendum) commissions: principles, order and terms of creation and operation; composition and level of preparation of election/referendum administrators

3.7.1. Preparation and administration of elections/referenda, provision and protection of electoral rights of citizens and control over their observation are vested with corresponding election (referendum) commissions acting within their competence and authorities set by the Constitution and by laws.

3.7.2. The order of creation, authorities, and the term for which election commission is created (nominated), as well as organization of its operation must be set by cor-

responding election or referendum law; separate (independent) laws on the status of the central election commission may be adopted. The order for operation of election commission may also be set in its regulations – the rules adopted by the central election commission. The state must not allow creation and operation of other administrative structures (bodies, organizations) to substitute election commissions or assume their functions, or manage their operations.

3.7.3. Election and referendum administrators must have a good knowledge of election and referendum legislation, including the universally recognized principles and norms of the international law, international standards of democratic elections; their own rights, duties and responsibilities during elections/referenda. Members of election commissions must be provided with legislative and other acts on elections/referenda, statistical and other reference materials, training materials and manuals, necessary decisions of superior election commissions, courts, and international obligations of the state in preparation and administration of democratic elections.

3.7.4. International observers must familiarize themselves with the calendar plan of the election/referendum campaign; particularly, they must be aware of all training events designed to prepare (in the course of professional training and advanced training) election/referendum administrators (members of election commissions, authorized representatives of political parties, etc.).

3.7.5. Operations of election (referendum) commissions must be independent, unbiased, collective, open, and public. Their independence and protection from political and administrative manipulations is achieved on condition that election commissions' budgets (projected expenses) are sufficient and independent, budgeted funds are transferred on time and in full, the principle and the order of their formation guarantee such protection and they are composed of known, respected, and professionally experienced people. Members of different political parties (coalitions) nominated by those parties (coalitions) based on the principle of equality may also participate in activities of election commissions of all levels. Once representatives of political parties (coalitions) become members of election commissions they cannot take part in election campaigning in any other capacity.

3.7.6. Members of election commissions must have the right to return to their place of work after an election/referendum is over, provided that they have worked for an election commission on a part-time basis (not as permanent staff members).

3.7.7. Decisions and statutory acts of relevant election commissions passed within their authority are binding on the bodies of executive power, state agencies, local bodies of power (local self-government), political parties and other public associations (organizations), their authorized representatives, agents, observers, organizations, officials, citizens, subordinate election commissions and other persons and organizations as accounted for by law.

3.7.8. The laws may oblige state bodies, bodies of local self-government, enterprises with state participation as well as their officials to provide assistance to election commissions in fulfillment of their duties; they may also require that editorial boards of periodicals and television and radio stations specified by election/referendum legislation should provide election commissions with possibilities to publish their information, as well as provide election bodies with free airtime to communicate information on elections/referenda and the course of the election/referendum campaign.

International observers must monitor interaction between election commissions and the said media structures and officials.

3.7.9. When assessing organization and activity of election bodies international observers must proceed from the premise that no democratic order of formation of election commissions (including by accepting representatives of the ruling and oppositional political forces) must influence independent, professional, and unbiased execution of duties by members of election commissions in preparation and administration of elections/referenda, in realization of electoral rights and freedoms of citizens and other participants of the election process, and observation of the principle of legal equity and impartiality.

3.8. Format and text of voting ballots (referendum ballots); level of their protection

3.8.1. To a certain degree, the format and text of voting (referendum) ballots influence efficiency of the election/referendum process and the choice of voters (referendum participants) on the election day. The ballot must be understandable, user-friendly, and easy to read and complete.

The format and text of voting (referendum) ballots are approved by election commissions within a certain period preceding the voting day as accounted for by election/referendum law.

3.8.2. Election documents that are used to determine vote returns and election/referendum results may be special reporting documents with a level of protection accounted for by law. Thus, to protect ballots against forfeiting they may carry a special seal that is specific for each particular election (referendum) precinct or signature (signatures) of responsible person (or two or more persons). To protect ballots against possible falsification (forfeiting) they may also contain other elements accounted for by law, e.g., watermarks, special paper color, markings, etc. An election (referendum) ballot may consist of two parts – one part that is issued to each voter (referendum participant) for voting and a detachable counterfoil that is kept by the election (referendum) commission that issued the ballot.

3.8.3. International observers must establish when, where, and by whom the ballots were printed; the number of ballots printed, and requirements for their production (culling), transfer, transportation, and storage; how they were actually stored and distributed among election districts and election (referendum) precincts, how many days before the voting/referendum day it was done, whether or not there are any reports confirming that a particular election commission has actually accepted a certain number of ballots; whether ballots were handed over to an election commission in the presence of observers, representatives of mass media, other persons indicated in the laws and decisions of election commissions; whether any problems were created and how they were resolved, whether there were complaints and how they were adjudicated. In case of missing, destroyed, or damaged voting (referendum) ballots and in other cases of unlawful treatment of ballots international observers must determine why a violation of the law occurred and what kinds of measures were undertaken to eliminate its consequences, as well as whether such measures were adequate, timely, and if they complied with election legislation.

3.8.4. Each ballot must contain completion instructions. If local election and referendum legislation does not contain such a provision international observers must find out to what degree voters (referendum participants) are familiar with the order and procedure of completion of voting (referendum) ballots. In particular, they must find out if materials for voters located in front of or inside the voting premises contained informational materials on the order of voting and the order of completion of voting (referendum) ballots.

3.8.5. In order to ensure electoral rights of certain categories of citizens and provide for additional guarantees of their participation in voting, national laws may specify that voting (referendum) ballots must be printed not only in the official language (languages) but in other languages, if required, e.g. languages of other people, national (language) minorities, ethnic groups in places of their compact residence.

3.9. Automated voting

3.9.1. In some countries, national election legislation provides for a possibility to use a variety of technological voting means (electronic voting systems, ballot processing devices, etc.).

3.9.2. International observers must familiarize themselves with the principles of using technical means in elections/referenda, assess the degree of their user-friendliness, considering the level of preparation of voters (referendum participants), their safety, including protection from unauthorized access, and ability to ensure ballot secrecy. At the same time, domestic and international observers must be granted a possibility to examine technical means available at an election (referendum) precinct.

3.10. Order of submission and adjudication of grievances

3.10.1. The right to appeal to an independent and unbiased governmental court must be provided to all participants of the election/referendum process. The body that may be the last adjudicator in this respect must provide for a procedure of submission and adjudication of grievances related to elections/referenda. International observers must take into account that fairness of the election/referendum process may be ensured only when complaints are adjudicated independently and without bias, and court decisions and decisions of other bodies authorized by law are immediately enforced.

3.10.2. Complaints referring to the election/referendum process must be reviewed with equal attention and in the legal order regardless of the fact whether they are submitted by voters (referendum participants) or candidates. The rules and timeframe for submitting and reviewing complaints must be clearly defined by election or referendum law. Accessible and adequate conditions must exist for submission of complaints and their receipt by respective judicial authorities. Response must be given within the set time and all decisions must be registered and published.

3.10.3. International observers must familiarize themselves with the rules of appealing violations of electoral rights and freedoms of election/referendum participants, taking into account that in some countries appeals can be submitted not only to courts but also to election commissions and submission of petitions (complaints)

to election commissions is not a mandatory pre-requisite for subsequent application to court.

Besides, the rules, the order, and the grounds upon which individuals that violate election or referendum laws, electoral rights and freedoms of participants of the election process can be held liable may be directly included in election or referendum laws, other laws, including the law on mass media, or may be contained in legislation on criminal and/or administrative liability.

3.10.4. International observers must pay attention specifically to the following: what timeframe exists for submission and review of complaints (petitions, statements) on election disputes; whether adjudication of complaints is postponed until after the voting takes place; whether representatives of election bodies show up at court sessions, etc.

3.11. Ensuring public order and security during elections/referenda

3.11.1. The state must take measures to ensure that election/referendum campaigns are conducted under conditions of public security and order and they must prevent any attempts of violence, intimidation or other similar actions or threats during elections/referenda.

3.11.2. During the entire election/referendum campaign law-enforcement and security forces must suppress any attempts of intimidation or corruption of voters (referendum participants), candidates or other participants of the election/referendum process.

3.11.3. International observers must assess efficiency of law-enforcement structures in their provision of assistance to election commissions and in prevention and suppression of unlawful activity of participants of the election/referendum process.

3.11.4. Operation of militia/police bodies must be set up so that to ensure public order and at the same time not create unreasonable obstacles in implementation of election events (campaigning, etc.) and especially in implementation of electoral rights and freedoms of citizens.

3.11.5. International observers must pay attention to facts of unjustified increase in numbers of militia/police groups/detachments, assess adequacy of the amount of equipment carried by representatives of law-enforcement bodies (e.g., if they carry firearms), observe behavior of representatives of law-enforcement bodies during mass campaign events, monitor activities of law-enforcement officers in election (referendum) precincts and directly in front of them and/or inside voting premises, and note if members of election commissions transporting election documents to superior election commissions are adequately escorted by security.

Section 4 ORGANIZATION OF SHORT-TERM OBSERVATION

Short-term observers normally arrive in the country the day before election/referendum and are deployed to the maximum number of regions so that to ensure their extensive presence in the territory of the state on the election/referendum day.

Activity of short-term observers is divided in three periods: monitoring of final days of campaigning, observation on the election/referendum day, and observation of vote count and determination of vote returns.

4.1. Activity of short-term observers in the final days of election campaign

4.1.1. It is important that short-term observers are well informed of the election/referendum process, as well as of the procedure and legal aspects of elections/referenda in addition to political and social context of elections/referenda.

4.1.2. Short-term observers must be supplied with legislative acts regulating elections/referenda, basic resolutions/decisions of the central election commission, training materials, general information materials about the country, maps of election districts, lists of addresses of election/referendum precincts, lists of corresponding officials and their contact phone numbers and a required number of reporting forms.

4.1.3. The Headquarters of short-term CIS observers must organize a briefing to:

- present the CIS Observation Mission and its Headquarters;
- explain methods of and specific issues associated with observation;
- assess pre-election period based on long-term observation results;
- assess political and social climate before election/referendum;
- assess election/referendum legislation and practice;
- assess mass media operations;
- explain the voting procedure and the vote count procedure;
- explain how to complete reporting forms.

4.1.4. In the last days of an election campaign short-term observers must assess:

- if the campaign is dynamic and voters (referendum participants) take an active part therein;
 - if an atmosphere of open political debates and free discussion between voters, candidates, political parties, referendum and other initiative groups exists or if the campaign is conducted in the atmosphere of fear and indifference;
 - if there is proof that an election/referendum campaign is conducted (e.g., distribution of posters, literature, or symbols);
 - if these materials represent a wide or narrow circle of competing candidates or political parties;
 - if measures are taken to encourage active participation of voters in elections/referenda;
 - if all social layers are motivated to participate in the election/referendum;
 - if media coverage of the election campaign is balanced or shows bias with respect to certain candidates/political parties.

4.2. Organization of observation in an election (referendum) precinct

4.2.1. The main goal of observation in an election/referendum precinct is to establish whether voting and vote count are carried out in accordance with election or referendum laws.

4.2.2. International observers must present their accreditation credentials to the chairman of the precinct election commission upon arrival at the election (referen-

dum) precinct. It must be taken into account that election legislation may provide for such an order of visiting voting premises by international observers when only one international observer representing respective foreign state or international organization accredited with corresponding election commission may be allowed to observe at the opening of voting premises.

4.2.3. As a rule, international observers arrive at electoral (referendum) precincts before the official time of opening of the premises to observe the procedure of opening of the electoral (referendum) precinct and beginning of voting. This allows them to examine the premises and voting equipment, including stationary and mobile ballot boxes before they are sealed in the order accounted for by law, and ensure that voting premises open in accordance with the order accounted for by law.

4.2.3. When visiting voting premises, international observers must pay attention if any tension exists in the electoral precinct. Sometimes the first minutes play major role in forming the right impression of the situation; however, to assess the situation more adequately additional time may be required. This is the reason why international observers must spend at least 30 minutes visiting each electoral precinct.

4.2.4. International observers must make sure that all persons responsible for elections/referenda are members of election (referendum) commission. Information about organization and the course of voting in electoral (referendum) precinct may contain the following:

- how members of the precinct election commission (including members of the election commission with deliberative vote) were selected (appointed) and prepared (trained) for their duties;
- whether written instructions, explanations, guidelines, etc. exist, including from superior election commissions, as an addition to election or referendum law or official rules;
- how duties associated with issuance of ballots and provision of assistance to voters at all stages of the voting procedure are distributed among members of the precinct election commission;
- whether the number of voters (referendum participants) requiring assistance at all stages of the voting process is significant;
- whether voters (referendum participants) are allowed into secret voting booths in groups (e.g., husband and wife, close relatives);
- whether disabled and seriously ill persons are allowed to vote and how the voting procedure goes when they need assistance;
- whether any signs of repeat voting (two or more times by the same voter), ballots issued to other people, or voting for other voters (referendum participants) can be observed;
- whether the precinct election (referendum) commission has the necessary number of voting (referendum) ballots taking into account voters (referendum participants) included in the list of voters (referendum participants), e.g., for issuing a new ballot to a voter (referendum participant) in exchange for a spoiled one;
- whether access to the electoral precinct is difficult (whether or not any signs have been put up to show the way to the voting premises, if transportation is convenient, if access to voting premises is secure, whether information stands are available at

the entrance to the premises) and also whether or not the access to voting premises is difficult;

- whether voting premises are equipped with the necessary equipment: places for issuing voting (referendum) ballots, cabins and places for secret voting, lighting system, pens for completion of ballots, stationary and mobile ballot boxes, and technical means of voting and vote count when their use is provided for by election and referendum laws;

- whether the layout of voting premises guarantees secrecy of vote and expression of will;

- whether booths or other places for secret voting are in the sight of precinct election (referendum) commission, observers or international observers;

- whether or not there are any indications of poor management and organization, e.g. exceptionally long lines, missing members of precinct election (referendum) commission, etc.;

- how voters (referendum participants) are identified; if the list of voters (referendum participants) is accurate; how many voters (referendum participants) are on the voters' (referendum participants) list and how many of them have voted;

- whether a protocol (register) of applications (notices) submitted by sick or older voters (referendum participants) who are voting at home with mobile boxes is maintained and if the number of people that entered the precinct appears to be unreasonably large;

- whether an additional list of voters (referendum participants) exists for those who for some reason were not included in the master list of voters (referendum participants), what the reasons for this were, how many citizens are on that list and what order exists for inclusion in the list of voters (referendum participants) who addressed the precinct election (referendum) commission requesting their inclusion in the voters' (referendum participants) list;

- whether or not any voters (referendum participants) were denied a possibility to vote due to their missing on voters' lists or because they were unable to present their ID documents, and how these problems were resolved;

- whether citizens submitted any complaints and how those complaints were handled;

- whether voters (referendum participants) are unlawfully pressed against or influenced;

- whether information stands at the precinct contain any materials from election campaign of certain candidates (political parties) and whether or not there any signs of one's conducting direct or indirect campaigning;

- whether anyone makes any attempts to persuade people to vote for or against certain candidates, lists of candidates, referendum issues;

- whether representatives of militia (police), state (public) security officers or state an/or municipal officials are present at election (referendum) precincts;

- whether persons who are not in their official duty are present at election (referendum) precincts;

- whether electoral precinct officials (members of precinct election commissions, domestic observers, authorized representatives of political parties, etc.) are prepared and present at electoral (referendum) precincts; how well they are aware of their obli-

gations, whether they have copies of election or referendum laws, regulations (commentary) of superior election commissions, and training manuals.

- whether pressure is exerted against voters (referendum participants) as they enter or exit election (referendum) precincts;

- whether voters exiting voting premises are subjected to opinion surveys or exit polls, and if yes, then whom by and whether it was legal. If election (referendum) legislation allows exit polls it is necessary to find out, specifically, whether or not voters participate in such polling voluntarily; if voter's (referendum participant's) reply becomes known to third persons (apart from the person conducting the poll), whether results of such polling are distributed (published) in violation of legal requirements before the end of voting in a respective territory;

- general impression produced by administration of voting.

4.2.5. International observers may stay longer in one or other electoral (referendum) precinct or return to the precinct during the day should there be suspicions that serious violations are committed therein. If facts of serious violations are established, international observers must report them to superior authorities (election commissions). All violations must be registered.

4.2.6. International observers must refrain from providing advice and recommendations to anybody except when they are requested to do so by chairpersons of election commissions; in that case they must stay within their competence and not interfere with the election process. International observers are entitled to draw attention of election commissions to existing problems and leave their solution to their discretion.

4.2.7. International observers must be present at the closing of electoral (referendum) precinct to verify all closing procedures and then stay for the vote count and compilation of vote return protocols.

4.2.8. International observers are recommended to complete assessment (verification) forms in each electoral (referendum) precinct to register observation remarks. In the future it will help establish whether violations were regular or exceptional.

4.2.9. The following violations are possible in electoral (referendum) precincts during administration of voting:

- 1) voter (referendum participant) is not allowed to vote without a reason;
- 2) voter (referendum participant) is required to provide additional documents in addition to those specified by law;
- 3) voter (referendum participant) is unreasonably sent to another election (referendum) precinct, election (referendum) commission;
- 4) voters (referendum participants) are allowed to share booths with their families;
- 5) voters (referendum participants) are allowed to vote by power of attorney (when it is not allowed by law);
- 6) voters (referendum participants) are allowed to vote more than once;
- 7) ballot boxes are not sealed or seals are broken;
- 8) campaign materials are available inside election (referendum) precincts;
- 9) military and law-enforcement officers are present at electoral (referendum) precincts (except when allowed by election law);
- 10) identification of voters (referendum participants) is impossible;

- 11) use of mobile ballot boxes and respective election documents (voter list statement, number of voting ballots, etc.) is not verified, including by domestic observers;
- 12) voters (referendum participants) entitled to vote are not listed in voters' lists;
- 13) electoral (referendum) precincts lack necessary election materials (ballots, information posters on candidates, referendum issues, etc.);
- 14) delays in voting;
- 15) voters (referendum participants) and/or members of precinct election commissions, domestic and international observers, other persons who are entitled to be in electoral (referendum) precincts are pressured against (influenced).

4.3. Contacts with voters, referendum participants, observers, authorized representatives and agents of candidates and political parties (coalitions), and other subjects of the election (referendum) process

4.3.1. As a rule, international observers contact three categories of persons when in election (referendum) precinct: members of election (referendum) commission, voters (referendum participants) and domestic observers (if any). International observers are entitled to find out the reason and the purpose of representatives of local administration being present at election (referendum) precinct, if there are any. International observer must, if possible, communicate with representatives of each of the said categories and take into consideration opinions expressed thereby. It must be remembered that some persons may manipulate information in their interests and that is why one must rely only on personal observation in assessment of the situation.

4.3.2. International observers are recommended to communicate with voters (referendum participants) to assess the degree of their confidence in the election/referendum process. For example, if conditions required by law to ensure secrecy of voting are not provided, international observers must find out to which degree voters (referendum participants) trust that their votes will remain secret and will be taken into account; how well they are informed about their opportunities to make their choices and if they are familiar with election/referendum procedures, the order of appeal of violations of their rights and freedoms.

4.3.3. International observers are recommended to learn the opinion of voters (referendum participants) on whether the current laws provide for maximum democratic conveniences for their participation in elections/referenda; in particular if the opening and closing times of voting premises are convenient for them, as is the duration of voting, whether the time of year or election day coinciding with national, religious or other holidays influence voters' (referendum participants') activity; whether the size of electoral (referendum) precincts and voting locations are convenient and if there was an opportunity to freely obtain all the necessary information pertaining to election/referendum campaigns, etc.

4.3.4. Election and referendum legislation provides that domestic observers be present at election (referendum) precincts, in voting premises during voting, vote count and determination of elections/referenda results, as well as in other cases accounted for by law. Observers can be assigned by candidates, political parties (coalitions) taking part in elections, and other public associations, public organizations and groups of voters. In compliance with election legislation authorized repre-

sentatives of candidates and political parties (coalitions) may be vested with observers' rights.

4.3.5. International observers must remember that the rights and obligations of observers and authorized representatives of candidates must be accounted for by law and other legal acts adopted by bodies which call and/or administer elections. Domestic observers and authorized representatives of candidates must be granted the following basic rights:

- To examine election documents (except those concerning national security or containing confidential voter information), receive information on the number of voters included in voters' lists and the number of voters who have voted;

- To visit premises of election bodies and voting premises and observe collective (public) operation, including meetings of election bodies, the voting process and other election procedures;

- To observe early voting, voting outside voting premises, and voting by other voting methods accounted for by law;

- To observe vote count under conditions providing visual control of ballots' contents;

- To observe compilation of vote return protocols and determination of election results by corresponding election bodies, as well as other election documents; review vote return protocols and protocols of election results, make or receive copies of said protocols from corresponding election bodies;

- To address election bodies with suggestions and criticisms with respect to administration of voting, vote count, determination of vote returns, as well as with statements on violation of election legislation, including violation of electoral rights and freedoms of election participants.

4.3.6. Equal necessary and legal conditions must be created to ensure observation by all domestic observers, integrity and transparency of the election process, as well as administration of voting and election activities and procedures connected with determination of vote returns and election results. The law may not allow presence of two or more observers representing interests of one candidate, a political party (coalition), or a separate election participant or one of non-governmental organizations.

4.3.7. International observers must note whether observers are present at electoral precincts (voting premises), who commissioned them and when, when they started observation of the voting process, and whether they were to any degree restricted in their observation rights. Their comments may be used for additional understanding of situations at precincts and operation of precinct election bodies.

4.4. Voting premises and their equipment

Equipment of voting premises is one of the necessary attributes of organization of the voting procedure which ensures freedom and secrecy of expression of the will of voters (referendum participants).

4.4.1. As a rule, voting premises are provided to precinct election (referendum) commissions by heads of corresponding municipalities (local self-government bodies). Schools, clubs and other public or municipal buildings are usually used as voting premises. The following criteria are taken into account, specifically: availability of an

easy access and convenient transportation, access for the disabled, etc. Citizens must be informed about location of voting premises in advance.

4.4.2. Voting premises must be suitable for organization of voting and vote count processes, must be equipped with all the necessary facilities and be secure, e.g., protected from fire hazards. Technological equipment must be arranged in such a fashion so that to ensure that places where ballots are issued, booths and ballot boxes, as well as entrances and exits are in sight of precinct election (referendum) commission members, observers, international observers, and other persons entitled to be at electoral precincts (voting premises) simultaneously.

4.4.3. International observers must establish, specifically:

- whether signs guiding to voting premises are available;
- whether voters' (referendum participants') access to voting premises is complicated;
- whether access of disabled voters to voting premises is possible;
- whether electoral precincts (voting premises) are located in suitable or unsuitable places, in other words, to assess how adequately voting premises and equipment ensure maximum convenience for administration of voting;
- whether voting premises are adequately equipped with technical means, specifically, with communication and fire prevention means;
- whether voting premises are sufficiently spacious to allow domestic observers, international observers, media representatives and other participants of the election/referendum process as accounted for by election and referendum laws, whether desks used to register voters (referendum participants) and issue ballots, as well as booths, ballot boxes, entrance and exit can be observed simultaneously.

4.5. Technological equipment for administration of voting

4.5.1. The state may develop, introduce and/or use new informational and computer technologies and technical and technological standards that promote openness and transparency of elections/referenda, facilitate registration of voters (referendum participants), promptly determine more exact vote returns and election/referendum results, starting from the level of election (referendum) precincts; opportunities for their verification that increase confidence of voters, candidates, political parties (coalitions), other participants of elections/referenda in election procedures, elections/referenda in general.

4.5.2. Voting premises must be equipped with all the necessary technological equipment required for administration of voting, including stationary and mobile ballot boxes.

4.5.3. Voting premises must be equipped to ensure secrecy of voting. Secrecy of expression of citizens' will is guaranteed by special booths or specially equipped places for voting in privacy. A hall is necessary to place booths in voting premises. Private voting booths must have working entrances-exits for voters (referendum participants). Each booth must have a desk and a chair and – in absence of other sources of lighting – a desk lamp. Private voting booths must be located in sight of precinct election (referendum) commission members, as well as in sight of domestic and international observers present at the election (referendum) precinct.

4.5.4. Stationary ballot boxes are designed for voting in voting premises and their number may be specified by law. Mobile ballot boxes are designed for early voting and voting outside voting premises. Both stationary and mobile ballot boxes must be spacious enough, convenient for voters (referendum participants) in terms of their height and position of ballot slot so that to ensure integrity of ballots dropped in the box and integrity of those that are already in the box. Breach of ballot box integrity is a ground for invalidation of ballots.

4.5.5. The use of mobile ballot boxes expands opportunities for participation of voters (referendum participants) in elections but at the same time such opportunities may present a possibility to abuse and undermine confidence in the election/referendum process. The number of mobile ballot boxes must be accounted for by law or by decision of corresponding election (referendum) commission and the procedure of their utilization must be especially controlled by international observers.

4.5.6. When accounted for by election/referendum legislation a special stand may be set up within immediate proximity of the entrance to voting premises (or inside voting premises) where precinct election (referendum) commission places informational materials on all candidates, lists of candidates, a sample of voting (referendum) ballot completion, an enlarged copy of a vote return protocol and other information accounted for by law or by decision of superior election commissions.

4.5.7. While at electoral (referendum) precinct, international observers must establish, specifically:

- the composition and quality of technological equipment of electoral precinct (voting premises, premises for vote count and determination of vote returns);
- availability of equipment required to store ballots, lists of voters (referendum participants) and other election documentation;
- availability of information on election/referendum campaign that is set by election/referendum law.

4.6. Special forms of voting

International observer must know the rules of voting in special cases, specifically, early voting, voting with absentee certificates, voting outside voting premises with mobile ballot boxes or in military units, hospitals, and by mail. These special cases of voting are accounted for by law and must be especially observed.

4.6.1. Early voting

When election legislation provides for an early voting procedure international observers must pay attention to the following, specifically:

- reasons for early voting accounted for by law and actual reasons (for specific voters);
- overall organization of early voting, including an opportunity for control by observers, days and time, location of early voting;
- readiness of premises and technological equipment (ballot boxes, technical vot-

ing equipment, etc.) for early voting;

- ensuring secrecy of voting;
- using special mobile ballot boxes for early voting;
- conditions for storage of mobile ballot boxes and election documents;
- ratio of those who voted early and the total number of voters on the list of registered voters;
- any complaints and decisions on their adjudication by election body or other bodies, including courts.

4.6.2. Absentee certificate voting

Voter who will be unable to arrive at voting premises of the precinct where he/she is registered to vote may apply for an absentee voting certificate according to the law and vote with it in the precinct where he/she will actually be on the voting day. It has to be taken into account that election legislation may set voting with absentee voting certificate for a candidate in election district and candidates in party lists or only for party lists, or otherwise. First of all, reasons and order of issuing absentee voting certificates must be considered for absentee voting certificates, as well as entering of information on voters who received and/or voted with absentee voting certificates, ratio of those who voted with absentee voting certificates vs. those who are included in the master voters' list, as well as establishing how this procedure assists in realization of voting rights of citizens. It is also necessary to examine complaints regarding organization of issuance of absentee voting certificates and procedure of voting and decisions taken.

4.6.3. Voting outside voting premises

The voting outside voting premises procedure is designed to provide an opportunity to vote to voters who are included in voters' list in a given electoral precinct and who are unable to independently arrive at voting premises for a good reason (due to a health condition, disability, family circumstances, etc.). Election laws not always specify that the voter shall prove impossibility of his/her coming to voting premises with documents. While observing voting outside voting premises international observers must pay attention to the following:

- If a list (register) of oral or written applications of voters requesting voting outside voting premises or applications of other persons on their behalf is maintained (describing reasons why personal attendance of voting premises by a certain voter is impossible);
- If written requests or evidence of oral requests of voters who cannot come to voting premises are available;
- Organization of visits to representatives of this voter category, in particular, if such voters are visited by at least two election commissioners, and domestic and/or international observers;
- The order in which mobile ballot boxes are used;
- Secrecy of voting;
- Reflection of information on voters who voted outside of premises into master election documents (voters' lists);

- The order of count of ballots cast by voters who voted outside of premises;
- If there were any complaints from voters and how they were adjudicated by election bodies or other bodies, including courts.

4.6.4. Administration of voting in medical institutions, sanatoriums, holiday hotels and other stationary institutions

When observing voting in medical institutions, sanatoriums, holiday hotels, and other stationary institutions and places of temporary residence of voters, international observers must examine, particularly, the order of composition of voters' lists, the number of voters with absentee voting certificates, administration of voting in terms of provision of voters with necessary information on elections, candidates, lists of candidates from political parties (coalitions), creation of conditions ensuring secrecy of ballot, etc.

It is also necessary to examine complaints regarding organization of voting in the said institutions and decisions adopted thereon.

4.6.5. Organization of voting in military units, institutions, and organizations

International observers planning to observe voting in military units, military institutions, and organizations must learn the existing procedure and rules of accessing those units set in election law and other laws in advance.

When voting is possible in military units, military institutions, and organizations attention must be paid to the following, specifically:

- whether materials necessary for voting have been delivered to military officers and personnel in advance so they could make a free and informed choice on the voting day;
- whether registration was provided;
- how multiple registration and multiple voting are prevented;
- will a special organization of voting be used in both cases or will it happen in accordance with the regular order;
- will conditions be provided to ensure secrecy of ballot and freedom from coercion;
- what procedure is set for transferring election documentation to superior election body or for its storage in cases set by election law.

It is necessary to examine complaints regarding organization of voting in military units, military institutions, and organizations, and decisions adopted thereon.

4.6.6. Organization of voting in penitentiary institutions and pre-trial detention facilities

International observers planning to observe voting in penitentiary institutions and pre-trial detention facilities in the cases when such voting is provided by the Constitution and/or national legislation must learn the existing procedure and rules of accessing those places.

While observing voting in penitentiary institutions and pre-trial detention facil-

ities international observers must pay attention to the following:

- whether materials necessary for voting have been delivered to inmates of penitentiary institutions and pre-trial detention facilities so they could make a free and informed choice on the voting day;
- whether registration was provided; how multiple registration and multiple voting are prevented;
- will a special organization of voting be used or will it happen in accordance with the regular order;
- will conditions be provided to ensure secrecy of ballot and freedom from coercion.

It is necessary to examine complaints regarding organization of voting and decisions made thereon.

4.6.7. Organization of voting by mail

When election legislation sets a procedure for voting by mail, international observers must learn about the order and rules regulating the process of application for this type of voting in advance. They must also learn the procedure that exists for printing and storage of voting ballots for voting by mail (should they differ from regular ballots), the order for issuing ballots and registration of voters who expressed their wish to vote by mail.

On the day of voting international observers must pay attention to the following:

- how many ballots for voting by mail were issued by election body;
- how many envelopes with ballots were received by precinct election body by mail;
- what is the order of storage of such envelopes;
- whether postmarks (mailing stamps) are present on the envelopes;
- how the envelopes are open, ballots registered and voters' will is determined.

Observer must find out what is done by election bodies with envelopes and ballots for voting by mail when those are delivered by mail after electoral precinct is closed or voting is over (should the mailing date precede the voting day).

4.7. Automation of voting and vote count

4.7.1. Election or referendum laws or special laws and other legal acts may set voting in precincts (all or only some of them) assisted by technical means of voting and vote count in order to increase confidence of voters (referendum participants) in vote returns and election/referendum results and ensure faster processing of ballots. In accordance with national election and referendum legislation results obtained with technical means of vote count or determination of vote returns may be preliminary and be considered information without legal consequences or having legal consequences after being signed by members of election commission.

4.7.2. The protocol data on vote returns derived with assistance of technical means, protocol on elections/referenda results after being signed by members of election (referendum) commission may be transferred by technical communication channels to superior election commission electronically and computer printouts of men-

tioned protocols may be handed over for review to all persons who are entitled to receive copies of election (referendum) commission documents, and also be sent to mass and telecommunications media.

4.7.3. If election (referendum) commissions use technical means of voting and vote count they must allow international observers to familiarize themselves with the principles of their operation and their use in election/referendum campaign.

4.8. Procedure for tabulation of votes and determination of vote returns, election/referendum results

4.8.1. The procedure for ballot count, reporting and transporting of ballots must be explained by the central election commission to voters (referendum participants), political parties and media before elections/referenda. Ballots are counted openly and publicly, ensuring transparency of the system. Preliminary results must be provided in accordance with a certain schedule. International observers must assess this process and verify that it is perceived as open and public.

4.8.2. The procedure for ballot count must start immediately after the voting period is over and electoral (referendum) precinct is closed. It must be open and verifiable. Representatives of candidates, media and telecommunications, domestic and international observers must be entitled to observe the entire process, including vote count, and receive certified copies of official results (or protocols) of each electoral (referendum) precinct. Results must be displayed and made available to the public.

4.8.3. The process of summarization of results must be open for review, starting from precinct election commissions and ending with the central election commission, and it must be set in corresponding laws. Transporting of ballots, other election documentation must be transparent and secure. International observer must have access to the process and be able to monitor it, should election (referendum) commissions transfer preliminary or final vote returns and/or election/referendum results by computer.

4.9. Observation of vote count by election (referendum) commission

4.9.1. International observers are entitled to observe the vote count and compilation of voting result protocols. This is a very important stage of elections/referenda which must be observed in its entirety to ensure that ballots are counted accurately and results of the vote count adequately reflect expression of voters' (referendum participants') will.

4.9.2. The first stage of vote count must be completed at an election (referendum) precinct. Any system where ballots are not counted directly in voting premises but are moved (transported) to other places for counting may create problems with openness and verification. International observers are entitled to accompany such movement of ballot boxes in accordance with the law or, if allowed by law, by approval of the chairman of election commission.

4.9.3. Vote count results at the level of electoral (referendum) precinct must be registered in a vote return protocol without obstacles. Summarization of results must be verifiable and open to the public at all levels of the system of election commissions.

4.9.4. Openness of the process is also ensured when all authorized representatives

of political parties and candidates and other persons indicated by election/referendum law (including observers from public organizations, public associations, and groups of voters) have certified copies of the protocol.

4.9.5. Based on this, election results from separate electoral (referendum) precincts can be scrutinized at the next level of election commissions, as well as with the final results of the vote count. Results from electoral precincts may be verified in sequence (parallel) in comparison with official count by available certified copies of protocols on vote returns in electoral precincts, and protocols of superior election commissions. This process must be in sight of all observers and authorized representatives of political parties. Observations and results may be documented with assistance of the copies of protocols on vote returns, election/referendum results.

4.9.6. It is important for international observers to find answers to the following questions:

- if members of election (referendum) commissions are well aware what the process for establishing the outcome of voting is like;
- if vote count is done in a free environment, if observers were provided with adequate and equal conditions including for visual review of ballot marks;
- if vote count was conducted by members of election (referendum) commissions or they were in somehow assisted by unofficial persons;
- the time precinct election commissions took to count votes and enter results in the protocol and the time commissions of other levels took to do the same;
- if the number of registered voters (referendum participants) marked as voted corresponds with the number of ballots that were taken out of ballot boxes for vote count;
- if ballots are counted in a uniform fashion in all election commissions (e.g., contents of each ballot are announced by a member of election commission and/or showed to a person present at the count) and how they are sorted and how their integrity is ensured;
 - how unused voting ballots are stored, destroyed or cancelled after the count;
 - if a uniform procedure exists to identify invalid ballots, ballots of an unspecified format (the procedure may be accounted for by law or decision of election commission or other body);
 - if invalid ballots are separated and retained for further review (repeat count or control recount);
 - if the number of invalid ballots or ballots of an unspecified format in the ballot box is too large;
 - if official persons (election commission members) make any marks on the ballots except those that they are entitled to do (e.g., indicate the reason for invalidation on the other side);
 - if official forms – protocols and other election documents – were completed correctly after the count and if they were signed by all official persons present; if dissenting opinions of election commission members were present and recorded election commission documents; what decisions were taken on them and if superior election commissions were notified of them;
 - if observers and other persons indicated in the law, other legal acts, or decisions of election commissions were able to make copies of vote return protocols and have them certified by authorized election commission members or if they were able to

receive certified copies;

- how election disputes and complaints were solved during the vote count and how many of them were submitted and reviewed;

- how openly and secure protocols, ballots, and election materials were transported after the vote count (according to law, observers are entitled to accompany transportation of vote return protocols or, should such right be granted by law – by approval of the chairman of election commission);

- if vote returns are transferred to superior election commissions in an open, secure and controllable fashion and if they are summed up correctly.

4.9.7. Voter (referendum participants) turnout (high or low turnout) at election (referendum) precincts may demonstrate, inter alia, the degree of citizens' confidence in elections/referenda and political forces taking part therein, while vote returns and election results may demonstrate a considerable (incidental) growth (reduction) of the level of representation of actual deputies or elected officials.

4.9.8. International observers must thoroughly study the grounds for validation of election/referendum results in certain electoral (referendum) precincts, in electoral districts, and learn possible motives for action (inaction) that caused invalidation of elections. International observers must also note whether preliminary results of vote count (without legal effect) were announced publicly and in accordance with existing order.

4.10. Observation of determination of vote returns and election/referendum results

4.10.1. Vote count results in the form of a vote return protocol (protocols) are transferred from electoral (referendum) precinct to a superior election (territorial) commission (referendum commission) of a relevant level where results are put together, verified, summarized, and entered into a vote return protocol of a corresponding territory accompanied by a summary table that contains data from all protocols submitted by subordinate election commissions, and are transferred to the next level, up to the central election commission. International observers must review methods of transportation, escort, and counting of ballots and must ensure that counting is verifiable starting from electoral precinct and ending with the central election commission. It is necessary to observe the vote count process at all levels of election commissions.

4.10.2. International observers must receive copies of the protocol on the outcome of voting and other election documents, if election legislation grants them the right to receive a copy from election commission or make one on their own account.

4.10.3. Election commissions may sometimes use computers, e-mail and other technical communication channels (technological systems for transmission of information) to transmit preliminary results. In such cases international observers must observe this process, must have a copy of computer printouts signed (certified) by corresponding member (members) of election commission and sealed with the stamp of that commission.

4.10.4. The following irregularities may be encountered in the process of observation of determination of vote returns and election results:

- 1) disorganized vote count procedure;

- 2) unfair vote count and submission of wrong results (forgery or falsification);
- 3) inadequate number of people counting votes;
- 4) substitution of ballot boxes or sabotage of voting machines and ballot counting machines;
- 5) loss of voting (referendum) ballots or ballot boxes;
- 6) arbitrary and uncontrolled recognition of ballots as invalid;
- 7) no measures undertaken to ensure integrity of unused, cancelled, invalidated ballots, spoiled and valid ballots, other election documentation (voters' lists, absentee certificates, etc.).

Section 5

PRELIMINARY AND FINAL STATEMENTS ON RESULTS OF INTERNATIONAL ELECTION/REFERENDUM OBSERVATION

5.1. Preliminary statement on results of international election/referendum observation

Based on observation results international observers must conclude whether elections/referenda complied with national legislation and international obligations of the state.

Assessments must focus on conclusions based on facts and must underline repeating tendencies observed during elections/referenda. Conclusions based on isolated cases or odd impressions and facts must be evaded.

Preliminary statement of international observers must be concise and must reflect the most substantial events from pre-election period. It must be based on facts and contain conclusions on compliance with national legislation and international obligations of the state in conducting democratic elections or referenda.

It is important to note that evaluation given in preliminary statement could be materially supplemented or even changed (partially or in full) by additional facts and information and it may not coincide with information reflected later in the final statement. It must be taken into account that although separate shortcomings may represent serious violations and must be noted it is repeated and mass violations that may seriously hinder the process of democratic elections.

When observation is conducted by groups of international observers (delegations, missions), the preliminary statement is delivered on behalf of the entire group and as a rule, must contain the following information:

- the number of members in the group and who they and its official head are;
- the total period and stages of observation in a particular election campaign;
- events attended by international observers before the voting day, including early voting;
- events attended by international observers on the voting day (which electoral precincts and which superior election commissions were visited by members of the group);

¹ The final statement on observation of referendum is made structurally in the same way, corresponding with main stages and procedures of preparation and administration of referendum.

- positive examples of voting organization and concrete shortcomings and violations registered; reasons and measures undertaken for their rectification;
- the overall feeling of observation and primary evaluations and recommendations.

5.2. Final statement on results of international election/referendum observation¹

The final statement must contain detailed information received during election observation and must be based on facts and verified data.

The purpose of the final statement is to issue a final statement on the election process based on two criteria: national legislation regulating election process and its practical application during elections; observation of international obligations in conducting democratic election by the state and guaranteeing electoral rights and freedoms of all participants of the election process. International observers must note cases when the law was not formally breached but the spirit of international obligation of the state was not observed. That is why in assessing election results it is important to take into account the measure to which the observed irregularities influenced the actual expression of voters' will and overall election results: poor organization is not always a sign of manipulation.

The final statement must be succinct but at the same time it must be exhaustive and must contain a conclusion about how the elections comply with the standards of national legislation and international election standards. A member of an international observation team who disagrees with the final statement is entitled to express his opinion in writing, which must be reviewed by the whole group of international observers.

Besides, the final statement may assess the effectiveness of:

- assistance in providing professional training of election administrators and other participants of the election process as accounted for by law;
- legal control over actions of candidates, political parties (coalitions), their authorized representatives and agents complying with the law;
- system of prevention of possible election fraud;
- resolution of election disputes by election commissions, courts and/or other authorized bodies and officials.

The final statement may contain recommendations for further improvement of election law, the process of election administration, suggestions and recommendations for organization of international observation, interaction with other international observers (e.g. from the OSCE Parliamentary Assembly, Parliamentary Assembly of the Council of Europe, European Parliament, ODIHR OSCE, Association of Central and Eastern European Election Officials) in the course of further development and improvement of the international legal basis (standards) of administration of democratic elections, unified approach to organization of international observation of elections.

The final statement must contain the following basic sections:

1. Introduction:

- General information about elections;
- Composition of the delegation of international observers from CIS member

states;

- Period and duration of international observation (e.g. the period of nomination of candidates, election campaigning or voting);

- Object of observation, including levels of election commissions.

2. Election legislation:

- Constitutions, election laws and other legal acts concerning elections, specifically passed in a referendum;

- Decisions of the central, district and other election bodies;

- Decisions of other bodies, including Constitutional and/or Supreme Courts;

3. Election commissions:

- The system and status of election commissions, members and staff of election commissions, other subordinate bodies and institutions under election commissions;

- Principles and order of formation, early termination of powers of election commissions, or some of its members, including during election campaign;

- Training (education) of members of election commissions, staff members of election commissions;

- Openness and transparency in operation of election commissions.

4. Measures undertaken to educate voters, train election administrators and other participants of the election process:

- Activities of election commissions in voter education (training) and in informing them about elections, in training of election administrators, including members of subordinate election commissions;

- Activities of election organizations in training of participants of the election process.

5. Registration of voters, creation of electoral districts and electoral precincts:

- Registration of citizens and composition of voters' lists (master and/or additional);

- Creation of electoral districts and electoral precincts.

6. Funding of elections and election campaign:

- Order and timeframe of financing of elections, sources of funding of candidates' campaigns, political parties' campaigns;

- Order of creation and expenditure of candidates' election funds;

- Observation of the order of expenditure of funds in preparation and administration of elections, election campaigns.

7. Registration of candidates, political parties (coalitions) and lists of their candidates:

- Nomination of candidates;

- Registration of political parties (coalitions);

- Registration, denial of registration, reversal of registration of candidates (lists of candidates);

- Guarantees of activities of candidates, political parties (coalitions) which nominated candidates.

8. Campaigning:

- The right to campaign, order and timeframe of its conduct;

- Consequences of abuse of the right to campaign;

9. Mass media and telecommunications and their role in the election process:

- Electronic media;
- Printed media;
- Internet.

10. Observation at electoral precinct on the voting day:

- How many electoral precincts were visited by international observers, which electoral precincts, their main characteristics;

- Main conclusions related to assessment of administration of voting.

11. Observation of vote count at election bodies:

- Which electoral precincts were visited by international observers to monitor vote count;

- If international observers accompanied authorized members of election commissions transporting election documents to superior election commissions

- If observers received copies of protocols and other documents on the outcome of voting and vote count;

- Main conclusions after observing vote count and determination of vote returns.

12. Summarization and verification of vote count results, vote returns, determination of election results.

13. Protection of electoral rights and freedoms of participants of the election process, resolution of election disputes:

- Responsibility for breaching election law;

- Responsibility for breaching electoral rights and freedoms of citizens and other participants of the election process;

- Resolution of election disputes by election commissions;

- Resolution of election disputes by courts and other authorized bodies and officials.

14. Conclusion:

- Compliance of elections with national legislation;

- Compliance of elections with the universally recognized principles of the international law in administration of democratic elections, international commitments of the state in administration of democratic elections.

15. Recommendations:

- On improvement of election legislation;

- On organization of international observation, interaction with other observers, improvement of current international election standards.

Appendix III

TENTATIVE FORM FOR CIS OBSERVERS REPORTING ELECTION OBSERVATION DURING THE VOTING DAY

CIS Observation Mission

Reporting observation of electoral precinct #

Observation Group

Name/Initials

Accreditation Number

- 1.
- 2.

Electoral Precinct

Electoral District

Name of Electoral Precinct/Number

Type of Electoral Precinct

Time of Visit

Time of arrival

Time of departure

Number of voters registered:

- In master list
- In additional list

Number of voters who voted by _____ (Hrs)

Before entering the electoral precinct

Evaluate general atmosphere; it is useful to listen to what voters or stand-biers talk about. Leave your notes at the back of the form.

Yes/No

Was electoral precinct hard to find?

Was access to electoral precinct difficult?

Is electoral precinct accessible by transportation?

Mark if you observed the following:

- gathering of police officers
- intimidation of voters
- indications of general campaigning or persuasion
- indications of handing-out of anything or any food offerings
- posters or other campaign materials
- any indications of election campaigning

**Inside the electoral precinct: people present, general feeling
inside the premises of electoral precinct**

Please mark your notes at the reverse side of this form

Members of precinct election commission	How many and representing which parties?
Party/candidate representatives	Yes/No/Not sure of party affiliation
Media representatives	Yes/No/ Not sure
Domestic observers	Yes/No/ Not sure
Law-enforcement representatives	Yes/No/ Not sure
Unauthorized personnel	Yes/No/ Not sure
How is electoral precinct equipped technologically	
Are there waiting queues at electoral precinct	
Were there signs of election campaigning at electoral precinct	
Were there any campaign materials	
Was voter information clear and exhaustive	

In the electoral precinct: voting procedure

Assess each stage of the voting procedure in order.

Please mark your notes at the reverse side of this Form

Yes/No

Registration problems

Identification problems

Voting ballots:

– are not signed

– are signed

– are stamped

Is secrecy of ballot observed

Are there signs that some ballots are completed outside

voting booths

Are there indications of family voting

How are unused/invalidated ballots kept

Is assistance to elderly (disabled, etc.) voters provided

Are ballot boxes sealed

Are voting booths and ballot boxes in sight of those who are entitled to observe

Are mobile boxes used

Other problems

Approximate time each voter needs to vote

Disruption of the voting procedure

Yes/No/Not aware

Details/Reasons

Was the electoral precinct open on time

Were there any disruptions in voting

Readiness of the electoral precinct

The electoral precinct:

– availability of necessary technological equipment

– availability of legal documents

– availability of information and reference materials

Election administrators:

– knowledge of current legislation

– knowledge of rules and procedures

– ability to cope with extraordinary situations

Violation that you are aware of:

Mark all the details of voting procedure violations and election campaign conduct that you were notified of, as well as who reported the information. Address your inquiries to party representatives, local observers, voters and members of election bodies.

Indicate if you had an opportunity to verify this information.

Details and Comments:

Overall impression

Overall, the voting process in the electoral precinct went

Very badly

Good

Very good

Important information

Please use your time while driving in the car provided for election observation and exchange opinions on visiting the electoral precinct. Complete the observation form. Specifically, write down any details that you observed or you heard of and that looked like violations, or, on the contrary, include positive information about voting.

**2.2 (10.4) DECISION OF THE COUNCIL OF MINISTERS OF
FOREIGN AFFAIRS OF MEMBER STATES OF THE COMMONWEALTH
OF INDEPENDENT STATES ON REGULATIONS ON THE CIS
OBSERVATION MISSION IN PRESIDENTIAL AND PARLIAMENTARY
ELECTIONS AND REFERENDA IN MEMBER STATES OF THE
COMMONWEALTH OF INDEPENDENT STATES**
(Minsk, March 26, 2004)

In compliance with the Decision of the Council of Heads of States of May 30, 2003 on application of the Resolution of the Council of Heads of States of the Commonwealth of Independent States of October 7, 2002 to send CIS observers to elections of the President of the Republic of Armenia and elections of the National Assembly of Armenia, the Council of Ministers of Foreign Affairs of the CIS

Has determined:

That Regulations on the CIS observation mission in presidential and parliamentary elections and referenda in member states of the Commonwealth of Independent States (attached) shall be approved.

(Signed by the ministers of Foreign Affairs of the Republic of Azerbaijan, Republic of Armenia, Republic of Belarus, Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Moldova, the Russian Federation, the Republic of Tajikistan, the Republic of Uzbekistan, and Ukraine).

**REGULATIONS
ON THE CIS OBSERVATION MISSION IN PRESIDENTIAL AND
PARLIAMENTARY ELECTIONS AND REFERENDA IN MEMBER
STATES OF THE COMMONWEALTH OF INDEPENDENT STATES**

These Regulations have been developed on the basis of the Convention on the standards of democratic elections, electoral rights and freedoms in the member states of the Commonwealth of Independent States, generalized experience of observer groups representing the Commonwealth of Independent States during preparation and administration of elections to supreme bodies of state power in a number of member states of the Commonwealth of Independent States in 1999–2003, taking into account "Recommendations for International Observers from the Commonwealth of Independent States for Election/Referendum Observation" adopted by the Inter-Parliamentary Assembly of the Member States of the Commonwealth of Independent States on December 4, 2004.

1. The CIS Observation Mission in presidential and parliamentary elections and referenda in member states of the Commonwealth of Independent States (CIS Observation Mission) shall be organized and coordinated by the Executive Committee of the CIS based on an invitation from a member state where elections (referendum) are held, a Decision of the Council of Heads of States of the CIS of May 30, 2003 which recognized the necessity to continue to send CIS observers to presidential and parlia-

mentary elections/referenda of member states of the Commonwealth of Independent States.

Upon receiving an invitation of a CIS member state where elections (referendum) are held the CIS Executive Committee shall request that CIS member states and bodies supply lists of persons to be included in the CIS Observation Mission.

The CIS Executive Committee shall forward lists of observers to the Central Election Commission for accreditation within the timeframe set by national legislation.

2. The CIS observation mission shall be composed by the CIS Executive Committee.

The CIS observation mission may include international observers representing legislative, executive and elective bodies of the CIS member states, as well as bodies of the Commonwealth and integration associations operating in the CIS which shall be entitled to observe elections (referenda) in compliance with the order set by national election (referendum) legislation, international agreements and commitments of the CIS member state where election (referendum) is held.

3. Groups of CIS observers representing legislative, executive and elective bodies of CIS member states, as well as bodies of the Commonwealth and integration associations operating in the CIS shall be led by coordinators whose candidacies shall be coordinated with commissioning parties.

The candidacy of the Head of the CIS Observation Mission shall be coordinated with the Council of standing plenipotentiary representatives of CIS member states in chartered and other bodies of the Commonwealth upon suggestion of the CIS Executive Committee.

4. Activities of the CIS Observation Mission shall be regulated by the legislation of the CIS member state where elections (referenda) are held, by the Convention on the standards of democratic elections, electoral rights and freedoms in the member states of the Commonwealth of Independent States and international obligations in election laws of the CIS member state where elections (referenda) are held.

5. The CIS Observation Mission shall be empowered in accordance with the Convention on the standards of democratic elections, electoral rights and freedoms in the member states of the Commonwealth of Independent States and national legislation of the CIS member state where elections (referenda) are held.

6. A member of the CIS Observation Mission shall have the right:

a) To receive necessary information and copies of election documents from election bodies as provided for by national legislation;

b) To contact political parties, coalitions, candidates, individuals, officers of election bodies;

c) To visit any electoral precincts and voting premises, including on the voting day, without any impediments;

d) To observe voting process, tabulation of votes and determination of results under conditions that provide visibility of ballot count;

e) To attend adjudication of grievances and claims related to violations of election and referendum laws;

f) To inform election commissions of their observation results and communicate their recommendations to them without interfering with operation of election (referendum) administration bodies;

g) To report his/her opinion on preparation and administration of elections/referenda upon termination of voting to the public.

7. A member of the CIS Observation Mission shall be obliged:

a) To comply with the Constitution and laws of the receiving country and the requirements of these Regulations;

b) To carry international observer credentials that are issued in the order set by the receiving country and present them upon request of election/referendum administrators;

c) To perform his/her functions on the basis of the principles of political neutrality and impartiality, to refrain from showing any partiality with respect to election commissions, state or other bodies, officials, election participants;

d) To refrain from interfering with the election process;

e) To base all his/her conclusions on personal observations and facts;

f) To objectively evaluate basic parameters of the election process and note results of observations in electoral precincts in special questionnaires developed by the CIS Executive Committee and send all observation materials to group coordinators or Head of the Mission.

8. A member of the CIS Observation Mission shall not be entitled to use his/her status for activities that are not related to election (referendum) observation. The CIS member state where elections (referenda) are held shall reserve the right to withdraw accreditation (registration) of those CIS observers who violate national legislation of the country where elections (referenda) are held.

9. Logistical and financial support of a member of the CIS Observation Mission shall be provided by the commissioning party or ensured by observers' personal funds.

10. Funding of organizational, legal, and informational support of the CIS Observation Mission shall be provided by the Executive Committee of the CIS from the unified budget of CIS bodies.

11. A member of the CIS Observation Mission shall be under protection of the state where elections (referenda) are held. Election bodies, bodies of state power and local self-government shall provide necessary assistance within their competence.

12. Head of the CIS Observation Mission shall organize media contacts to ensure objective coverage of observation in preparation and administration of election (referendum), as well as contacts with international organizations and their election (referendum) observation missions.

13. Location (locations) of the CIS Observation Mission shall be determined in coordination with representatives of authorities of the state where elections (referenda) are held.

14. Elections (referenda) shall be observed by the CIS Observation Mission on a long-term basis in accordance with the terms stipulated by the election body of the state where elections (referendum) are held.

Logistical support of the CIS Observation Mission shall be provided by Headquarters for provision of activity of CIS observers (Headquarters). The Headquarters staff shall be formed from staff members of the CIS Executive Committee. The Headquarters shall be responsible for accreditation of members of the CIS Observation Mission, monitoring and analysis of campaigning in media of the state where elections (referendum) are held, preparation of a respective package of legal acts

regulating the election (referendum) process (translation of materials, assembly and distribution among members of the Mission), provision of services associated with arrival, accommodation, and departure of Mission members, their activity in the regions, and other logistical issues.

15. The statement of the CIS Observation Mission on compliance of elections with national legislation and international obligations of the state where elections (referenda) are held shall be prepared on the basis of materials received from members of the CIS Observation Mission.

The statement of the CIS Observation Mission shall be concise and reflect the most important issues associated with preparation and administration of elections.

The statement shall be delivered on behalf of the entire team of the CIS Observation Mission.

The statement shall be signed by Head of the CIS Observation Mission and group coordinators. The statement shall be forwarded to all state bodies of the state where elections (referenda) are held and to the public and the media.

16. The CIS Executive Committee shall inform the Council of Heads of CIS States on the outcome of the CIS Observation Mission in elections (referenda).

17. The official language of the CIS Observation Mission shall be Russian.

18. The current Regulations shall be subject to amendment upon proposal from any CIS member state that is duly processed by a decision of the Council of Ministers of Foreign Affairs of the CIS.

¹ The Sub-Section does not include some auxiliary documents of the Commonwealth of Independent States that originally were included in the Russian-language printed version of the Collection (2004) and its electronic version (2005).

PART III
INTERNATIONAL TREATIES OF THE
RUSSIAN FEDERATION WITH THE MEMBER
STATES OF THE COMMONWEALTH
OF INDEPENDENT STATES, UNIVERSALLY
RECOGNIZED PRINCIPLES AND NORMS
OF INTERNATIONAL LAW IN THE PRACTICE
OF THE CONSTITUTIONAL COURT OF THE
RUSSIAN FEDERATION AND THE SUPREME
COURT OF THE RUSSIAN FEDERATION

INTERNATIONAL TREATIES OF THE RUSSIAN
FEDERATION WITH THE MEMBER STATES OF THE
COMMONWEALTH OF INDEPENDENT STATES¹

3.1 (11.9.) TREATY BETWEEN THE RUSSIAN FEDERATION
AND THE REPUBLIC OF BELARUS ON THE FORMATION
OF THE UNION STATE
(Moscow, December 8, 1999)

The Russian Federation and the Republic of Belarus,

Guided by the will of the peoples of Russia and Byelorussia for unity and based on their common historical destiny, concerned about vital interests of their citizens;

Convinced that the formation of the Union State will make it possible to pool the efforts in the interests of the social and economic progress of both States;

Desiring to continue the development of the integration processes initiated by the Treaty on the Formation of the Community of Russia and Belarus of April 2, 1996, the Treaty on the Union of Belarus and Russia of April 2, 1997, the Charter of the Union of Belarus and Russia of May 23, 1997, as well as in pursuance of the provisions of the Declaration on Furthering the Unity of Russia and Belarus of December 25, 1998;

Reaffirming the commitment to the purposes and principles of the Charter of the United Nations and the desire to live in peace and good neighborliness with other states;

Acting in accordance with the universally recognized principles and norms of international law;

Have agreed as follows:

SECTION I GENERAL PROVISIONS

Chapter I. Purposes and Principles of the Union State

Article 1

The Russian Federation and the Republic of Belarus (hereafter "the Member States") shall establish a Union State, which shall mark a new stage in the process of unification of the peoples of the two countries in a democratic law-based state.

Article 2

1. The purposes of the Union State shall be:
 - to ensure peaceful and democratic development of the fraternal peoples of the Member States; strengthen the friendship; raise the well-being and living standards;
 - to create a single economic space for ensuring socioeconomic development based on unification of the economic and intellectual potentials of the Member States and use of the market mechanisms in the functioning of the economy;
 - strictly to observe the fundamental civil and human rights and freedoms in accordance with the universally recognized principles and norms of international law;
 - to conduct a coordinated foreign and defense policy;
 - to develop a single legal system of a democratic state;
 - to implement a coordinated social policy aimed at creation of conditions for the people to live in dignity and develop freely;
 - to safeguard the security of the Union State and fight against crime;
 - to consolidate peace, security and mutually beneficial cooperation in Europe and in the whole world; promote the development of the Commonwealth of Independent States.
2. The purposes of the Union State shall be accomplished in stages, with the priority given to solving the economic and social tasks. Concrete activities and the schedules for their performance shall be determined by the decisions of the bodies of the Union State or the treaties between the Member States.
3. In the course of its development the Union State shall consider the question of adoption of its Constitution.

Article 3

1. The Union State shall be based on such principles as sovereign equality of the Member States, voluntary participation, conscientious fulfillment of mutual obligations.
2. The Union State shall be based on the division of the jurisdiction and powers between the Union State and the Member States.

Article 4

1. To accomplish the purposes of the Union State a Supreme State Council, a Parliament, a Council of Ministers, a Court, and an Audit Chamber of the Union State shall be established.
2. The state power in the Member States shall be exercised by the bodies established by them in accordance with their national constitutions.

Article 5

The Union State shall be a secular, democratic, social, law-based state recognizing political and ideological diversity.

Article 6

1. Each Member State shall retain the national sovereignty, independence, territorial integrity, state structure, Constitution,, national flag, national emblem, and other attributes of statehood, subject to the powers voluntarily given up to the Union State.

2. The Member States shall retain their membership in the United Nations and other international organizations. Joint membership in the international organizations and other international associations shall be subject to mutual agreement between the Member States.

Article 7

1. The territory of the Union State shall consist of the state territories of the Member States.

2. The Member States shall ensure territorial integrity and inviolability of the territory of the Union State.

3. The outer boundary of the Union State shall be formed by the borders of the Member States with other states or the limits in space to which the state sovereignties of the Member States extend.

4. Pending the adoption of a regulatory legal act of the Union State on the state border, the external border of the Union State shall be guarded in the procedure established by the Member States as of the date of signature of the present Treaty.

Article 8

1. The Union State shall recognize and equally protect all forms of property, recognized in the territories of the Member States, and shall assure equal rights of citizens to acquire, possess, use and manage property.

2. The Union State shall take legislative and other measures necessary to ensure equal rights, obligations and guarantees for economic entities of all corporate forms, as well as for citizens with an entrepreneurial status, subject to the laws of the Member States.

3. The legal status and the rules for operation of foreign legal entities in the territory of the Member States prior to the harmonization of their legislation in this sphere shall be defined in accordance with the national laws of the Member States and their treaties with third countries.

Article 9

Possession, use, and disposition of the movable and immovable property of the Union State shall be exercised subject to the regulatory legal acts of the Union State.

Article 10

1. The Union State shall have its own national emblem, flag, national anthem, and other attributes of statehood.

2. State symbols of the Union State shall be determined by the Parliament of the

Union State and shall be subject to the approval by the Supreme State Council.

Article 11

The official languages of the Union State shall be official languages of the Member States without prejudice to the constitutional status of their official languages. The Russian language shall be used as a working language in the bodies of the Union State.

Article 12

The venue of the bodies of the Union State shall be determined by the Supreme State Council.

Article 13

1. The Union State shall have a single monetary unit (currency). Money issue shall be carried out exclusively by a single emission center. Introduction and issue of a currency, other than the single monetary unit, shall not be allowed in the Union State.

2. Pending the introduction of a single monetary unit and establishment of a single emission center, the national currencies of the Member States shall continue to be in circulation in their territories. The transition to a single monetary unit (currency) shall be carried out in accordance with Article 22 of the present Treaty.

Chapter II. Citizenship of the Union State

Article 14

1. Citizens of the Member States shall concurrently be citizens of the Union State.

2. The Union States shall recognize and guarantee the human and civil rights and freedoms in accordance with the universally recognized principles and norms of international law.

3. The matters concerning receipt and loss of citizenship of the Member States shall be regulated by their national laws.

4. No one can become a citizen of the Union State without receiving citizenship of a Member State.

5. Citizens of the Union State shall enjoy equal rights and bear equal obligations in the territory of the other Member State, unless otherwise provided by the legislative acts of the Member States and the treaties between them.

6. Pending the adoption of a regulatory legal act of the Union State relating to citizenship, the legal status of the citizens of the Member States shall be regulated by the national laws of the Member States, the treaties concluded between them in this sphere, and the present Treaty.

7. Citizens of the Union State shall have the right to elect and be elected to the Parliament of the Union State, as well as the right to be appointed to offices in the bodies of the Union State.

8. Citizens of the Union State shall have the right to establish union-wide public associations.

9. Pending the introduction of a uniform document certifying the identity of a citizen of the Union State, the documents issued by the state bodies and bodies of local

self-government of the Member States shall be equally valid in its territory, as well as the documents recognized in accordance with the laws of the Member States and the international treaties.

Article 15

Each citizen of a Member State shall be entitled to protection in the territory of a third state, where there is no representation of the citizen's Member State, such protection being afforded by the diplomatic missions or consular offices of the other Member State on the same conditions as to its own citizens.

Article 16

1. A Human Rights Commission shall be established in order to promote the exercise and protection of fundamental rights and freedoms of citizens of the Union State.

2. The competence of the Commission, rules for its formation and its operating procedures shall be established by the Statute of the Human Rights Commission of the Union State, approved by the Supreme State Council.

SECTION II SPHERE OF JURISDICTION OF THE UNION STATE

Article 17

The following matters shall come within the scope of the exclusive jurisdiction of the Union State:

creation of a single economic space and a legal basis for the common market which ensures free movement of goods, services, capital, and labor within the territories of the Member States, equal conditions and guarantees for the activity of economic entities;

single monetary, currency, taxation, and pricing policy;

unified rules for competition and protection of consumer rights;

unified transport and energy systems;

preparation and placement of a joint defense order, deliveries and sales of military armaments and hardware on its basis, unified logistical support system for the armed forces of the Member States;

single trade, customs and tariff policy with regard to third countries, international organizations and associations;

uniform legislation on foreign investments;

drafting, approval and execution of the budget of the Union State;

management of property of the Union State;

international activities and international treaties of the Union State on the matters falling within the sphere of exclusive jurisdiction of the Union State;

functioning of the regional troops grouping;

border policy of the Union State;

technical and reference standards, hydro-meteorological service, metric and time-keeping systems, geodesy and cartography;

statistics and accounting, common databanks;

establishment of the system of Union State bodies, procedures for their organization and functioning, formation of the bodies of the Union State.

Article 18

The following matters shall come within the scope of the joint jurisdiction of the Union State and the Member States:

- accession of new states to the Union State;
- coordination and interaction in the sphere of foreign policy, relating to the implementation of the present Treaty;
- pursuance of a coordinated policy aimed at strengthening the Commonwealth of Independent States;
- joint defense policy, coordination of military construction activities, development of the armed forces of the Member States, joint use of military infrastructure and other measures to maintain the defense capability of the Union State;
- interaction in the international cooperation on defense and border issues, including the implementation of the international treaties concluded by the Member States on the reduction of armed forces and limitation of armaments;
- interaction in the implementation of democratic reforms, exercise and protection of the fundamental rights and freedoms of citizens of the Union State;
- harmonization and unification of the legislation of the Member States;
- pursuance of an investment policy aimed at reasonable division of labor;
- environmental protection;
- joint activities in the sphere of environmental security, prevention of natural and technological disasters and liquidation of their consequences, including consequences of the Chernobyl accident;
- development of science, education, culture; creation of equal conditions for the preservation and development of ethnic, cultural and linguistic identity of peoples;
- formation of a single scientific, technological and information space;
- coordination of the social policy, including the problems of employment, migration, working conditions, labor protection, social welfare and insurance;
- assurance of equal rights of citizens with regard to employment and labor remuneration, education, health care, and other social guarantees;
- fight against terrorism, corruption, drug trafficking, and other types of crime.

Article 19

The Member States shall retain the full scope of state powers in all the matters outside the exclusive jurisdiction of the Union States and joint jurisdiction of the Member States.

SECTION III PRINCIPLES FOR FORMATION OF A SINGLE ECONOMIC SPACE

Article 20

The Member States shall create a single economic space. The Union State shall have a uniform, and, later on, single legislation regulating the economic activities, including civil and tax laws.

Article 21

With a view to creating a single economic space the Member States shall take

concerted measures for phased harmonization of basic social and macroeconomic development indices, and shall implement a common structural policy.

Article 22

A single monetary unit (currency) shall be introduced in the Union State in stages, simultaneously with the establishment of a single emission center.

The main function of the single emission center shall be to protect, and ensure the stability of, the single monetary unit. This function shall be performed by the single emission center in cooperation with other bodies of the Union State and the government bodies of the Member States.

The single emission center shall not grant credits to the bodies of the Union State and shall not buy securities of the Union State upon their initial placement on the financial market.

The Union State shall extend and receive credits, grant credit guarantees, issue loans and securities in the procedure established by the Parliament of the Union State and approved by the Supreme State Council.

The single monetary unit shall be introduced and the single emission center formed on the basis of an agreement between the Member States.

Article 23

The Union State shall implement a single pricing policy, including in the matters concerning price regulation and tariffs.

Article 24

The Union State shall have a common securities market providing for free circulation of securities, and relevant institutions shall be formed for the issue of securities and regulation of the stock market.

Article 25

The Member States shall complete unification of the requirements to organization of supervision over banks and other lending institutions based on the main principles of efficient banking supervision defined by the Basle Committee on Banking Regulation and Supervisory Practices, and shall apply single refinance rates and common reserve requirements to the banks.

Article 26

The Union State shall draft and enact a single legislation for regulation of the servicing and repayment of the external and internal debt and procedure for receipt of foreign loans and foreign investments. The Member States shall jointly conclude international treaties on such matters with third states and shall coordinate obligations to be assumed thereunder.

Article 27

The Union State shall apply single taxation principles independent of the location of the taxpayers in its territory.

Article 28

The Member States shall implement a single trade policy with regard to third countries, international economic organizations and associations, shall apply single import and export customs duties, single customs regimes, and a single customs clearance and control procedure, and shall unify the legislation on the state regulation of the external economic activity and protection of economic interests of the Member States in their foreign trade activities.

Article 29

The Union State shall have a single customs space, featuring:
a single export control procedure;
single measures of non-tariff regulation, including application of quotas, licensing of exports and imports, introduction of a single list of goods subject to export and import bans and restrictions;
a single procedure for mutual recognition of licenses, certificates and import and export permits.

Article 30

The Union State shall have united energy and transport systems and inter-linked telecommunications systems.

These and other unified elements of the infrastructure shall be regulated on the basis of the acts of the Union State.

Article 31

The Union State shall have a unified labor legislation and legislation in the field of social welfare and pensions.

SECTION IV BUDGET OF THE UNION STATE

Article 32

1. The budget of the Union State shall be used to finance programs and projects of the Union State and its functioning, including expenses on the maintenance of its bodies.

2. The budget of the Union State shall be formed by annual agreed contributions of the Member States.

3. At the suggestion of the Council of Ministers approved by the Parliament other

sources may be used to finance the budget, according to the procedure and in cases established by the Supreme State Council.

4. The matters concerning the financial and economic activity of the bodies of the Union State, sectoral and functional administration bodies of the Union State shall be regulated by the Council of Ministers of the Union State in accordance with the regulatory legal acts of the Union State and the legislation of the Member States.

5. The Member States shall independently bear the expenses unrelated to the activities provided for by the budget of the Union State.

6. The budget of the Union State shall not provide for any deficit spending.

7. Pending the establishment of the Treasury of the Union State the budget shall be executed by the treasuries of the Member States within the part related to their respective territories.

Article 33

1. A draft budget of the Union State shall be introduced to the Parliament by the Council of Ministers of the Union State.

2. After adoption by the Parliament the budget shall be approved by the Supreme State Council.

SECTION V BODIES OF THE UNION STATE

Chapter I. Supreme State Council

Article 34

1. The Supreme State Council shall be the highest body of the Union State.

2. The Supreme State Council shall consist of the heads of the Member States, the heads of the governments, and the heads of the houses of the parliaments of the Member States.

3. Meetings of the Supreme State Council shall be attended by the Chairman of the Council of Ministers, the Chairmen of the Houses of the Parliament, and the Chairman of the Court of the Union State.

Article 35

1. The Supreme State Council shall:
deal with the most important matters concerning the development of the Union State;

form the bodies of the Union State within the scope of its competence, including sectoral and functional administration bodies;

announce the elections to the House of Representatives of the Parliament of the Union State;

approve the budget of the Union State, adopted by the Parliament of the Union State, as well as annual reports on its execution;

approve international treaties of the Union State, ratified by the Parliament;

approve the state symbols of the Union State;
decide the venue of the bodies of the Union State;
hear an annual report of the Chairman of the Council of Ministers on the implementation of the adopted decisions (decrees, directives).

2. The Supreme State Council shall perform other functions referred to its competence by the present Treaty or submitted for its consideration by the Member States.

3. Acting within the scope of its competence the Supreme State Council shall issue decrees, decisions and directives.

Article 36

1. The Supreme State Council shall be chaired by the heads of the Member States on a rotation basis, unless otherwise agreed by the Member States.

2. The Chairman of the Supreme State Council shall:
organize the work of the Supreme State Council; preside at its meetings; and sign the acts adopted by the Supreme State Council and the laws of the Union State;
present annual messages to the Parliament about the situation in the Union State and the main lines of its development;
upon the instruction of the Supreme State Council conduct international negotiations and sign international treaties on behalf of the Union State, represent the Union State in the relations with foreign states and international organizations;
organize control over the implementation of the present Treaty and the acts adopted by the Supreme State Council;
issue instructions to the Council of Ministers of the Union State within the scope of his competence;
perform other functions upon the request of the Supreme State Council.

Article 37

1. The acts of the Supreme State Council shall be adopted on the basis of unanimous approval by the Member States. An act shall not be adopted if any Member State raised objections to its adoption.

2. At the meetings of the Supreme State Council the Member States shall vote through their heads of state or persons authorized by them.

Chapter II. Parliament of the Union State

Article 38

The Parliament of the Union State shall be a representative and legislative body of the Union State.

Article 39

1. The Parliament shall consist of two houses– the House of the Union and the

House of Representatives.

2. The House of the Union shall consist of 36 members of the Federation Council, deputies of the State Duma, delegated by the houses of the Federal Assembly of the Russian Federation, and 36 members of the Council of the Republic, deputies of the House of Representatives, delegated by the houses of the National Assembly of the Republic of Belarus. The members of the House of the Union shall work on a non-permanent basis and shall receive compensation for their work at their permanent jobs.

3. The House of Representatives shall consist of 75 deputies from the Russian Federation and 28 deputies from the Republic of Belarus elected on the basis of universal suffrage by secret ballot.

4. The House of Representatives shall be elected, and the House of the Union formed, for a term of four years. Should the powers of the houses of the national parliaments of the Member States be terminated, members of the House of the Union shall retain their mandates until the respective parliament forms a new delegation.

Article 40

The Parliament of the Union State shall:

adopt laws and the Fundamental Legislation of the Union State on matters referred to the competence of the Union State by the present Treaty;

assist in the unification of the legislation of the Member States;

hear annual messages of the Supreme State Council about the situation in the Union State and the main lines of its development;

hear reports and information on the work of the Council of Ministers;

adopt the budget and hear annual and semi-annual reports on its execution;

approve periodic reports, hear current reports and statements the Audit Chamber of the Union State;

ratify international treaties, concluded on behalf of the Union State;

conclude cooperation agreements with the parliaments of the states that are not members of the Union State and with parliamentary organizations;

upon the recommendation of the Supreme State Council, appoint judges of the Court of the Union State;

upon the recommendation of the Supreme State Council, appoint members of the Human Rights Commission;

upon the recommendation of the Council of Ministers, appoint members of the Audit Chamber of the Union State;

establish the symbols of the Union State;

consider proposals on the matters concerning accession of third states to the Union State, adopt relevant recommendations, submits them to the Supreme State Council for its approval;

organize interaction between the parliaments of the Member States;

perform other functions provided for by the present Treaty.

Article 41

1. Deputies of the House of Representatives and members of the House of the Union shall enjoy immunity over the entire territory of the Union State during the whole period of their powers.

2. Deputies of the House of Representatives shall work on a permanent professional basis and shall not concurrently be on the government service or engage in any other gainful activities, other than teaching, scientific and other creative pursuits.

Article 42

1. Sessions of the House of the Union and the House of Representatives shall be held on a regular basis in accordance with their respective rules of procedure.

2. The House of the Union and the House of Representatives shall meet separately, save as otherwise provided by their respective rules of procedure.

3. Both houses shall elect their Chairman and the Deputy Chairman, and form commissions from among its members. The Chairman and the Deputy Chairmen of both houses shall be elected on a rotation basis. The Chairman and the Deputy Chairmen of the houses cannot be citizens of the same Member State.

4. Each house shall adopt its own rules of procedure and internal regulations.

Article 43

1. The right to introduce draft laws shall belong to the Supreme State Council, the Council of Ministers of the Union State, the House of the Union, as well as to a group of at least 20 deputies of the House of Representatives.

2. Draft laws shall be introduced into the House of Representatives.

3. After a law has been adopted by the House of Representatives it shall be passed on to the House of the Union for approval.

4. Draft laws providing for expenditures to be financed from the budget of the Union State may only be introduced with the consent of the Council of Ministers of the Union State.

5. No decision of the House of Representatives shall be deemed adopted if more than one-fourth of the total number of deputies voted against it.

6. Laws of the Union State shall be adopted by a majority vote of all members of each house. If a draft law has not been approved by the House of the Union, the houses may establish a conciliatory commission to settle the differences, after which the law shall be considered again by both houses.

7. Once adopted, the law shall, within 7 days of the date of its approval by the House of Union, be submitted by the House of the Union to the Supreme State Council to be signed by the Chairman of the Supreme State Council and made public.

8. The Chairman of the Supreme State Council shall sign the law within 30 days of the date of its approval, provided he or the Head of the Member State not chairing the Supreme State Council at the time the law is to be signed have no objections to the adoption of the law. If the Chairman of the Supreme State Council or the Head of the Member State who is not chairing the Supreme State Council at the time the law is to be signed have any objections, the law shall be

rejected. Rejection of the law shall be formalized by a decision of the Supreme State Council, which shall be presented to the houses of the Parliament within 7 days of the date of rejection of the law. The Chairman of the Supreme State Council may suggest that the houses of the Parliament establish a conciliatory commission to settle the differences.

Chapter III. Council of Ministers

Article 44

1. The Council of Ministers shall be an executive body of the Union State.

2. The Council of Ministers shall consist of the Chairman of the Council of Ministers; the heads of the governments; the State Secretary (acting as Deputy Chairman of the Council of Ministers); the ministers of foreign affairs, economics, and finance of the Member States; the heads of the major sectoral and functional bodies of the Union State.

Heads of central banks and ministers of the Member States may be invited to attend the meetings of the Council of Ministers.

3. The Chairman of the Council of Ministers shall be appointed by the Supreme State Council. This office may be held by heads of the government of the Member States on a rotation basis.

4. The functions of the Council of Ministers, its composition and working procedures shall be determined by the relevant Statute to be approved by the Supreme State Council.

Article 45

The State Secretary, heads of the sectoral and functional bodies of the Union State shall be appointed and removed from office by the Supreme State Council upon the recommendation of the Chairman of the Council of Ministers.

Article 46

1. In accordance with its competence specified by the present Treaty and the decisions of the Supreme State Council the Council of Ministers shall:

work out the main lines of the general policy on the matters concerning the development of the Union State, and present them to the Supreme State Council for its consideration;

make proposals to the Supreme State Council with regard to establishment of the sectoral and functional bodies of the Union State and direct their activities;

introduce draft laws of the Union State and the draft Fundamental Legislation to the Parliament of the Union State;

exercise control over the implementation of the provisions of the present Treaty, acts of the Union State and, if necessary, make reasonable representations to the Member States if they default in the obligations arising therefrom;

draft and introduce to the Parliament of the Union State a budget of the Union State, ensure its execution, and present annual and semi-annual reports on budget

execution to the Parliament;

consider periodic and current reports of the Audit Chamber;

exercise management of the property of the Union State;

ensure the establishment and development of a single economic space, implementation of a single finance, taxation, credit, monetary, currency, pricing, and trade policy;

coordinate unification of the legislation of the Member States;

assist in the implementation of a coordinated policy of the Member States in international affairs, in the sphere of defense, security, law enforcement, assurance of civil rights and freedoms, maintenance of public order and fight against crime, and also in the sphere of culture, science, education, health care, social welfare, and environmental protection;

exercise other powers vested in it by the present Treaty and the Supreme State Council.

2. Acting within its competence the Council of Ministers shall issue decisions, directives, and resolutions.

3. A decision (directive, resolution) of the Council of Ministers may be suspended or revoked by the Supreme State Council.

Article 47

The Chairman of the Council of Ministers shall:

direct the activities of the Council of Ministers and organize its work;

present annual reports on the work of the Council of Ministers to the Supreme State Council and the Parliament of the Union State;

sign the acts of the Council of Ministers;

upon the instruction of the Supreme State Council and within the scope of powers granted by it, conduct negotiations and sign international treaties on behalf of the Union State.

Article 48

1. The Council of Ministers shall form a Permanent Committee, headed by the State Secretary.

2. The Permanent Committee shall be responsible for the preparation of meetings of the Supreme State Council and the Council of Ministers.

3. The Permanent Committee shall coordinate the work of the sectoral and functional bodies of the Union State and their interaction with the national bodies of the Member States; control the implementation of the decisions adopted by the Supreme State Council and the Council of Ministers; keep the Council of Ministers informed about the situation in the spheres of activity of the sectoral and functional bodies of the Union State; submit proposals to the Council of Ministers with regard to the accomplishment of current tasks related to the development of the Union State.

Article 49

1. The governments of the Member States shall propose candidates for service on the Permanent Committee.

2. The Council of Ministers shall appoint members of the Permanent Committee from among the proposed candidates.

3. The State Secretary and members of the Permanent Committee shall be appointed for a term of four years. The procedure for their removal from office shall be determined by the Supreme State Council.

4. Eligible for service on the Permanent Committee may only be citizens of the Member States. Citizens of the same state shall account for not more than two-thirds of the number of members on the Permanent Committee. Members of the Permanent Committee shall be appointed and shall act in their personal capacity.

5. The Statute of the Permanent Committee shall be approved by the Supreme State Council upon the recommendation of the Council of Ministers.

Chapter IV. Court of the Union State

Article 50

The Court of the Union State (hereafter "the Court") shall be a body of the Union State, called upon to ensure uniform interpretation and application of the present Treaty, regulatory and legal acts of the Union State.

Article 51

The Court shall consist of nine judges to be appointed by the Parliament of the Union State upon the recommendation of the Supreme State Council.

Article 52

1. The judges shall be appointed and act in their personal capacity from among citizens of the Union State, who have high professional and moral qualities and meet the requirements set for appointment to the highest judicial offices in the Member States.

2. The Court shall not consist of more than five judges who are citizens of one state.

3. The judges shall be independent.

Article 53

1. The judges shall be appointed for a term of six years and may be re-appointed for one more term.

2. One-third of the members of the Court shall be replaced every two years.

3. In the event of initial appointment one-third of judges shall be appointed for a two-year term and one-third for a four-year term.

4. The Court shall elect one of the judges as Chairman, and another one as Deputy Chairman, who may not be citizens of the same Member State.

5. The Statute and the Rules of the Court shall be approved by the Supreme State Council.

Article 54

1. Each Member State, the bodies of the Union State may submit to the Court any issues connected with the interpretation and application of the present Treaty and regulatory legal acts of the Union State.

2. Decisions of the Court shall be legally binding and shall be officially published.

3. Decisions of the Court shall be taken by a two-thirds majority vote of the judges present at the relevant court sitting.

Chapter V. Audit Chamber

Article 55

1. The Audit Chamber shall be formed to exercise control over the finances of the Union State.

2. The Audit Chamber shall consist of eleven members appointed for a term of six years from among citizens of the Member States, who have experience in the work in control, review and auditing organizations and whose high professionalism and honesty are beyond any doubt.

3. Members of the Audit Chamber shall be appointed by the Parliament of the Union State upon the recommendation of the Council of Ministers, regardless of which of the Member States they are citizens. The number of members of the Audit Chamber who are citizens of the same Member State shall not exceed seven.

4. Members of the Audit Chamber shall elect one of their number as Chairman and another one as Deputy Chairman, who shall hold their offices for two years and can be re-elected. The Chairman and the Deputy Chairman of the Audit Chamber may not be citizens of the same Member State.

5. Members of the Audit Chamber shall act in the interests of the Union State and shall be absolutely independent in the performance of their duties.

Article 56

1. The Audit Chamber shall exercise control over the execution of revenue and expenditure articles of the budget of the Union State as regards the volumes, structure and purpose thereof; audit the reports on the incomes and expenditures of all bodies of the Union State; decide on the legitimacy of the income gained and the expenditures made; establish whether the finances were managed reasonably; and check on the efficient use of the property of the Union State.

2. Upon the request of the Audit Chamber the bodies of the Union State, national auditing organizations and competent authorities of the Member States shall present to the Audit Chamber all documents and information necessary for the Audit Chamber to perform its functions.

3. Based on the results of financial year, the Audit Chamber shall present an annual report to the Council of Ministers and the Parliament. Upon the consideration of the

report these bodies may, either independently or jointly, make proposals to the Supreme State Council aimed at the improvement of the financial position of the Union State.

4. The Audit Chamber may, on its own initiative or upon the request of any of the bodies of the Union State, issue opinions on various issues within its sphere of its competence.

5. The Audit Chamber shall work out its own Rules of Procedure, which are to be approved by the Council of Ministers.

Chapter VI. Officials

Article 57

1. The officials and staff members of the bodies of the Union State, except for members of the Supreme State Council, the Council of Ministers and members of the House of the Union of the Parliament, shall be civil servants of the Union State and shall be appointed from among citizens of the Member States.

2. The officials and staff members of the bodies of the Union State: while performing their functions shall be guided by the common interest and shall not ask for or accept instructions from any state bodies of the Member State;

shall not combine work in the bodies of the Union State with other gainful activities except for teaching, scientific or other creative pursuits;

shall not engage in any activity incompatible with the status of an official of the Union State, and, in particular, shall not use their official status in the interests of political parties, associations and other organizations.

3. The legal status of the officials and staff members of the bodies of the Union State, their salary and social guarantees shall be established by the Supreme State Council upon the recommendation of the Council of Ministers.

SECTION VI ACTS OF THE UNION STATE

Article 58

In order to attain the purposes and accomplish the principles of the Union State its bodies, shall, within the scope of their competence, adopt regulatory and legal acts provided for by the present Treaty, such as laws, Fundamental Legislation, decrees, decisions, directives and resolutions. The bodies of the Union State may also adopt recommendations and express opinions.

Article 59

1. Laws, decrees, decisions and resolutions shall be adopted on the subjects falling under the exclusive jurisdiction of the Union State. The bodies of the Union State shall adopt decrees and decisions on the basis of the present Treaty and the laws of the Union State.

2. Fundamental Legislation, directives and resolutions shall be adopted on the subjects falling under the joint jurisdiction of the Union State and the Member States.

3. Regulatory and legal acts of the Union State on the subjects falling under the joint jurisdiction of the Union State shall be implemented through adoption of national regulatory and legal acts of the Member States on the relevant matters.

Article 60

1. Laws and decrees shall be intended for general application. They shall be legally binding in their entirety, and, after official publication, shall be subject to direct application in the territory of each Member State.

2. If any norm of a law or decree of the Union State comes in conflict with a norm of the national law of a Member State, the norm of the law or decree of the Union State shall have a prevailing force. However, this provision shall not apply to the collision of the norms of a law or decree of the Union State and the norms of the constitutions and constitutional acts of the Member States.

3. Decisions shall be legally binding in their entirety upon the state, individual or legal entity to which/whom they refer.

4. Directives shall be legally binding upon each state to which they refer, provided the bodies of the relevant state are free to choose the ways and means of their actions.

5. A resolution is an act which ensures the current activities of the bodies of the Union State are ensured.

SECTION VII FINAL PROVISIONS

Article 61

The provisions of the present Treaty, the phased implementation of which may require amendments and addenda to the constitutions of the Member States, shall enter into force after completion of the national procedures necessary to introduce changes in the constitution of each Member State.

Article 62

1. After the entry into force of the present Treaty the Parliament of the Union State shall, at the suggestion of the Supreme State Council, consider a draft Constitutional Act determining the state structure of the Union State and its legal system on the basis of the present Treaty.

2. After the approval by the Parliament of the Union State, the draft Constitutional Act shall be presented by the presidents of the Member States to the national parliaments for their consideration, after which it shall be submitted to a referendum in the Member States, in accordance with their national legislation.

3. After the approval of the Constitutional Act at the referendums, the Member States shall introduce the necessary amendments and addenda in their national constitutions.

Article 63

With a view to phased implementation of the present Treaty the Russian Federation and the Republic of Belarus shall adopt an Action Plan of the Russian Federation and the Republic of Belarus for Carrying out the Provisions of the Treaty on the Formation of the Union State.

Article 64

The elections to the House of Representatives of the Parliament of the Union State of the first convocation shall be held within six months of adoption by the Parliaments of the Member States of the relevant legislative acts.

Article 65

1. The present Treaty shall be open to accession for other states, which are subjects of international law, share the purposes and principles of the Union State and assume all obligations under the present Treaty.

2. The Member States shall consider the applications of third states and invite them to become parties to the present Treaty after compliance with the conditions established by the Supreme State Council for the accession and completion of the procedures connected with the increase in the number of the Member States.

Article 66

1. Any Member State, the Parliament or the Court of the Union State may propose amendments to the present Treaty. The amendments shall be considered by the Council of Ministers and submitted to the Supreme State Council for its approval.

2. The amendments shall be in the form of separate treaties which shall be subject to ratification by the Member States.

Article 67

1. Any Member State may decide to withdraw from the Union States complying with the relevant constitutional procedures, on the basis of a nation-wide referendum. The head of the Member State withdrawing from the Union State shall notify in writing the Supreme State Council, the Parliament of the Union State and the other Member State. The present Treaty shall be terminated with regard to such state upon expiration of 18 months from the date on which a referendum on this question was held in this state.

2. Withdrawal from the present Treaty shall not affect the performance of the obligations assumed by the Member States under the Treaty, the fulfillment of which requires certain time periods.

Article 68

1. The present Treaty is not directed against any third states. The Member States shall meet the obligations assumed under the previously concluded international treaties.

2. The Member States shall not assume any international obligations running counter to the provisions of the present Treaty.

Article 69

1. The present Treaty shall be subject to ratification by the Member States and shall enter into force from the date of exchange of the instruments of ratification by the Member States.

2. The Treaty shall be concluded for an indefinite time.

Article 70

1. Upon entry into force of this Treaty the Treaty on the Formation of the Community Between Russia and Belarus of April 2, 1996 and the Treaty on the Union of Belarus and Russia of April 2, 1997 shall be terminated.

2. The legal acts adopted within the framework of the Community and the Union shall remain in force insofar as they do not contradict the present Treaty.

3. Until the first meeting of the Supreme State Council of the Union State, its functions shall be performed by the Supreme Council of the Union of Belarus and Russia.

4. Until elections to the House of Representatives of the Parliament of the Union State, the functions of the Parliament of the Union State shall be performed by the Parliamentary Assembly of the Union of Belarus and Russia.

5. Until the first meeting of the Council of Ministers of the Union State its functions shall be performed by the Executive Committee of the Union of Belarus and Russia.

6. Until the establishment of the Permanent Committee its functions shall be performed by the staff of the Executive Committee of the Union of Belarus and Russia, established in accordance with the Charter of the Union of Belarus and Russia.

Article 71

The present Treaty shall be registered in accordance with Article 102 of the Charter of the United Nations.

Done in duplicate at Moscow on the eighth day of December, 1999, in the Russian and Byelorussian languages, both texts being equally authentic.

Note to the Document. Information about ratification: Russia – Federal Law No. 25-FZ of January 2, 2000. The Treaty entered into force on January 26, 2000.

¹ See: *Izбирatelnoe pravo i izbiratelnyi protsess v resheniyakh Konstitutsionnogo Suda Rossiiskoy Federatsii (1992–1999)* (The Electoral Rights and Electoral Process in Resolutions of the RF Constitutional Court (1992-1999))// Ed. by A.A. Veshnyakov. Moscow: NORMA, 2000. P. 248-257.

DECISIONS OF THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION

3.2 (11.10) DECISION NO. 9-P OF JULY 10, 1995 IN THE CASE ON VERIFICATION OF CONSTITUTIONALITY OF PARAGRAPH 2, ARTICLE 42 OF THE LAW OF THE REPUBLIC OF CHUVASHIA "ON THE ELECTION OF DEPUTIES OF THE STATE COUNCIL OF THE REPUBLIC OF CHUVASHIA," AS AMENDED ON AUGUST 26, 1994¹

The Constitutional Court of the Russian Federation, presided by Yu.D. Rudkin and composed of judges: M.V. Baglay, N.V. Vitruk, G.A. Gadzhiyev, A.L. Kononov, T.G. Morshchakova, N.V. Seleznyov, O.I. Tiunov, B.S. Ebzeyev, and V.G. Yaroslavtsev, with participation of N.V. Fedorov, President of the Republic of Chuvashia, who submitted a petition to the Constitutional Court of the Russian Federation, and his representative A.A. Sharapov, a lawyer of the Moscow City Bar; representatives of the State Council of the Republic of Chuvashia: V.S. Shurtchanov, Chairman of the State Council of the Republic of Chuvashia, G.V. Maltsev, Doctor of Law, B.B. Khangeldyev, Doctor of Law; V.G. Tarasenko, Chairman of the Federation Affairs Federation Treaty and Regional Policy Committee of the Federation Council, and O.K. Zastrozhnaya, member of the Central Election Commission of the Russian Federation,

following Article 125 (Clause (b), Para. 2 of the Constitution of the Russian Federation, Subclause "b", Clause 1, Paras. 1 and 2, Article 3; Subclause "b", Clause 1, Para. 2, Article 22, and Article 86 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation,"

reviewed in an open session the case on verification of constitutionality of Para. 2, Article 42 of the Law of the Republic of Chuvashia "On the Election of Deputies of the State Council of the Republic of Chuvashia," as amended on August 26, 1994.

Pursuant to Para. 1, Article 36 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," the case has been reviewed in response to a petition submitted by the President of the Republic of Chuvashia who requested that the said norm of the Law of the Republic of Chuvashia "On the Election of Deputies of the State Council of the Republic of Chuvashia" be recognized to be inconsistent with the Constitution of the Russian Federation.

Pursuant to Para. 2, Article 36 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," the case has been reviewed on the grounds of an uncertainty identified in the issue of whether or not the contested norm of the Law of the Republic of Chuvashia, as amended on August 26, 1994, that altered the procedure of determination of voting results in a repeat voting complied with the Constitution of the Russian Federation.

Upon examination of the report of judge-rapporteur, T.G. Morshchakova, explanations of the representatives of the parties, opinions of the invited experts, as well as documents and materials, the Constitutional Court of the Russian Federation

Established as follows:

The March, May and June, 1994 elections of the State Council of the Republic of Chuvashia were held on the basis of the Law of the Republic of Chuvashia "On the Election of Deputies of the State Council of the Republic of Chuvashia" of November 24, 1993, as amended on January 20, 1994. Elected were 33 deputies out of 47 deputies comprising the total number of deputies of the State Council of the Republic of Chuvashia set by the Constitution of the Republic of Chuvashia (Para. 1, Article 93). To complete the formation of the State Council, another round of the elections was set for November 27, 1994. At the same time, on August 26, 1994 the newly elected members of the State Council of the Republic of Chuvashia passed the Law "On Introduction of Changes and Amendments to the Law of the Republic of Chuvashia 'On the Election of Deputies of the State Council of the Republic of Chuvashia.'" That law, in particular, excluded from Para. 2, Article 42 the provision stipulating that elected by a vote majority shall be deemed a candidate who, during the repeat voting, has gained no less than 25 per cent of the votes of citizens included in the voters lists. On December 4, 1994, at the final stage of the repeat voting held on the basis of the amended Law, all remaining members of the State Council of the Republic of Chuvashia were by-elected.

In the opinion of the petitioner, the exclusion of the said norm from the election law is not in conformity with the provision of Article 77 (Para. 1) of the Constitution of the Russian Federation under which bodies of state power of a subject of the Russian Federation shall be formed in accordance with the basic principles of the constitutional system of the Russian Federation. In addition to it, as is stated in the petition, the entering of the said amendment into force immediately prior to the final round of the repeat voting violates the principle of equality of electoral rights which also contradicts Articles 3, 15 and 19 of the Constitution of the Russian Federation.

2. The petition of the President of the Republic of Chuvashia, pursuant to Article 125 (Clause "b", Para. 2) of the Constitution of the Russian Federation and Para. 2, Article 85 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," is acceptable as the regulatory act challenged therein deals with the issue which falls within the joint jurisdiction of the Russian Federation and subjects of the Russian Federation.

According to Article 72 (Clause "b", Para. 1) of the Constitution of the Russian Federation, protection of the rights and freedoms of citizens falls within the joint jurisdiction of the Russian Federation and subjects of the Russian Federation. Thus, it should be admitted that the State Council, when adopting amendments to the law on elections, was in deed acting within the sphere of the joint jurisdiction relating to the ensurance of the electoral rights of citizens.

The Constitutional Court of the Russian Federation, in this case, is considering the issues raised by the petitioner only in so far as they fall within the said sphere of the joint jurisdiction of the Russian Federation and subjects of the Russian Federation.

3. The petitioner is requesting the verification of the constitutionality of Para. 2, Article 42, as amended, both in terms of the content of the said provision and in terms of legal effect caused by its entering into force and application.

The norm under review regulates the procedure of determination of vote returns in case of repeat voting held when none of the candidates at the first round has gained a required majority of votes. The issue according to the Constitution of the Russian Federation falls neither within the exclusive jurisdiction of the Russian Federation nor within the joint jurisdiction of the Russian Federation and subjects of the Russian Federation. Therefore, by virtue of Article 125 (Clause "b", Para. 2) of the Constitution of the Russian Federation, verification of the constitutionality of the procedure of vote returns determination that is established by the law of a subject of the Russian Federation does not fall within the competence of the Constitutional Court of the Russian Federation.

Meanwhile, according to Para. 1, Article 86 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," the Constitutional Court of the Russian Federation verifies the compliance of regulatory acts with the Constitution of the Russian Federation not only in terms of the content of its norms but also in terms of the procedure of their adoption, publication or entering into force. Proceeding from Para. 2, Article 74 of the said law, the Constitutional Court of the Russian Federation assesses, by the said criteria, both the literal meaning of the norms under review and the implication they acquire in the process of law enforcement and in connection with the role they play in the system of legal acts.

Pursuant to Clause 2 of the Decision of the State Council of the Republic of Chuvashia of July 15, 1994, the Law of the Republic of Chuvashia "On Introduction of Changes and Amendments to the Law of the Republic of Chuvashia 'On the Election of Deputies of the State Council of the Republic of Chuvashia'" was to be entered into force from the day of its signature, i.e. from August 26, 1994. The norm on entering into force essentially is a transitional provision of the Law which stipulated the application of the amended version of the Law to the next repeat voting in the course of elections of the State Council of the Republic of Chuvashia which were earlier conducted on the basis of the former legislation.

4. The State Council of the Republic of Chuvashia, however, was not entitled to extend the application of the new norms to the issues related to the elections of the representative body of state power of the Republic of Chuvashia the formation of which began in March, 1994, in accordance with the previously effective procedure. Article 42 (Para. 2), as amended, in conjunction with the Decision on putting the Law into force altered the vote counting rules in the course of the elections, i.e. when the formation of the State Council of the Republic of Chuvashia had not been completed yet.

As a result, the candidates running for the State Council of the Republic of Chuvashia prior to amending Article 42 of the Law, were subject, in the course of the repeat voting, to conditions that were quite different from those applicable to the candidates who participated in the next round of the repeat voting held under the amended Law.

5. The alteration of the vote counting rules during the repeat voting in the course of the elections that had already started, violated the principle of equal suffrage the observance of which is a prerequisite for free elections (Para. 3, Article 3 of the Constitution of the Russian Federation). The substance of that principle is elaborated in more detail in the International Covenant on Civil and Political Rights which

is recognized by the Russian Federation.

The rights and freedoms of a human being and citizen are recognized and guaranteed in the Russian Federation in accordance with the Constitution of the Russian Federation and the norms of the international law (Article 17 of the Constitution of the Russian Federation) which, in accordance with Article 15 (Para. 4) of the Constitution of the Russian Federation, are an integral part of its legal system. For the purpose of ensuring the power of the people, Clause "b", Article 25 of the said International Covenant provides for that every citizen shall enjoy, without any discrimination and without unreasonable restrictions, the right and possibility to elect and be elected at genuine regular elections held on the basis of the universal and equal suffrage by secret ballot designed to ensure free expression of the will of voters.

In accordance with the Constitution of the Russian Federation and the said international legal norm, the federal legislation shall guarantee the right of a citizen to take part in free elections on the basis of the universal and equal suffrage. The guarantees for such right must also be provided for in the laws of subjects of the Russian Federation.

The said alterations of the procedure of the elections of the State Council of the Republic of Chuvashia resulted in inequality of citizens in exercising their rights to elect and be elected in the course of the same elections. At the first stage of the elections candidates to deputies were subject to stricter requirements which was accounted for by more rigorous norms stipulated by the former version of the Law regarding the number of votes that a candidate shall gain to be elected to the State Council of the Republic of Chuvashia. As a result, the voters, likewise, were unable in some cases to exercise, on equal terms, their right to be represented at the legislative body of the Republic of Chuvashia.

Thus, violated was the principle of equality of citizens provided for in Article 19 of the Constitution of the Russian Federation which stipulates an equal legal status of citizens in exercising any rights, including the right to elect and be elected to bodies of state power provided for by Article 32 of the Constitution of the Russian Federation. The violation of the principle of equality of electoral rights in the course of formation of a legislative body constitutes a deviation from the general principles of organization of representative bodies of power of subjects of the Russian Federation (Para. 1, Article 77 of the Constitution of the Russian Federation) and, therefore, may challenge the legitimacy of Decisions they take.

The prescription contained in Clause 2 of Decision of the State Council of the Republic of Chuvashia of July 15, 1994 to put the amended version of the Law under review into legal force from the day of its signature rather than from the day of its publication also contradicts Article 15 (Para. 3) of the Constitution of the Russian Federation that stipulates that no regulatory legal act affecting the rights, freedoms or duties of citizens may apply unless published officially for general information.

Thus, in terms of the procedure of entering into force, the norm of Para. 2, Article 42 of the Law of the Republic of Chuvashia "On the Election of Deputies of the State Council of the Republic of Chuvashia," as amended on August 26, 1994, does not comply with Articles 15 (Para. 4), 17 (Para. 1), 19 and 32 (Para. 2) of the Constitution of the Russian Federation regarding the equality of citizens, their right to elect and be

ected to bodies of state power and Article 25 of the International Covenant on Civil and Political Rights.

On the basis of the above and following Para. 1 of Article 71; Paras. 1, 2 and 3 of Article 72; Paras. 1, 2, 3 and 4 of Article 74; Article 75; Para. 3, Article 79, Clause 3, Para. 1, Article 86 and Article 87 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," the Constitutional Court of the Russian Federation

Decided as follows:

1. It shall be recognized that the procedure of enforcement of Para. 2, Article 42 of the Law of the Republic of Chuvashia of November 24, 1993, as amended by the Law of the Republic of Chuvashia "On Introduction of Changes and Amendments to the Law of the Republic of Chuvashia "On the Election of Deputies of the State Council of the Republic of Chuvashia" of August 26, 1994, as applied to the formation of the State Council of the Republic of Chuvashia of the first convocation be inconsistent with the Constitution of the Russian Federation, specifically, its Articles 15 (Para. 4), 17 (Para. 1), 19 and 32 (Para. 2), as the alteration of the vote counting rules in the course of the same elections resulted in violation of equality of citizens in exercising their rights to elect and be elected to bodies of state power.

2. Clause 1 of the operative part of this Decision does not challenge the legitimacy of the State Council of the Republic of Chuvashia nor does it affect the powers of the deputies elected before the Law of the Republic of Chuvashia "On Introduction of Changes and Amendments to the Law of the Republic of Chuvashia 'On the Election of Deputies of the State Council of the Republic of Chuvashia'" of August 26, 1994 came into legal force.

3. In connection with this Decision, the resolutions of the Central Election Commission on the elections of deputies of the State Council of the Republic of Chuvashia based on Para. 2, Article 42 of the Law of the Republic of Chuvashia "On the Election of Deputies of the State Council of the Republic of Chuvashia," as amended on August 26, 1994, shall be revised.

As far as by-election of members of the State Council of the Republic of Chuvashia of the first convocation is concerned, if such by-election is held, the Law of the Republic of Chuvashia "On the Election of Deputies of the State Council of the Republic of Chuvashia" of November 24, 1993, as amended on January 20, 1994, shall apply.

4. This Decision shall not affect the legal force of the Law of the Republic of Chuvashia "On Introduction of Changes and Amendments to the Law of the Republic of Chuvashia 'On the Election of Deputies of the State Council of the Republic of Chuvashia'" of August 26, 1994, with regard to the elections of the State Council of the Republic of Chuvashia of a new convocation.

5. In accordance with Paras. 1 and 2, Article 79 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," this Decision shall be final, shall not be subject to appeal and shall be effective immediately following its following its proclamation, and shall be applied directly.

6. In accordance with Article 78 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," this Decision shall be immediately published in the "*Sobraniye zakonodatelstva Rossiiskoi Federatsi*" (Collection of

Legislation of the Russian Federation), and the "Rossiyskaya Gazeta," other official outlets of the bodies of state power of the Russian Federation and of the Republic of Chuvashia. This Decision shall also be published in the "*Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii*" (Bulletin of the Constitutional Court of the Russian Federation).

Dissenting Opinion

Of N.V. Vitruk, Judge of the Constitutional Court of the Russian Federation in the Case On Verification of Constitutionality of Part 2, Article 42 of the Law of the Republic of Chuvashia "On the Election of Deputies of the State Council of the Republic of Chuvashia," as amended on August 26, 1994

Pursuant to Article 76 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," I am hereby stating my dissenting opinion in this case.

Pursuant to Articles 73 and 74 of the Constitution of the Republic of Chuvashia, the formation of the State Council of the Republic of Chuvashia as a permanent representative legislative body of state power of the Republic of Chuvashia, by way of elections is provided for by the Law of the Republic of Chuvashia "On the Election of Deputies of the State Council of the Republic of Chuvashia" of November 24, 1993. The Law provides for holding general elections in the course of which repeat voting is allowed within a two week period (Article 42) repeat elections are allowed as well (within a two month period after the general elections) with repeat voting being allowed if not more than two candidates to deputies run for the seat in an electoral district and none of them has been elected or if the elections in an electoral district are declared invalid or if the repeat voting did not allow an elected deputy to be determined (Article 43).

As a result of the general (primary) elections held on March 13, 1994 followed by repeat voting on March 27, 1994 and the repeat elections held on May 26, 1994 followed by repeat voting on June 2, 1994 the State Council of the Republic of Chuvashia was formed, consisting of 33 deputies out of the total number of 47 deputies as provided for in Article 93 of the Constitution of the Republic of Chuvashia and Article 3 of the Law of the Republic of Chuvashia "On the State Council of the Republic of Chuvashia" adopted by the Supreme Council of the Republic of Chuvashia on November 24, 1993.

A resolution of the meeting of the State Council of the Republic of Chuvashia is considered adopted if it is voted for by not less than half of the deputies (Article 5 of the Law of the Republic of Chuvashia "On the State Council of the Republic of Chuvashia"). Pursuant to Articles 92 and 98 of the Constitution of the Republic of Chuvashia, Article 2 of the Law of the Republic of Chuvashia "On the State Council of the Republic of Chuvashia," the State Council of the Republic of Chuvashia adopts laws and resolutions by votes cast by the majority of deputies, while a decision to remove the President of the Republic of Chuvashia from the office – by not less than two thirds of deputies' votes.

Thus, the State Council of the Republic of Chuvashia formed on the basis of the March, May and June, 1994 elections is legitimate and is capable of resolving any issues within its respective competence in accordance with the requirements of the

Constitution of the Republic of Chuvashia and the Law of the Republic of Chuvashia "On the State Council of the Republic of Chuvashia."

The State Council of the Republic of Chuvashia, seeking to realize as much as possible its representative nature and thus overcome the negative effect of no-turnout of voters at elections (absenteeism), set elections for November 27, 1994 in administrative-territorial electoral districts and territorial electoral districts in which no deputies had been elected in the course of the general (primary) elections.

On July 15, 1994 the State Council of the Republic of Chuvashia passed a Law "On Introduction of Changes and Amendments to the Law of the Republic of Chuvashia 'On the Election of Deputies of the State Council of the Republic of Chuvashia'" and on August 26, 1994 overcame the veto imposed by the President of the Republic of Chuvashia on August 2, 1994.

The said Law made an amendment to Para. 2, Article 42 of the Law of the Republic of Chuvashia "On the State Council of the Republic of Chuvashia" which lifted, in the event of repeat voting, the limitation under which a candidate to deputies shall gain not less than 25 per cent of the votes of citizens included in the voters list. On the basis of the Law, as amended on August 26, 1994, new general elections followed by repeat voting were held on December 4, 1994. As a result all members of the State Council of the Republic of Chuvashia were elected.

The State Council of the Republic of Chuvashia was fully entitled to make changes and amendments to the then effective republican Law "On the State Council of the Republic of Chuvashia," so it did on January 20, 1994 and August 26, 1994. The legislative body of the republic, acting within the limits of its respective powers, is not obliged to adopt norms to be coinciding with the provisions of similar laws of other subjects of the Russian Federation or federal laws.

However, the State Council of the Republic of Chuvashia improperly applied Para. 2, Article 42 of the amended Law of the Republic of Chuvashia "On the State Council of the Republic of Chuvashia" to the formation of the State Council of the first convocation, as in that case the principle of equality of citizens of the Republic of Chuvashia before the electoral law was violated: citizens of the Republic of Chuvashia found themselves under unequal conditions in exercising the rights to elect and be elected to the State Council of the Republic of Chuvashia which contradicts Articles 29, 79 and 81 of the Constitution of the Republic of Chuvashia. N.V. Fedorov, the President of the Republic of Chuvashia, speaking in the session of the Constitutional Court of the Russian Federation gave some convincing examples of violations of the principle of equal conditions with regard to the electoral rights of citizens of the Republic of Chuvashia. Thus, in Kalininsky administrative territorial district No. 1 in March, 1994, candidate to deputies Ch.M. Shlepnev gained 14.2 per cent of the votes but was not elected deputy. In December, in the same district, T.P. Popova gained a mere 7 per cent of the votes and was declared a deputy elected to the State Council of the Republic of Chuvashia; in Leninsky territorial electoral district No. 16 in March, 1994, V.F. Pavlov gained 10.3 per cent of the votes, in

December of the same year V.I. Izherov gained 6.2 per cent of the votes and was elected deputy. A similar situation with regard to the ratio of votes cast for candidates to deputies during the March and December, 1994 elections was observed in other two administrative-territorial electoral districts and one territorial electoral district.

Thus, the State Council of the Republic of Chuvashia improperly applied the amended Law of the Republic of Chuvashia "On the State Council of the Republic of Chuvashia" and have thereby violated the basic rights of citizens of the Republic of Chuvashia provided for by Articles 79 and 81 of the Constitution of the Republic of Chuvashia.

The State Council of the Republic of Chuvashia was in a position to most fully realize the representative nature of the supreme body of state power by calling new general elections according to the rules of the former Law of the Republic of Chuvashia "On the Election of Deputies of the State Council of the Republic of Chuvashia," or by exercising the right of self-disbandment (early termination of powers) as is provided under Article 93 of the Constitution of the Republic of Chuvashia and Article 4 of the Law "On the State Council of the Republic of Chuvashia" and calling elections of the State Council of the Republic of Chuvashia in accordance with the provisions of the amended Law "On the Election of Deputies of the State Council of the Republic of Chuvashia."

Verification of the content of the republican electoral law for its compliance with the effective Constitution of the Republic of Chuvashia and assessment of the constitutional validity of its application is beyond the competence of the Constitutional Court of the Russian Federation. The resolution of those issues is within the jurisdiction of courts of general jurisdiction, in the given case – the jurisdiction of the Supreme Court of the Republic of Chuvashia. So, the case for verification of the constitutionality of Para. 2, Article 42 of the Law of the Republic of Chuvashia "On the Election of Deputies of the State Council of the Republic of Chuvashia" as amended on August 26, 1994, was dismissed by the Constitutional Court of the Russian Federation. The said case could have been reviewed in the procedure established by the Constitution and laws of the Republic of Chuvashia.

References to violations of respective articles of the Constitution of the Russian Federation cannot serve as a sufficient reason for the reviewing of the case by the Constitutional Court of the Russian Federation as, in the given case, first of all, delimitation of the judicial constitutional jurisdiction between the Russian Federation and subjects of the Russian Federation is dealt with. The Decision of the Constitutional Court of the Russian Federation on the merits of the given case means that the competence of republican courts of general jurisdiction is improperly superseded, the given collision of law is resolved ahead of time without taking into account the right of the subjects of the Russian Federation to solve such issues on their own. Only after all possibilities of resolving the given collision of law have been exhausted at the republican level the issue may be filed to the Constitutional Court of the Russian

¹ See: *Izбирательное право и избирательный процесс в республиках Конституционного Суда Российской Федерации (1992–1999)* (The Electoral Rights and Electoral Process in Resolutions of the RF Constitutional Court (1992-1999))// Ed. by A.A. Veshnyakov. Moscow: NORMA, 2000. P. 472-505.

Federation.

3.3 (11.11) DECISION NO. 7-P OF APRIL 30, 1997 IN THE CASE ON VERIFICATION OF CONSTITUTIONALITY OF DECREE NO. 315 OF THE PRESIDENT OF THE RUSSIAN FEDERATION MARCH 2, 1996 "ON THE PROCEDURE OF POSTPONEMENT OF THE DATES OF ELECTIONS OF LEGISLATIVE (REPRESENTATIVES) BODIES OF STATE POWER OF THE SUBJECTS OF THE RUSSIAN FEDERATION," THE LAW OF THE PERM REGION OF FEBRUARY 21, 1996 "ON ELECTIONS OF DEPUTIES OF THE LEGISLATIVE ASSEMBLY OF THE PERM REGION," AND PARAGRAPH 2, ARTICLE 5 OF THE LAW OF THE VOLOGDA REGION OCTOBER 17, 1995 "ON THE PROCEDURE OF ROTATION OF DEPUTIES OF THE LEGISLATIVE ASSEMBLY OF THE VOLOGDA REGION" AS AMENDED ON NOVEMBER 9, 1995¹

The Constitutional Court of the Russian Federation presided by M.V. Baglay and composed of judges: E.M. Ametistov, N.V. Vitrouk, G.A. Gadzhiev, Yu.M. Danilov, A.L. Kononov, T.G. Morshchakova, V.I. Oleinik, Yu.D. Rudkin, N.V. Seleznyov, V.G. Strekozov, O.I. Tiunov, O.S. Khokhryakova, B.S. Ebzeyev and V.G. Yaroslavtsev, with participation of representatives of the parties that submitted petitions to the Constitutional Court of the Russian Federation: S.N. Baburin, Deputy Chairman of the State Duma of the Federal Assembly of the Russian Federation, V.V. Olnev, Candidate of Law, deputy of the Legislative Assembly of the Nizhny Novgorod Region, A.I. Bestolkov, judge of the court of the Perm Region; and representative of the party that issued the contested act: S.M. Shakhrai, Plenipotentiary Representative of the President of the Russian Federation at the Constitutional Court of the Russian Federation,

following Article 125 (Clauses "a" and "b", Paras. 2 and 4) of the Constitution of the Russian Federation, Subclauses "a" and "b", Clauses 1 and 3, Para. 1, Article 3; Subclauses "a" and "b", Clause 1, Para. 2, Article 22; Articles 36, 84, 85, 86, 101, 103 and 104 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation,"

reviewed in an open session the case on verification of constitutionality of Decree of the President of the Russian Federation No. 951 of September 17, 1995 "On the Elections of Bodies of State Power of the Subjects of the Russian Federation and Bodies of Local Self-Government" and Decree of the President of the Russian Federation No. 315 of March 2, 1996 "On the Procedure of Postponement of the Dates for Elections of Legislative (Representative) Bodies of State Power of the Subjects of the Russian Federation," the Law of the Perm Region of February 21, 1996 "On the Elections of Deputies of the Legislative Assembly of the Perm Region" and Para. 2, Article 5 of the Law of the Vologda Region of October 17, 1995 "On the Procedure of Rotation of Deputies of the Legislative Assembly of the Vologda Region," as amended on November 9, 1995.

The case has been reviewed in response to the petitions submitted by the State Duma of the Federal Assembly of the Russian Federation and the Legislative Assembly of the Nizhny Novgorod Region requesting verification of constitutionality of Decrees No. 951 and No. 315 of the President of the Russian Federation and the petitions submitted by the regional courts of the Perm and Vologda regions requesting verification of constitutionality of provisions of the said regional laws.

In the opinion of the State Duma, Decree No. 315 of the President of the Russian Federation violates Articles 3 (Para. 4), 32 (Paras. 1 and 2) and Article 80 (Para. 2) of the Constitution of the Russian Federation. The regional courts, proceeding from the same grounds, challenge the constitutionality of regional laws adopted, in their view, in accordance with Decrees Nos. 951 and 315 of the President of the Russian Federation contradicting the Constitution of the Russian Federation. The Legislative Assembly of the Nizhny Novgorod Region, on the contrary, requests confirmation of constitutionality of the said decrees.

Since all the said petitions are related to the same subject, namely, the statutory right of the legislator of a subject of the Russian Federation to independently resolve the issue pertaining to the term of powers and setting dates for election of its legislative bodies, the Constitutional Court of the Russian Federation, pursuant to Article 48 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," has consolidated the cases associated with the said petitions in one proceeding.

Upon examination of the reports of judges-rapporteurs T.G. Morshchakova and N.V. Vitruk, explanations of the parties' representatives, opinions of the experts: Ye.I. Kozlova, Doctor of Law, A.A. Bezouglov, Doctor of Law, N.A. Bogdanova, Candidate of Law, A.Ye. Postnikov, Candidate of Law, comments of Yu.A. Kravtsov, first Deputy Chairman of the Constitutional Legislation and Judicial-Legal Issues Committee of the Federation Council, L.G. Alekhitcheva, Head of Section of the Central Election Commission of the Russian Federation, V.V. Glyantsev, judge of the Supreme Court of the Russian Federation, as well as documents and other materials, the Constitutional Court of the Russian Federation

Established as follows:

1. The petition submitted by the State Duma challenges the provisions of Decree of the President of the Russian Federation No. 315 of March 2, 1996 "On the Procedure of Postponement of the Dates for Elections of Legislative (Representative) Bodies of State Power of the Subjects of the Russian Federation" under which the date for holding regular elections of legislative bodies of the subjects of the Russian Federation shall be established in accordance with the procedure of formation and terms of powers of those bodies set forth in their respective legislation, while the operating legislatures shall preserve their powers until the newly elected bodies commence their work.

The State Duma asserts that the subjects of the Russian Federation should establish a system of bodies of state power in compliance with the Constitution of the Russian Federation and general principles of organization of representative and executive bodies of state power that are stipulated by the federal law and not by decrees of the President of the Russian Federation. According to the State Duma, the contested provisions of Decree No. 315 go beyond the scope of powers of the President of the

Russian Federation, as the subjects of the Russian Federation are entitled to independently determine the procedure of formation of their legislative (representative) bodies of state power and resolve issues pertaining to holding, postponement of dates and setting dates of elections.

Additionally, as claimed by the State Duma, Decree No. 315 violates the electoral rights of citizens recognized by the Constitution of the Russian Federation and the norms of international law, inasmuch as it invalidates the provision approved by Decree No. 1723 of the President of the Russian Federation of October 22, 1993 "On the Basic Principles of Organization of State Power in the Subjects of the Russian Federation," on the two-year term of powers of the legislative (representative) bodies of state power of the subjects of the Russian Federation elected on the basis of that provision.

2. The petition submitted by the Legislative Assembly of the Nizhny Novgorod Region requests confirmation of compliance with the Constitution of the Russian Federation of Decrees of the President of the Russian Federation No. 951 and No. 315.

Proceeding from the said Decrees, on March 19, 1996, the Legislative Assembly of the Nizhny Novgorod Region adopted a law of the Nizhny Novgorod Region "On the Basic Principles of Organization of the Legislative Assembly of the Nizhny Novgorod Region," that fixed a four-year term of powers of the Legislative Assembly, applicable also to the current convocation, and set next regular elections for March, 1998. The prosecutor of the Nizhny Novgorod Region lodged a protest against those decisions, describing them as a violation of the norms of the Constitution of the Russian Federation and the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" of December 4, 1994. The Legislative Assembly rejected the protest, proceeding from the fact that the contested provisions were consistent with Decrees of the President of the Russian Federation No. 951 and No. 315, and regarding them, in defiance of the prosecutor's opinion, valid and not conflicting with the Constitution of the Russian Federation.

Nonetheless, the prosecutor's protest rejected by the Legislative Assembly of the Nizhny Novgorod Region and his still pending application filed to the court of the Nizhny Novgorod Region demanding invalidation of the contested law, may not be viewed as officially adopted decisions of the body of state power that prevent application of both the regional law protested against by the prosecutor and the decrees of the President of the Russian Federation that served as the basis for that law. Meanwhile, that is an obligatory prerequisite for acceptability of a petition submitted to the Constitutional Court of the Russian Federation for verification of constitutionality of a regulatory act, which was the reason why the petition of the Legislative Assembly of the Nizhny Novgorod Region may not, pursuant to Para. 1, Article 85 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," be recognized acceptable.

3. The petition submitted by the court of the Perm Region and the petition submitted by the court of the Vologda Region that, apart from the norms of the regional laws, also challenged constitutionality of Decrees No. 951 and No. 315 of the President of the Russian Federation, that, as they had been accepted for considera-

tion, were recognized by the Constitutional Court of the Russian Federation acceptable, but only in so far as concerned verification of constitutionality of the provisions of the Law of the Perm Region "On the Elections of Deputies of the Legislative Assembly of the Perm Region" and Para. 2, Article 5 of the Law of the Vologda Region "On the Procedure of Rotation of Deputies of the Legislative Assembly of the Vologda Region" respectively, which provisions shall apply in reviewing cases in response to the complaints lodged by citizens (in the court of the Perm Region – by B.P. Sapin and A.D. Kouznetsov and in the court of the Vologda Region – by A.K. Golovantsev and A.M. Eskin) against violation of their electoral rights by extension, that is illegal in their view, of their powers by the Legislative Assemblies of the Perm and Vologda Regions.

As far as Decrees of the President of the Russian Federation No. 951 and No. 315 are concerned, the petitions submitted by the courts, by the implication of Article 101 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," shall not be acceptable – pursuant to Article 120 of the Constitution of the Russian Federation, courts of law shall independently establish illegality of acts, being inconsistent with the Constitution and law. Thus, in the given case, it is required to verify constitutionality of only one of the two decrees contested in the petition of the State Duma – Decree No. 315 of the President of the Russian Federation of March 2, 1996 "On the Procedure of Postponement of the Dates of Elections of Legislative (Representative) Bodies of State Power of the Subjects of the Russian Federation."

4. Decree of the President of the Russian Federation No. 315 issued as a follow-up to Decree No. 951 of the President of the Russian Federation, deals with the issues of ensuring democratic, periodic elections in the process of formation of representative bodies of state power of the subjects of the Russian Federation. Those issues are directly related to the foundations of the constitutional system, namely, the right of citizens to participate in the management of the affairs of the state, to elect and be elected to bodies of state power; delineation of scopes of jurisdiction between the Russian Federation and the subjects of the Russian Federation and to the status of the subjects of the Russian Federation. Under the given part, they are treated as general principles of organization of the system of bodies of state power the establishment of which falls within the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation (Clause "o", Para.1, Article 72 of the Constitution of the Russian Federation).

Relations in the sphere of the joint jurisdiction are regulated by federal laws and the laws of the subjects of the Russian Federation adopted in compliance with those federal laws (Para. 2, Article 76 of the Constitution of the Russian Federation). Notably, the absence of a federal law does not prevent the subjects of the Russian Federation from passing their own laws to regulate the procedure for establishment, terms of powers and calling elections of their legislative bodies. At the same time, the development of a statutory base that would be consistent with the Constitution of the Russian Federation and federal laws is an essential condition for holding such elections. Only given such statutory base and following its own legislation, a subject of the Russian Federation shall have the right to set by itself the date for elections.

That position of law used as a basis by the President of the Russian Federation in issuing two Decrees (No. 951 and No. 315) in view of incompleteness of the process of formation within the subjects of the Russian Federation of the legislative electoral base, is also formulated in the Decision of the Constitutional Court of the Russian Federation of April 30, 1996 in the case on verification of constitutionality of Clause 2 of Decree No. 1969 of the President of the Russian Federation of October 3, 1994 "On Measures to Strengthen the Uniform Executive System in the Russian Federation" and of Clause 2.3 of the Regulations "On the Head of Administration of a Krai, Region, City of Federal Subordination, the Autonomous Region, Autonomous Districts of the Russian Federation" approved by the said Decree.

Availability of a legal base as a prerequisite for holding elections in itself is important as a general principle of organization of state power that may be inferred from certain constitutional norms (Para. 2, Article 5; Para. 2, Article 11; Para. 2, Article 66; Para. 1, Article 77).

On the basis of the aforesaid, Decree No. 315 of the President of the Russian Federation deals with the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation and, therefore, it does not violate constitutionally mandated delineation of powers along the vertical line (Para. 2, Article 76 of the Constitution of the Russian Federation). Nor does it infringe upon the sphere of jurisdiction of the subjects of the Russian Federation; on the contrary, it proceeds from the assumption that the subjects of the Russian Federation shall set the date for elections "in accordance with the procedure of formation and terms of powers of their legislative body established under the legislation of a respective Russian Federation subject."

At the same time, legislation of the subjects of the Russian Federation in that sphere must conform to the foundations of the constitutional system and general principles of organization of representative and executive bodies of state power established by the federal law (Para. 1, Article 77 of the Constitution of the Russian Federation). No such law has been adopted as of today. At the same time, the Decision of the Constitutional Court of the Russian Federation of April 30, 1996 mentioned above, provided that issuance of decrees by the President of the Russian Federation to fill in the gaps in legal regulation of issues to be resolved by legislative acts ensues from his constitutional powers associated with ensuring implementation of constitutional injunctions and the concerted functioning of bodies of state power (Article 80) and does not violate delineation of the terms of reference between bodies of state power at the federal level (horizontally) prescribed by the Constitution of the Russian Federation, unless those decrees contravene the Constitution of the Russian Federation and federal laws and provided their operation in time is limited by a period until enactment of relevant acts by the legislator.

Such temporary limitation of operation of the decrees issued by the President of the Russian Federation as applied to organization of elections within the subjects of the Russian Federation is formulated in Decree No. 951. Decree No. 315 did not change this provision and thus, it continues to be valid in respect of all the issues that have been resolved in that sphere by the President of the Russian Federation in the absence of a federal law.

5. The content of Decree of the President of the Russian Federation No. 315, in fact, is confined to recognition of powers of the subjects of the Russian Federation ensuing from the Constitution of the Russian Federation to independently form their legislative bodies, fix terms of their powers and set election dates and to the statement of a generally accepted rule according to which legislative (representative) bodies of state power shall preserve their powers until the newly elected bodies of state power commence their work. Concerning that part, Decree No. 315 does not introduce or enforce any new legal provisions but proceeds from existing legal regulations.

New legislative content is imparted to only such injunctions of Decree No. 315 that invalidate the norms of pre-constitutional Decree No. 1723 of the President of the Russian Federation, intended at the time of adoption to ensure, in the absence of the federal laws and legislation of the subjects of the Russian Federation, a reform of bodies of state power. Those norms provided for only temporary regulation for the period of constitutional reform that was to ensure a transition to a situation when the subjects of the Russian Federation should independently establish a system of their bodies of state power in accordance with the foundations of the constitutional system, proceeding from their new constitutional legal status ensuing from a Federative Agreement and recognized thereafter by the Constitution of the Russian Federation. Decree No. 1723 resolved the issues that were thereafter either partially settled under the federal Constitution or were to become a subject of subsequent constitutional (statutory) legislation of the subjects of the Russian Federation.

The adoption of constitutions and charters within the subjects of the Russian Federation, *de facto* and *de jure* superseding the temporary provisions of Decree No. 1723 marked the termination, as far as the powers of the subjects of the Russian Federation to form their own legislative bodies were concerned, of a transitional period which, pursuant to that Decree and in the sphere outside the general principles of organization of state power, i.e. within the jurisdiction of the subjects of the Russian Federation, was subject to federal injunctions, including legal acts issued by the President of the Russian Federation.

Decrees of the President of the Russian Federation No. 951 and No. 315, in fact, led the legislative bodies of the subjects of the Russian Federation to conclude that restrictions imposed for a transitional period with respect to their powers to independently establish a system of their own bodies of power, shall not apply if and when they have developed their own electoral legal base.

Thus, the act of a federal level has confirmed priority of acts issued by the subjects of the Russian Federation in the sphere of their exclusive competence, which clearly follows from Para. 6, Article 76 of the Constitution of the Russian Federation, under which, in case of discrepancy between a federal law and a regulatory act of a subject of the Russian Federation on issues pertaining to its jurisdiction, the latter shall prevail.

Decree No. 315 that invalidates the norms of Decree No. 1723 setting, for a transitional period, a shorter, as compared to previous regulation, two-year term of powers of legislature in the subjects of the Russian Federation, proceeds from the assumption that the calling of elections, including postponement of their dates,

falls within the competence of the subjects of the Russian Federation and shall be effected only in accordance with the procedure established under their respective legislation. In its content, Decree No. 315 is aimed at ensuring compliance with that procedure and, therefore, may not serve as justification for the situation when elections are called or their dates are postponed in contravention of the Constitution of the Russian Federation and constitutions (charters) or electoral laws prevailing in the subjects of the Russian Federation. Nor may it be used to justify any intentional delays in preparations for and adoption of electoral laws or failure to call elections, unless evidence is available of the presence of objectively valid reasons for such a situation.

On the other hand, the issuance of Decrees No. 951 and No. 315 by the President of the Russian Federation substantiated by "incompleteness of the process of formation in a number of the subjects of the Russian Federation of a legislative base essential for the holding of elections and functioning of the bodies of state power of the subjects of the Russian Federation" was to contribute to acceleration and completion of the process of regional law-making in that sphere, as all electoral activities within the subjects of the Russian Federation were timed so as to be completed in December, 1997. Following the issuance of Decrees Nos. 951 and 315, the practice of delaying the process of establishing a legal base for elections and failure to bring the electoral laws of the Subjects of the Russian Federation in line with the Constitution of the Russian Federation, federal laws and constitutions and charters of the Subjects of the Russian Federation should also be regarded as non-compliance with those decrees.

At the same time, setting tentative time limits as specified under the Decision of the Constitutional Court of the Russian Federation of May 30, 1996 in the case on verification of constitutionality of Clause 1, Article 58 and Clause 2, Article 59 of the Federal Law of August 28, 1995 "On the General Principles of Organization of Local Self-Government in the Russian Federation" (as amended on April 22, 1996) "does not infringe upon the right of the bodies of state powers of the subjects of the Russian Federation... to fix specific dates for elections but merely set a specific time frame for implementation of that right which serves as a guarantee of electoral rights of citizens."

Independent appointment, within certain time limits, by the subjects of the Russian Federation of the date for elections in accordance with the procedure prescribed under their respective laws, may not be regarded as violation of electoral rights of citizens.

Violations of electoral rights, on the other hand, may occur as a result of deviations from the law or a failure, in defiance of the legislation, to call elections or hold elections on the basis of unconstitutional or unlawful acts. Decree No. 315, similarly to Decree No. 951, is aimed, among other things, at excluding such deviations in the course of electoral procedures and at creating conditions that would enable citizens to exercise their electoral rights.

Identification and elimination of instances of violation of constitutions (charters) and electoral laws of the subjects of the Russian Federation is put within the competence of courts of general jurisdiction. They are entitled not only to reverse unlawful law-enforcement decisions but also to invalidate statutory injunctions of law that run

counter to the federal law, basic constituent acts or legislation of the subjects of the Russian Federation (unless it has been put within the competence of their constitutional or statutory courts).

6. The tentative time limits for holding regular elections of legislative bodies of the subjects of the Russian Federation specified by Decrees No. 951 and No. 315 of the President of the Russian Federation do not contradict the notions of periodicity of elections typical of both Russian and world practice. Such periodicity is generally achieved by means of four- or five-year terms of power set for elective bodies of state power. In the Russian Federation, that is secured through regulation exercised both at the federal level with elective bodies being elected for four-year terms and at the level of most of its subjects.

One should not disregard either the current traditions existing therein that are based on pre-constitutional norms, which conforms to Clause 2, Section 2 of the Constitution of the Russian Federation. In particular, the Law of the Russian Federation "On the Krai, Region Soviet of People's Deputies and the Krai, Region Administration" of March 5, 1992 specified that representative bodies shall be elected for a five-year term (Article 23). That norm may be constitutionally constructed as setting a maximum possible length of the term of powers of representative bodies within the subjects of the Russian Federation. The admissibility of such interpretation ensues from Decree No. 2266 of the President of the Russian Federation "On Operation of Legislation of the Russian Federation on the Bodies of State Power of Krai, Regions, Cities of Federal Subordination, the Autonomous Regions and Autonomous Districts of the Russian Federation" of December 22, 1993. That Decree invalidated all other provisions of the said Law, save the norm on the terms of powers. Besides, for a period of gradual constitutional reform, no reduced terms of legislature as compared with the preceding period, were fixed in such subjects of the Russian Federation as republics, as it was done in accordance with Decree No. 1723 in respect of elections of legislative bodies of all other subjects of the Russian Federation that had no electoral legislation of their own.

However, as regards kraies, regions, federal cities, the autonomous regions and autonomous districts, proceeding from the Constitution of the Russian Federation and Decree No. 315, temporary two-year limitation of the term of their representative bodies shall not be extended any further in respect of next regular elections held in compliance with the legislation of a subject of the Russian Federation, when such legislation provides for other periodicity and other election dates. In that connection, in the absence of a new federal regulation regarding maximum terms of powers of representative bodies of the Subjects of the Russian Federation, the courts of law shall, when examining complaints against invalidity of regional elections, take into consideration the operation of pre-constitutional norms establishing such terms. It may be excluded upon the adoption of other federal acts, specifically, the law on the general principles of organization of representative and executive bodies of state power of the subjects of the Russian Federation.

7. The right of citizens to participate in free, periodic elections, that is recognized under Article 25 (Clause "b") of the International Covenant on Civil and Political Rights, shall, for the purpose of identifying its constitutional meaning, be considered in interrelation with the right of the subjects of the Russian Federation

to independently establish the system of their bodies of state power proceeding from the general principles of their organization as defined by federal laws or ensuing directly from the constitutional provisions, primarily, from the foundations of the constitutional system.

Proclaiming as part of those fundamental principles, the principle of the power of the people, the Constitution of the Russian Federation provides for neither electoral system, nor specific electoral procedures as applied to elections within the subjects of the Russian Federation. That is the subject of their specific charters or electoral laws addressing such issues as terms of powers of elective bodies, procedure of appointment and postponement of elections. Such regulation within the subjects of the Russian Federation must be consistent with the constitutionally mandated principles of organization of representative bodies of state power and take into account the guarantees of citizens' electoral rights envisaged at the federal level.

Proceeding from the Constitution of the Russian Federation, representative bodies in the subjects of the Russian Federation shall be formed on the basis of their own electoral laws, authorized bodies of the Russian Federation and the subjects of the Russian Federation shall ensure consistency of the general principles of formation of the said representative bodies with the federal Constitution, and federal laws and legitimate electoral procedures instituted by a subject of the Russian Federation may not be violated. Anything to the contrary would inevitably lead to infringement upon the right of citizens to participate in free, democratic and periodic elections. That implies that the legislator of a subject of the Russian Federation is charged with the constitutional obligation to exercise in a timely manner its own legal regulation in respect of the procedure of formation of its legislative bodies, to bring its electoral laws, as concerns issues of the joint jurisdiction with the Russian Federation, in compliance with federal laws (Article 5, Para. 2; Article 76, Paras. 4 and 5; Article 77, Para. 1) ensuring protection of constitutional rights of citizens, including their electoral rights (Article 32; Clause "b", Para. 1, Article 72).

With a view to ensure the right of citizens to take part in free, periodic elections, the federal legislator is entitled to set, as a general principle, maximum terms of powers in respect of elective bodies of the subjects of the Russian Federation which is intended to prevent any deviations from actual periodicity of elections providing for alternation of legislatures in accordance with the voters' will at the dates fixed by law at federal and regional levels. However, establishment of a specific term of powers, in any case, remains a prerogative of the legislator of a subject of the Russian Federation.

Importantly, periodicity of elections shall be considered disrupted both in the event of refusal of the legislator of a subject of the Russian Federation to observe the maximum term of powers fixed by federal acts and a failure of the legislator of a subject of the Russian Federation, when calling elections, to comply with the specific dates set on its own as a body authorized to exercise such regulation.

The absence of required electoral norms in the charters and laws of the subjects of the Russian Federation and their inconsistency with the federal Constitution and federal laws detected in some cases by duly authorized agencies may create an obstacle to holding elections and affect electoral dates. Ignoring those objective factors, i.e. holding elections in the absence of a legal base that is consistent with the

Constitution of the Russian Federation and federal laws, like an unjustified delay of elections, may jeopardize the guarantees of the universal and equal suffrage and make it impossible to identify the genuine will of voters. The right of citizens to elect its representatives to bodies of state power and participate in management of state affairs may also be violated by automatic disbandment of representative bodies set up for a transitional period upon the expiry of a two-year term of powers, unless they are replaced on the basis of legal acts of the subjects of the Russian Federation that are consistent with the Constitution of the Russian Federation and federal laws.

8. Establishing non-conformity between the federal laws and laws of the subjects of the Russian Federation which have resulted in violation of electoral rights of citizens and settling complaints submitted by citizens against actions (decisions) of the bodies applying electoral legislation is entrusted to the courts of law. However, in eliminating such violations in each specific case, the court of law shall have no right to recognize unconstitutional and, therefore, not any longer valid, the norms of the charters and electoral laws adopted on the basis of the Constitution of the Russian Federation, verification of whose constitutionality falls within the exclusive competence of the Constitutional Court of the Russian Federation (Article 3 of the Law of the Russian Federation of April 27, 1993 "On Appealing Actions and Decisions Infringing Upon the Rights and Liberties of Citizens in the Court of Law," Articles 120, 125 of the Constitution of the Russian Federation). Those acts may be invalidated either by decision of the legislator itself or by a ruling of the Constitutional Court of the Russian Federation that, in so doing, shall refrain from verifying compliance with the guarantees of electoral rights of citizens specified under the federal law, since such verification falls within the competence of other courts, and shall be authorized in plenary session only to establish inconsistency with the federal Constitution of the norms of the charters of the subjects of the Russian Federation.

Nor shall the Constitutional Court of the Russian Federation resolve the issue as to which norms of electoral legislation shall be applicable in each specific case, including in the event of competition and collision between the injunctions of law at federal and regional levels. Such issues shall be resolved by the law-enforcer whose conclusions, as to lawfulness and validity, shall be supervised by courts of law.

At the same time, approaches to be taken in assessing the constitutionality of electoral laws of the subjects of the Russian Federation specified by the Constitutional Court of the Russian Federation in connection with the petitions submitted by the regional courts shall be binding upon those participants in the electoral process in so far as they are directly related to the constitutional provisions and thus, to the constitutional principles of organization of representative bodies of power. This follows from the exclusive powers of the Constitutional Court of the Russian Federation to construe the Constitution of the Russian Federation.

9. In accordance with the Law of the Perm Region "On the Elections of Deputies of the Legislative Assembly of the Perm Region" of February 21, 1996 elections were set for December, 1997. Thus, it actually invalidated a transitional provision regarding the two-year term of legislature, for which term, pursuant to Decree of the President of the Russian Federation No. 1723 and the Decision of the Lower Council of the

Soviet of People's Deputies of the Perm Region of December 17, 1993, the Legislative Assembly of the Perm Region was elected in March, 1994. The Legislative Assembly maintained that in view of the adoption (on October 6, 1994) of the Charter of the Perm Region and Decree of the President of the Russian Federation No. 951 it was authorized to take a decision to call elections.

Such position is in conformity with the fact that the Charter of the Region, as compared with the former transitional electoral norms, has more legal force as a basic legal document in respect of formation of a representative (legislative) body of a subject of the Russian Federation and that following its adoption, the temporary pre-constitutional legal regulation lost its force both at the federal and regional level; that regulation, being inconsistent with the effective federal Constitution, was not to apply any longer. That clearly follows from Articles 66 (Para. 2), 72 (Clause "o", Para. 1), 73, 76 (Para.6) and 77 (Para.1) and Clause 2, Section 2 of the Constitution of the Russian Federation.

The elections being set for December, 1997 in accordance with the Law of the Perm Region in fact, approved a four-year periodicity provided by the Charter of the Region and therefore, by itself, would not be an infringement upon the right of citizens to take part in periodic, democratic elections. A violation of that right may occur as a result of deviations from lawful electoral procedures, specifically in instances when elections are called arbitrarily, in the absence of a due legal base, when the maximum framework for determining a term of powers of representative bodies established in federal acts are exceeded or when the terms of powers of those bodies fixed in the legislation of a subject of the Russian Federation are modified in defiance of the procedure of their formation prescribed by the charter or law. Such facts are always associated with infringement of the right of citizens to elect and be elected to representative (legislative) bodies in the course of free, democratic and periodic elections in accordance with the procedure established by law, as provided for by Article 32 of the Constitution of the Russian Federation.

Pursuant to the Charter of the Perm Region, the Legislative Assembly shall be elected for a four-year term (Clause 1, Article 27). However, the law regulating the procedure of enactment of the Charter of the Perm Region establishes that the given norm shall take effect only after election of a new composition of the Legislative Assembly of the Perm Region, unless otherwise is prescribed by the legislation of the Russian Federation. Thus, it was provided that elections of the Legislative Assembly of the Perm Region shall be held upon the expiry of a two-year term of legislature, i.e. in March, 1996.

In accordance with Article 42 of the Charter of the Perm Region, the law on its entry into force shall be adopted by the same procedure as the Charter itself – by a qualified majority vote of no less than two thirds of the elected deputies. It can be described as transitional provisions to the Charter and, consequently, by its legal force, it enjoys a priority over other regional legislation (Para. 2, Article 5 of the Constitution of the Russian Federation), including the contested law on calling elections.

The fact of non-conformity of the regional law that scheduled the elections for December, 1997, with the norms on entry into force of the Charter of the Perm

Region makes it possible to recognize the contested regional law as unconstitutional, since it violates the legitimate electoral procedures and, consequently, fails to ensure constitutionally recognized electoral rights of citizens (Article 32 of the Constitution of the Russian Federation) the procedure for implementation of which was earlier specified by applicable regional acts of a higher level.

At the same time, the petition lodged by the court of the Perm Region pointed out that the norm according to which a four-year term of legislature recognized under the Charter of the Perm Region shall be applicable after election of a new Legislative Assembly of the Perm Region, was established as an amendment to the law adopted simultaneously with the Charter under which all norms of the Charter were to enter force upon publication of the law. The given law, in as much as it relates to the entry into force of a norm on a four-year term of the Legislative Assembly of the Perm Region, was invalidated by the Decision of the court of the Perm Region of March 9, 1995 as being inconsistent with the Constitution of the Russian Federation, specifically, with its Article 3. The said court decision made the regional legislator to make amendments to the law on entry into force of the Charter of the Region, although the regional court, having invalidated the law in its initial version as inconsistent with the federal Constitution, had clearly exceeded its competence established under the Constitution of the Russian Federation and federal laws.

10. The Legislative Assembly of the Vologda Region consisting of 15 deputies was elected in March, 1994, for a two-year term, pursuant to Decree of the President of the Russian Federation No. 1723 and on the basis of Regulations "On the Basic Principles of Organization of State Power in the Vologda Region" and Decision of the Administration of the Vologda Region No. 670 of December 16, 1993 "On the Elections of the Duma of the Vologda Region" (at the first meeting following the elections the Duma was renamed as the Legislative Assembly).

The Charter of the Vologda Region of September 14, 1995 provided for an increase of the number of deputies up to 30, a four-year term of the Legislative Assembly and its formation on the principle of rotation by electing 15 deputies every two years (Para. 2 and Para. 3, Article 44). The Charter of the Vologda Region became effective immediately following its adoption (Article 107 of the Charter, Decision of the Legislative Assembly of the Vologda Region "On Adoption of the Charter of the Vologda Region"); in keeping with that Charter and by the Decision of the Legislative Assembly of February 25, 1996 they held the elections to elect half of the number of deputies stipulated by the Charter.

In accordance with the Law of the Vologda Region of October 17, 1995 "On the Procedure of Rotation of Deputies of the Legislative Assembly of the Vologda Region" (Article 5 as amended by the law of November 9, 1995), the elections of the remaining 15 deputies, in connection with the rotation of a half of the deputy corps, were scheduled for March, 1998. That law is contested by the Vologda regional court in the given case as violating Articles 3, 19 and 32 of the Constitution of the Russian Federation, i.e. as restricting the equal right of citizens to participate in implementation of state power and to elect and to be elected to representative bodies.

Pursuant to Articles 72, 73, 76 (Para. 2 and Para. 4) and 77 (Para. 1) of the Constitution of the Russian Federation, the legislator of a subject of the Russian

Federation shall be entitled to establish its own legal regulation determining the procedure for election of deputies of a legislative (representative) body of state power, including specific features of realization during a transitional period of the principle of rotation of the deputy corps accounted for by a regional Charter and regional law. In the absence of a federal law on the general principles of organization of representative and executive bodies of state power this prerogative of the legislator of a subject of the Russian Federation may be limited only by the provisions expressly stipulated under the Constitution of the Russian Federation.

In resolving the said issues, the subjects of the Russian Federation shall meet the requirement ensuing from the constitutional provisions to the effect that a representative body shall be formed on the basis of their own charter and laws, without deviations from the electoral procedure and terms of powers of that body established therein and in compliance with the general injunctions regarding the maximum term of legislature.

The contested law of the Vologda Region complies with the above-listed requirements. Moreover, the procedure of rotation established by the Law, providing for a twofold increase of the number of deputies of the Legislative Assembly of the Vologda Region, inclusion in their number, alongside with earlier elected deputies, of the same number of new deputies elected by the entire population of the Region, holding regular elections and calling next regular elections on the basis of the Charter of the Vologda Region within the timeframe guaranteeing that the powers of every deputy are equally limited by a four-year term, may not be interpreted as a violation of the right of citizens to take part in periodic elections of a representative body of power or a violation of the principle of their equality in respect of electoral rights.

Consequently, the Law of the Vologda Region under review, in so far as it affects the provisions of a constitutional level, is not at variance with the Constitution of the Russian Federation.

Other issues pertaining to electoral procedures are not among those that have been resolved under constitutional norms. The charters and electoral laws of the subjects of the Russian Federation accounting for those procedures, have superseded the acts of executive authorities intended for a transitional period that were temporarily in force in that sphere. By their legal force, they have a priority over those temporary acts, since they were adopted by the legislative bodies of the subjects of the Russian Federation in compliance with their constitutional powers (Para. 6, Article 76 of the Constitution of the Russian Federation). The regulation effected by the legislator of the subjects of the Russian Federation in respect of electoral procedures to the extent relating to the part not resolved under the Constitution of the Russian Federation, shall not be subject to verification by the Constitutional Court of the Russian Federation.

Proceeding from the above and following Para. 1, Article 71; Articles 72, 74, 75, 87 and 104 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," the Constitutional Court of the Russian Federation.

Decided as follows:

1. It shall be recognized that Decree of the President of the Russian Federation

No. 315 of March 2, 1996 "On the Procedure of Postponement of the Dates for Elections of the Legislative (Representative) Bodies of State Power of the Subjects of the Russian Federation" be consistent with the Constitution of the Russian Federation.

2. Pursuant to Article 68 and Para.1, Article 85 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" the proceedings opened in response to the petition submitted by the Legislative Assembly of the Nizhny Novgorod Region requesting confirmation of constitutionality of Decrees of the President of the Russian Federation No. 951 of September 17, 1995 "On the Elections of Bodies of State Power of the Subjects of the Russian Federation and Bodies of Local Self-Government" and No. 315 of March 2, 1996 "On the Procedure of Postponement of the Dates for Elections of Legislative (Representative) Bodies of State Power of the Subjects of the Russian Federation" shall be terminated, as the petition in question is not acceptable pursuant to the requirements of the said federal constitutional law.

3. It shall be recognized that the Law of the Perm Region of February 21, 1996 "On Elections of Deputies of the Legislative Assembly of the Perm Region," as violating legitimate electoral procedures, be inconsistent with the Constitution of the Russian Federation, its Articles 5 (Para. 2), 32 (Para. 2) and 72 (Clause "b", Para. 1). The said law shall, pursuant to Para. 3, Article 79 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," be invalidated upon adoption of this Decision.

4. It shall be recognized that the provision of Para. 2, Article 5 of the Law of the Vologda Region of October 17, 1995 "On the Procedure of Rotation of Deputies of the Legislative Assembly of the Vologda Region" (as amended by the law of November 9, 1995) be consistent with the Constitution of the Russian Federation, inasmuch as it realized the constitutional power of a subject of the Russian Federation to effect its own legal regulation determining the procedure of formation of a legislative body of state power, including specific features of the procedure of rotation of deputies, substantive assurance of the right of citizens to take part in periodic elections in the procedure established by law and in compliance with the constitutional principle of equality in respect of electoral rights.

5. In accordance with Para. 1 and Para. 2, Article 79 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," this Decision shall be final, shall not be subject to appeal and shall be effective immediately following its proclamation and shall be applied directly.

6. In accordance with Article 78 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," this Decision shall be immediately published in the *"Sobraniye zakonodatelstva Rossiiskoi Federatsii"* (Collection of Legislation of the Russian Federation) and the "Rossiyskaya Gazeta," other official outlets of the bodies of state power of the Nizhny Novgorod, Vologda and the Perm Regions. This Decision shall also be published in the *"Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii"* (Bulletin of the Constitutional Court of the Russian Federation).

Dissenting opinion

of N. V. Vitruk, judge of the Constitutional Court of the Russian Federation in

the Case on Verification of Constitutionality of Decree No. 315 of the President of the Russian Federation of March 2, 1996 "On the Procedure of Postponement of the Dates for Elections of the Legislative (Representative) Bodies of State Power of the Subjects of the Russian Federation," of the Law of the Perm Region of February 21, 1996 "On Elections of Deputies of the Legislative Assembly of the Perm Region" and of Para. 2, Article 5 of the Law of the Vologda Region of the October 17, 1995 "On the Procedure of Rotation of Deputies of the Legislative Assembly of the Vologda Region" as amended on November 9, 1995

The Constitutional Court of the Russian Federation was obliged, pursuant to the requirements of Para. 2, Article 74 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," to verify constitutionality of Decree No. 315 of the President of the Russian Federation of March 2, 1996 "On the Procedure of Postponement of the Dates for Elections of the Legislative (Representative) Bodies of State Power of the Subjects of the Russian Federation," by assessing both the literal meaning of the act under review and the implication imparted thereto by official and other interpretation or by the established law-enforcement practice and proceeding from the role it plays within the system of legal acts.

Decree No. 315 of the President of the Russian Federation of March 2, 1996 "On the Procedure of Postponement of the Dates for Elections of the Legislative (Representative) Bodies of State Power of the Subjects of the Russian Federation" is, by its content, a detailed statement of and elaboration upon Decree No. 951 of September 17, 1995 of the President of the Russian Federation "On the Elections of Bodies of State Power of the Subjects of the Russian Federation and Bodies of Local Self-Government." It also specifies the procedure for application of the rule on the two-year term of powers of legislative (representative) bodies of state power of the subjects of the Russian Federation, established by Decree No. 1723 of the President of the Russian Federation of October 22, 1993 "On the Basic Principles of Organization of State Power in the Subjects of the Russian Federation." That indeed accounts for the statutory nature of Decree of the President of the Russian Federation No. 315 of March 2, 1996 and its binding character upon the subjects of the Russian Federation.

The two Decrees of the President of the Russian Federation, No. 951 of September 17, 1995 and No. 315 of March 2, 1996, have a common point in the sense that both of them refer to the provision stipulating that "Decree No. 1723 of October 22, 1993 of the President of the Russian Federation "On the Basic Principles of Organization of State Power in the Subjects of the Russian Federation" to the extent relating to the term of powers of legislative (representative) bodies of the subjects of the Russian Federation shall not apply" while decisions to postpone the dates of elections of legislative (representative) bodies of the subjects of the Russian Federation are taken. Pursuant to Decree of the President of the Russian Federation No. 951 of September 17, 1995 "On the Elections of Bodies of State Power of the Subjects of the Russian Federation and Bodies of Local Self-Government," the elections of legislative (representative) bodies of the subjects of the Russian Federation whose two-year terms of powers expire in 1995 and 1996, shall be held in December 1997. Moreover, the President of the Russian Federation also recommended that the legislative (rep-

representative) bodies of the subjects of the Russian Federation that had earlier scheduled elections of representative (legislative) bodies of respective subjects of the Russian Federation for 1995 or 1996, take a decision to postpone the elections till June, 1997, provided they earlier had not specified the term of powers of a representative (legislative) body of respective subjects of the Russian Federation.

By virtue of Decree of the President of the Russian Federation No. 315 of March 2, 1996, the elections of legislative (representative) bodies of the subjects of the Russian Federation whose two-year term of powers has already expired, shall not necessarily be held in June or December, 1997. It establishes that in postponing the dates for elections of legislative (representative) bodies of state power of the Subjects of the Russian Federation whose term of powers expires in 1996, "the date for holding elections may be set by the bodies of state power of a subject of the Russian Federation in conformity with the procedure of formation and terms of powers of a legislative (representative) body of state power of a subject of the Russian Federation accounted for by the legislation of the subject of the Russian Federation." The given provision implies that it is the authority of the Subjects of the Russian Federation to establish terms of powers of their legislative (representative) bodies of state power and set election date in accordance with the established terms of those powers, i.e. the legislative (representative) bodies of state power of the subjects of the Russian Federation extend their own terms of powers merely by virtue of the law adopted thereby without an appropriate mandate therefore from the voters (the people). The practice of postponement of election dates, i.e. of extension of powers by the legislative (representative) bodies of state power of the Subjects of the Russian Federation without an appropriate voters' mandate therefore carefully follows the guidelines of Decree of the President of the Russian Federation No. 315 of March 2, 1996.

That is evidenced by direct references made to the said Decrees of the President of the Russian Federation as the legal ground for relevant laws adopted by the Legislative Assemblies of the Nizhny Novgorod, Perm and Vologda Regions that became a subject of examination of the Constitutional Court of the Russian Federation.

Thus, on March 19, 1996, the Legislative Assembly of the Nizhny Novgorod Region adopted the Law "On the Basic Principles of Organization of the Legislative Assembly of the Nizhny Novgorod Region" that provided for a four-year term of powers of the Legislative Assembly of the given region, extended it to the current convocation of the Assembly and scheduled the next regular elections for March, 1998. The Prosecutor of the Nizhny Novgorod Region lodged a protest against the decision to postpone election dates, having qualified it as a violation of the norms of the Constitution of the Russian Federation and 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 Legislative Assembly of the Nizhny Novgorod Region rejected the prosecutor's protest, proceeding from the fact that the protested provisions of the Law of the Nizhny Novgorod Region were in compliance with Decrees of the President of the Russian Federation, No. 951 of September, 1995 and No. 315 of March 2, 1996, regarding them, in defiance of the prosecutor's opinion, not conflicting with the Constitution of the Russian Federation. At the same time, the Legislative Assembly of the Nizhny Novgorod Region submitted a petition to the Constitutional Court of the Russian Federation requesting confirmation of compli-

ance of the said Decrees of the President of the Russian Federation with the Constitution of the Russian Federation.

The prosecutor of the Nizhny Novgorod Region submitted an application to the court of the Nizhny Novgorod Region requesting invalidation of the protested provisions of the Law of the Nizhny Novgorod Region. The prosecutor's actions of that sort may not be viewed as a decision of the federal body of state power that prevents application and implementation of the contested law as being inconsistent with the Constitution of the Russian Federation (which was the grounds for dropping the proceedings in response to the petition submitted by the Legislative Assembly of the Nizhny Novgorod Region), however, the uncertainty as to whether or not the Law of the Nizhny Novgorod Region is consistent with the Constitution of the Russian Federation still remains. Therefore, by virtue of the procedural economy principle, the petition of the Legislative Assembly of the Nizhny Novgorod Region should have been reviewed on its merits.

The duration of activity of a legislative (representative) body of a subject of the Russian Federation elected by the population is limited by a certain period ensuring, on the one hand, the effective functioning of that body and on the other hand, its periodic rotation which guarantees a truly representative character of an elective body. Succession and continuity in exercising state power is achieved in that case thanks to the fact that a legislative (representative) body of state power of a subject of the Russian Federation, prior to the expiration of the term of its powers, develops an appropriate legal base, calls and administers elections of a new membership of a legislative (representative) body of state power. As this takes place, naturally, legislative (representative) bodies of state power of the subjects of the Russian Federation preserve their powers until newly elected legislative (representative) bodies of state power have started their work.

Extension of terms of powers of legislative (representative) bodies of state power of the subjects of the Russian Federation, including by setting the date for elections after expiry of terms of their powers is allowed only in exceptional cases stipulated by the norms of identical legal force. Such exceptional cases may include: extension of the powers of a legislative (representative) body of state power of a subject of the Russian Federation by decision taken by the voters themselves at a referendum, when in accordance with the Constitution or under the law on referendum such question may be put to the vote (see, for instance, Clause 11, Section 2, "Conclusive and Transitional Provisions" of the Constitution of the Republic of Mordovia); establishing a new system of bodies of state power in compliance with the requirement of continuity of their organization and activity, when the operating bodies of state power preserve their powers until the formation of new bodies of state power or until the commencement of their work or until recognition of their powers and election of their governing bodies (see, for instance, Para. 2, Article 117 of the Constitution of the Republic of Buryatia, Article 124 of the Charter of the Chita Region); imposition, by law, of a state of emergency or martial law or any other legal regime caused by extraordinary circumstances (restoration of the constitutional law and order on some part of the territory of the Russian Federation). The specific periods for which the powers of legislative (representative) bodies of the Subjects of the Russian Federation may be extended depend on the above-listed grounds for making such decisions. For instance,

in the event of imposition of a state of emergency, no elections of bodies of state power shall be held throughout the period of the state of emergency (Para. 2, Article 38 of the RSFSR Law "On the State of Emergency").

The provisions of Decree of the President of the Russian Federation No. 315 of March 2, 1996, along with the practice of its realization by legislative (representative) bodies of state power of respective subjects of the Russian Federation, run counter to the requirements of Paras. 1, 2 and 3, Article 3 and Paras. 1 and 2 of Article 32 of the Constitution of the Russian Federation. The constitutional system of the Russian Federation is based on the principle of the power of the people accounted for by Article 3 of the Constitution of the Russian Federation. Free elections are the supreme, direct expression of the power of the people. The periodic nature of free elections is secured by specifically fixed terms of powers of legislative (representative) bodies of state power. In accordance with Decree of the President of the Russian Federation No. 1723 of October 22, 1993, the term of powers of legislative (representative) bodies of state power of the subjects of the Russian Federation shall be two years for the duration of a transitional period. Before the expiration of the said term of powers, a new legislative (representative) body of state power of a subject of the Russian Federation shall be elected for such a term that is fixed in the charter of a respective krai, region, city of federal subordination, autonomous region or autonomous district. A legislative (representative) body may not independently extend the term of powers. Non-availability or incompleteness of an appropriate legislative base necessary to hold elections and form legislative (representative) bodies of state power of the subjects of the Russian Federation may not serve as justification of extension of the term of their powers. The measure undertaken by the President of the Russian Federation may be politically justified but it goes beyond the framework of law, the Constitution of the Russian Federation and legal acts. The efforts of the President of the Russian Federation could have been directed to influence respective subjects of the Russian Federation solely towards establishing a required legislative base.

Specific terms of powers of legislative (representative) bodies of the subjects of the Russian Federation shall be fixed thereby independently. The date for calling elections – a purely organizational and technical issue pre-determined by the term of operation of a legislative (representative) body of state power of a subject of the Russian Federation – shall fall within the exclusive competence of a subject of the Russian Federation.

The President of the Russian Federation had no authority to order that the legislative (representative) bodies of state power of the Russian Federation postpone the dates for elections of their new membership with regard to newly-established term of powers, i.e. to actually extend the term of powers of the former membership whose two-year term of powers had already expired. The President of the Russian Federation had no sufficient legal grounds as mentioned above to make such a decision.

Postponing the dates for elections after expiration of the term of legislature of a legislative (representative) body of state power of the Russian Federation makes it impossible to realize such most important form of direct democracy or power of the people as free elections. A legislative (representative) body of state power not duly replaced, has no mandate of the voters (the people), may be unable to adequately represent an alignment of social-political forces and voters' interests and, therefore, may

distort the very idea of popular representation that immediately follows from the principle of the power of the people embodied in Article 3 of the Constitution of the Russian Federation.

Extension of powers of legislative (representative) bodies of state power of a subject of the Russian Federation deprives the voters of the given subject of the Russian Federation of the possibility to take part in regular elections and thus, to implement their constitutional right to participate directly in the administration of state affairs (Para. 1, Article 32 of the Constitution of the Russian Federation), to elect and be elected to bodies of state power (Para. 2, Article 32 of the Constitution of the Russian Federation). Postponement of elections undermines the guarantees of electoral rights of citizens by virtue of their organizational and legal non-enforcement, since no elections are called following the expiry of the term of powers of a legislative (representative) body of state power of a subject of the Russian Federation.

Requirements of Paras. 1, 2 and 3, Article 3 and Paras. 1 and 2, Article 32 of the Constitution of the Russian Federation must be taken into consideration in assessment of the provisions of the Law of the Perm Region of February 21, 1996 "On Elections of Deputies of the Legislative Assembly of the Perm Region" and Para. 2, Article 5 of the Law of October 17, 1995 of the Vologda Region "On the Procedure of Rotation of Deputies of the Legislative Assembly of the Vologda Region" (as amended on November 9, 1995), regarding postponement of the dates of elections of the Legislative Assemblies of the Perm and Vologda Regions (just as similar provisions of the laws of other subjects of the Russian Federation).

On March 20, 1994 the population of the region elected the Legislative Assembly of the Perm Region for a two-year term. The Charter of the Perm Region of October 6, 1994 established that the term of powers of the Legislative Assembly shall be four years (Clause 1, Article 27). Pursuant to the decision of the court of the Perm Region of March 9, 1995, the Legislative Assembly of the Perm Region, in compliance with the requirements of Article 3 and Para. 2, Article 32 of the Constitution of the Russian Federation, established that Clause 1, Article 27 of the Charter of the Perm Region shall take effect after the election of a new Legislative Assembly of the Perm Region, unless otherwise provided for by the legislation of the Russian Federation. However, the Law of the Perm Region of February 21, 1996 set elections of deputies of the Legislative Assembly of the Perm Region for December, 1997, i.e. the term of powers of the Legislative Assembly of the Perm Region was unlawfully extended.

On March 20, 1994, the Legislative Assembly of the Vologda Region of 15 deputies was elected for a two-year term. In accordance with the Charter of the Vologda Region providing for a four-year term of powers of the Legislative Assembly of the Vologda Region and an increase in the number of deputies up to 30, on February 25, 1996, they held by-election of 15 deputies. Pursuant to Para. 2, Article 5 of the Law of the Vologda Region of October 17, 1995 "On the Procedure of Rotation of Deputies of the Legislative Assembly of the Vologda Region" (as amended on November 9, 1995) election of 15 deputies to replace those elected in 1994 were set for March, 1998, i.e. the term of powers of initially elected 15 deputies was unlawfully extended for two years.

On the basis of the above, I conclude that Decree of the President of the Russian Federation No. 315 of March 2, 1996 "On the Procedure of Postponement of the

Dates for Elections of Legislative (Representative) Bodies of State Power of the Subjects of the Russian Federation," the Law of the Perm Region of February 21, 1996 "On Elections of Deputies of the Legislative Assembly of the Perm Region," Para. 2, Article 5 of the Law of the Vologda Region of October 17, 1995 "On the Procedure of Rotation of Deputies of the Legislative Assembly of the Vologda Region (as amended on November 9, 1995) are inconsistent with the Constitution of the Russian Federation, its Articles 3 (Paras. 1, 2 and 3) and 32 (Paras. 1 and 2).

Dissenting opinion

of G.A. Gadzhiyev, Judge of the Constitutional Court of the Russian Federation in the Case on Verification of Constitutionality of Decree of the President of the Russian Federation No. 315 of March 2, 1996 "On the Procedure of Postponement of the Dates for Elections of the Legislative (Representative) Bodies of State Power of the Subjects of the Russian Federation," the Law of the Perm Region of February 21, 1996 "On Elections of Deputies of the Legislative Assembly of the Perm Region" and Para. 2, Article 5 of the Law of the Vologda Region of October 17, 1995 "On the Procedure of Rotation of Deputies of the Legislative Assembly of the Vologda Region" as amended on November 9, 1995

Pursuant to Para.1, Article 76 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" I hereby state my dissenting opinion regarding the Decision of the Constitutional Court of the Russian Federation of April 30, 1997.

1. Accepting that the Law of the Perm Region of February 21, 1996 "On Elections of Deputies of the Legislative Assembly of the Perm Region" is inconsistent with the Constitution of the Russian Federation, I cannot, at the same time, agree that it runs counter to Article 5 (Para. 2) of the Constitution of the Russian Federation.

Pursuant to Decree of the President of the Russian Federation No. 1723 of October 22, 1993 "On the Basic Principles of Organization of State Power in the Subjects of the Russian Federation," that approved the Regulations "On the Basic Principles of Organization and Activity of Bodies of State Power of Territories, Regions, Federal Cities, the Autonomous Region and Autonomous Districts of the Russian Federation During the Period of the Gradual Constitutional Reform," on December 17, 1993, the Lower Council of the Soviet of People's Deputies of the Perm Region passed a decision "On the Legislative Assembly of the Perm Region" and approved Regulations "On the Legislative Assembly of the Perm Region." In accordance with Article 2 of the Regulations, the term of powers set for deputies was two years.

The Legislative Assembly of the Perm Region, in adopting the Charter of the Perm Region on October 6, 1994, established that the term of powers of the Legislative Assembly of the Perm Region shall be four years, however, no reservation was made that the term shall also apply to its new membership. By its decision of March 9, 1995, the Perm regional court invalidated Clause 1 of the Decision of the Legislative Assembly of the Perm Region of October 6, 1994 as conflicting with the federal legislation and Article 3 of the Constitution of the Russian Federation. Pursuant to the decision of the regional court, the Legislative Assembly of the Perm Region adopted a decision on March 23, 1995 under which Clause 1, Article 27 of the

Region Charter was to enter force following the election of a new membership of the Legislative Assembly of the Perm Region.

In accordance with Article 3 of the Law of the Perm Region of July 20, 1995 "On the Elections of Deputies of the Legislative Assembly of the Perm Region," the Legislative Assembly was to call elections of deputies not later than 70 days before voting day and conduct them not later than a month before the expiration of powers of the current Legislative Assembly of the Perm Region. Although the said time limits had expired, no elections were called. The Law of the Perm Region of February 21, 1996 established that elections of deputies of the Legislative Assembly of the Perm Region shall be held in December 1997.

The Perm regional court maintains that the said law actually serves to extend the powers of deputies of the Legislative Assembly of the Perm Region which implies appropriation of power in disregard of the will of voters which was the reason for submitting the petition to the Constitutional Court of the Russian Federation.

Verification of constitutionality of the Law of the Perm Region of February 21, 1996 "On Elections of Deputies of the Legislative Assembly of the Perm Region" as to the content of its norms, suggests the necessity to verify whether or not it is consistent with the legal content of several constitutional principles making up the foundations of the constitutional system and, first of all, – the principles of a democratic and law-bound state (Para. 1, Article 1 of the Constitution of the Russian Federation).

The principle of a democratic state is secured by the Constitution of the Russian Federation through a system of norms, including, inter alia, the norms accounting for the forms of government by the people (Para. 2, Article 3) and electoral rights of citizens (Para. 3, Article 3, Article 32).

The provision of Para. 2, Article 3 of the Constitution of the Russian Federation to the effect that "the only source of power in the Russian Federation is its multinational people" implies that bodies of state power should be endowed with powers in full compliance with the will expressed by the people. A body of popular representation, once formed, may not become a vehicle of state power independent of the people; its powers should be linked to the will expressed by the people. The authority of bodies of state power should be legitimate. The continuous legitimization of authority of bodies of state power is ensured by free elections, implying, inter alia, that they are held at regular intervals (Para. 3, Article 3 of the Constitution of the Russian Federation).

Only under that condition may the activity of bodies of state power be regarded as state power being exercised by the people through bodies of state power.

The legitimacy of a legislature is ensured not only by terms of powers fixed by laws, but also by the will declared by voters. Clause 3, Article 21 of the Universal Declaration of Human Rights establishes that the will of the people should be the basis of any power; that will must be expressed at periodic and genuine elections that must be held on the basis of the universal and equal suffrage by secret ballot.

The voters' will declared at elections determines not only the personal composition but also a particular term of legislature.

The principle of a law-bound state embodied in Para. 1, Article 1 of the Constitution of the Russian Federation implies not only the delineation of powers,

and the rule of law, but also the recognition of the fact that rights and freedoms of a human being, super-positive in nature, including the dignity of a human being, are the supreme value.

Obliteration of the fact that people are made up of citizens enjoying fundamental, inalienable rights is contradictory to the idea of a law-bound state. The representative bodies of power prolonging terms of their powers violate the guarantees of implementation of the power of the people, infringe upon the dignity of the human being, his political rights. A representative body of state power not duly replaced, may fail to represent voters' interests, distorting thereby the idea of popular representation ensuing from the principles of a democratic, law-bound state with a republican form of governance. Extension of powers of a representative body not due to the absence of a legal base, deprives the citizens of the possibility to participate in next regular elections and thus derogates their fundamental rights to participate directly in the management of state affairs (Para. 1, Article 32 of the Constitution of the Russian Federation), to elect and be elected to bodies of state power (Para. 2, Article 32 of the Constitution of the Russian Federation) which contradicts Para. 2, Article 55 of the Constitution of the Russian Federation, under which no laws denying or derogating the rights and freedoms of the human being and citizen may be adopted in the Russian Federation.

Consequently, the Law of the Perm Region of February 21, 1996 "On Elections of Deputies of the Legislative Assembly of the Perm Region" is inconsistent with Articles 1 (Para. 1), 3, 32 (Paras. 1 and 2) and 55 (Para. 2) of the Constitution of the Russian Federation.

Article 5 (Para. 2) of the Constitution of the Russian Federation provides for a norm under which a region shall have its own charter and legislation.

The fact of non-compliance of the Law of the Perm Region setting elections for December, 1997, with the norms of enforcement of the Charter of the Region may not imply unconstitutionality of the given law, since a mere contradiction of an ordinary law of a subject of the Russian Federation to the charter does not necessarily imply a violation of the Constitution of the Russian Federation. If we assume that any non-compliance of a regional law with the charter implies unconstitutionality, then, that would imply unconstitutional expansion of the powers of the Constitutional Court of the Russian Federation. In accordance with Article 125 (Clause "b", Para. 2) of the Constitution of the Russian Federation, the Constitutional Court of the Russian Federation resolves cases regarding compliance with the Constitution of the Russian Federation of only regulatory acts of the subjects of the Russian Federation issued on matters falling within the jurisdiction of bodies of state power of the Russian Federation and the joint jurisdiction of bodies of state power of the Russian Federation and bodies of state power of the subjects of the Russian Federation. Pursuant to Article 27 (Para. 1) of the Federal Constitutional Law "On the Judicial System of the Russian Federation," issues of compliance of laws and other regulatory acts of a subject of the Russian Federation with the Constitution and the charter of a subject of the Russian Federation shall fall within the competence of constitutional, statutory courts of the subjects of the Russian Federation.

By virtue of Para. 2, Article 3 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," the Constitutional Court of the

Russian Federation resolves exclusively issues of law. That provision suggests, *inter alia*, that the Constitutional Court of the Russian Federation resolves issues of law falling within the competence of a given special court. Thus, the Constitutional Court of the Russian Federation should proceed from the principle of interrelatedness of competences of all other courts, including constitutional and statutory courts of the subjects of the Russian Federation.

Dissenting Opinion

of B.S. Ebzeyev, Judge of the Constitutional Court of the Russian Federation in the Case on Verification of Constitutionality of Decree of the President of the Russian Federation No. 315 of March 2, 1996 "On the Procedure of Postponement of the Dates for Elections of the Legislative (Representative) Bodies of State Power of the Subjects of the Russian Federation," the Law of the Perm Region of February 21, 1996 "On Elections of Deputies of the Legislative Assembly of the Perm Region" and Para. 2, Article 5 of the Law of the Vologda Region of October 17, 1995 "On the Procedure of Rotation of Deputies of the Legislative Assembly of the Vologda Region" as amended on November 9, 1995

On the basis of Para. 1, Article 76 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," I hereby state my dissenting opinion as follows.

Pursuant to Decree of the President of the Russian Federation No. 315 of March 2, 1996 "On the Procedure of Postponement of the Dates for Elections of Legislative (Representative) Bodies of State Power of the Russian Federation," the date for holding next regular elections of those bodies shall be determined in accordance with the procedure of formation and terms of powers of legislative bodies set forth in the legislation of the subjects of the Russian Federation with operating legislatures preserving their powers until the commencement of work of newly elected bodies.

That provision should be assessed with due regard of the fact that Decree No. 315 also invalidates the provision approved by Decree No. 1723 of October 22, 1993 "On the Basic Principles of Organization of State Power in the Subjects of the Russian Federation" regarding a two-year term of powers of legislative (representative) bodies of the subjects of the Russian Federation elected on the basis of that act.

1. By virtue of Article 77 of the Constitution of the Russian Federation, the subjects of the Russian Federation shall establish a system of bodies of state power in accordance with the Constitution of the Russian Federation and general principles of organization of representative and executive bodies of state power as envisaged by the federal law and not by decrees of the head of state. The provisions of Decree No. 315, being contested by the State Duma, go beyond the scope of powers of the President of the Russian Federation, as the subjects of the federation are entitled to independently determine the procedure of formation of legislative (representative) bodies of state power and resolve issues pertaining to conduct, postponement and appointment of dates of elections subject to the requirements of the federal Constitution.

At the same time, such interference of the head of state in the given sphere may prove to be justified in terms of the Constitution of the Russian Federation and nec-

essary in view of the initial stage of establishment of institutes of popular representation in the subjects of the Russian Federation and stems from the functions of a guarantor, coordinator and integrator entrusted to the President of the Russian Federation under the Constitution of the Russian Federation (Article 80) and the powers ensuring realization of those functions.

In that connection, consideration should be given to a presumption contained in the Decision of the Constitutional Court of the Russian Federation in the given case to the effect that "in itself the availability of a legal base as a prerequisite for holding elections acquires the meaning of a general principle of organization of state power inferred from a number of constitutional norms (Para. 2, Article 5; Para. 2, Article 11; Para. 2, Article 66; Para. 1, Article 77)." Refraining, in the given case, from making an assessment of that thesis and without assessing the inadequacy of interpretation of the above listed provisions of the Constitution of the Russian Federation, I consider it necessary to call attention only to the fact the absence of such a base suggests and requires that the federal bodies of state power, including the President of the Russian Federation, should take measures to accelerate the formation thereof, rather than legalization of anti-constitutional actions of bodies of state power of some subjects of the Russian Federation; such legalization as such is inconsistent with the Constitution of the Russian Federation and contradictory to the status of the head of state.

2. However, the main issue to be resolved in the given case, if it is not substituted by procedure- and proceedings-related aspects of the problem, being secondary in that case, is whether or not representative bodies of state power have the right to extend their powers over and above the legislature established at the time of their election and to what extent such extension complies with the principle of the power of the people and electoral rights of citizens.

Democracy is an inalienable element of a law-bound state that presupposes, *inter alia*, the obligation of all state authorities and their officials to comply with the Constitution and act in a manner compatible with the law (Articles 1, 15 of the Constitution of the Russian Federation). State power in a law-bound state is put within certain limits. The case in point is not the objective limitation of any state imposed by economic, social or geopolitical factors but the limits of state power established by the Constitution of the Russian Federation and effective legislation that the state power may not exceed in a legal way. The limitation of unlawful intervention by the state in a civil society or in the sphere of an individual autonomy of a human being and citizen shall be effected, primarily, through inalienable (both individual and collective) rights and freedoms of every individual and a group of individuals, that is the people, including electoral rights, that may not be violated or limited by the state.

The principles of a democratic, law-bound state largely determine the way it is organized. A democratic and law-bound state is characterized by specific organization of power. Not suppression of individual or groups of citizens with power but their participation in exercising state power – that is indeed the basis underlying the organization of power in such a state. An individual and groups of individuals, the people as a whole, are identified not only as objects but also subjects of power and they participate in exercising that power in various forms, including through free and periodic elections and popular representation (Article 3 of the Constitution of the Russian Federation).

Thus, democratic organization of society is based on the principle of sovereignty of the people, its supremacy in the solution of most important issues of state and public life. It is the rule of the people exercised in various forms that provides for the foundations of a democratic and law-bound state. Representative democracy is characterized by involvement of the people in implementation of most important functions of law-making and governance through their representatives elected in conformity with law and legally established procedures. Notably, representative democracy in the Russian Federation is a form of democracy with a division of powers, under which legislative and executive bodies of power are independent and not controlled by each other; the government and the entire system of executive power is not reporting to parliament but is dependent upon the head of state whose will is the source of powers of members of the Government of the Russian Federation but not of the federal parliament and bodies of popular representation of the subjects of the Russian Federation.

Popular representation, being the most important organizational form of a constitutional state, does not, however, imply a merger between state power and the people. We refer to a situation when the right to exercise legislative power is transferred by the people to the parliament, reserving for itself the right to exercise control over activity of the parliament and other forms of implementation of state power. It is not the power as such that the people transfers to representative bodies of state power, but only the right to exercise power during a certain period. Therefore, any infringement upon the institute of popular representation, including by the so-called extension of powers, is an infringement upon the people's sovereignty, the fullness of the people's power and its supremacy, and should be qualified as appropriation of power. Replacement of a representative system in terms of its organizational form and deputy composition is the right vested in the people and is exercised by the people through free and periodic elections.

Importantly, one should distinguish between postponement of elections due to various reasons and always involving short periods and therefore, challenging neither the powers of representatives chosen by the people nor the representative character of the body of which they are members, and extension of powers that means exceeding the limits of legitimate legislature and entails the loss by a relevant body and all its members of the representative character and the right to represent the people. The legislative (representative) bodies of state power of the subjects of the Russian Federation, are entitled, by a general rule, and acting in the interests of the electorate, to postpone elections but have no right to extend the term of their powers fixed in constitutions and charters, provided those bodies have been elected in accordance with those constitutions and charters or an act (acts) by which those bodies have been constituted as such, in the given case – under Decree of the President of the Russian Federation No. 1723 of October 22, 1993. Deviations from such terms (including extension thereof) may be stipulated either at the constitutional, statutory level and intended for a specific case associated with the formation of a new system of state bodies and the requirement to observe continuity in their organization and activity, bearing in mind that in making such decision, the will of the people, the body

¹ See: *Izбирatelnoe pravo i izbiratelnyi protsess v resheniyakh Konstitutsionnogo Suda Rossiiskoy Federatsii (1992–1999)* (The Electoral Rights and Electoral Process in Resolutions of the RF Constitutional Court (1992–1999))// Ed. by A.A. Veshnyakov. Moscow: NORMA, 2000. P. 661–678.

of voters is of decisive importance, or in laws imposing a state of emergency or a marshal law, being a form of declaration of the common will of the people and enforceable for strictly specified grounds stipulated by those laws.

Thus, extension of the term of powers of legislative (representative) bodies of the subjects of the Russian Federation is a violation of the constitutional principle of the power of the people. The activity of those bodies, in such a situation, is based not on the will of the people, as prescribed by the Constitution of the Russian Federation (Articles 1 and 3) but on the will of the head of state which, in itself, is a violation of the principle of division of state power (Article 10) or on the will of representatives earlier elected by the people for a strictly specified term who have, however, already lost the right to act on behalf of the people and therefore, their actions may be described as appropriation of power (Para. 4, Article 3 of the Constitution of the Russian Federation).

Extension of powers of legislative (representative) bodies of subjects of the Russian Federation at the same time represents a major violation of electoral rights of citizens and is not in compliance with international commitments of the Russian Federation to assure those rights. Extension of powers of a legislative (representative) body deprives voters of the possibility to take part in next regular elections intended in the process of its formation and thus, to exercise their constitutional right to participate directly in the management of state affairs (Para. 1, Article 32 of the Constitution of the Russian Federation) and to elect and be elected to bodies of state power (Para. 2, Article 32 of the Constitution of the Russian Federation). Thus, the guarantees of electoral rights of citizens are substantially undermined due to their organizational non-enforcement which means, specifically, that no elections are called upon the expiry of the term of powers of an operating legislative (representative) body of a subject of the Russian Federation which calls for adequate response of the head of state who is charged under the Constitution of the Russian Federation with the function of a guarantor of rights and freedoms of the human being and citizen to be realized in the forms prescribed by the Constitution of the Russian Federation and laws by using the methods stipulated thereby and of the courts of law as is envisaged under the Constitution of the Russian Federation and the Federal Law "On the Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum."

**3.4 (11.12) DECISION NO. 26-P OF NOVEMBER 17, 1998 IN THE
CASE ON VERIFICATION OF CONSTITUTIONALITY OF CERTAIN
PROVISIONS OF THE FEDERAL LAW OF JUNE 21, 1995
"ON THE ELECTIONS OF DEPUTIES OF THE STATE DUMA
OF THE FEDERAL ASSEMBLY OF THE RUSSIAN FEDERATION"¹**

The Constitutional Court of the Russian Federation, presided by Yu.M. Danilov and composed of judges: M.V. Baglay, N.T. Vedernikov, L.M. Zharkova, V.D. Zorkin, V.I. Oleinik, V.G. Strekozov, O.S. Khokhryakova,

With participation of representatives of the Saratov Regional Duma: deputy M.Ya. Semenets and Doctor of Law V.T. Kabyshev, representatives of the State Duma:

deputies Ye.B. Mizoulina and V.L. Sheinis and Doctor of Law V.B. Isakov, representatives of the Federation Council: Candidates of Law I.B. Vlasenko and I.N. Shumskoi, and Plenipotentiary Representative of the President of the Russian Federation at the Constitutional Court of the Russian Federation, A.M. Mityukov,

Following Article 125 (Clause "a", Para. 2) of the Constitution of the Russian Federation, Subclause "a", Clause 1, Para. 1, Article 3; Subclause "a", Clause 1, Para.2, Article 22; Articles 36, 74, 84, 85, 86, and 87 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation,"

Reviewed in an open session the case on verification of constitutionality of certain provisions of the Federal Law "On the Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation."

The case has been reviewed in response to a petition submitted by the Saratov Regional Duma requesting verification of constitutionality of Article 5; Para. 2, Article 11; Para. 6, Article 14; Articles 17 and 18; Para. 3, Article 36; Articles 37 and 38, Paras. 2 and 3, Article 39; Articles 44, 47, 48, 50, 52, 57, 58, 59, 61, Para. 2, Article 62; Articles 63, 64, 65, and 67 of the said Federal Law.

The case has been reviewed on the grounds of an uncertainty identified in the issue of whether or not the regulatory provisions contested in the petition are consistent with the Constitution of the Russian Federation.

Provisions of the Federal Law "On the Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation," including the provisions contested in the petition of the Saratov Regional Duma, have already been examined by the Constitutional Court of the Russian Federation in response to previously submitted petitions. Thus, on November 20, 1995, the Constitutional Court of the Russian Federation passed a decision refusing to accept for consideration relevant petitions submitted by the Supreme Court of the Russian Federation and a group of State Duma deputies. The Constitutional Court of the Russian Federation received those petitions more than two months into a State Duma election campaign, at an important stage of the electoral process when nomination and registration of candidates were completed. A court hearing held under such conditions would have been an impermissible interference with the electoral process and would have contradicted both the purpose and principles of activity of the Constitutional Court of the Russian Federation. Given that no such circumstances exist at the moment, the Constitutional Court of the Russian Federation has found the petition submitted by the Saratov Regional Duma acceptable for consideration.

Upon examination of the report of judge-rapporteur V.G. Strekozov, explanations of representatives of the parties, opinions of experts: Doctors of Law A.I. Kovler and Ye.I. Kolyushin, Doctor of History V.A. Nikonov, comments of invited representatives: A.Yu. Shipitsin of the Ministry of Justice of the Russian Federation, A.A. Belkin of the General Prosecutor's Office of the Russian Federation, M.V. Grishina of the Central Election Commission of the Russian Federation, as well as other documents and materials, the Constitutional Court of the Russian Federation

Established as follows:

1. The Saratov Regional Duma challenges constitutionality of provisions of Article 5; Para. 2, Article 5, Para. 2, Article 11; Para. 6, Article 14; Para. 3, Article 36; Para. 5, Article 37; Para. 2, Article 39; Para. 3, Article 39; Para. 2, Article 62; and Article 67 of the Federal Law of June 21, 1995 "On the Elections of Deputies of the

State Duma of the Federal Assembly of the Russian Federation." In the opinion of the petitioner, those provisions are at variance with Articles 3, 13, 19, 32, and 55 of the Constitution of the Russian Federation.

Among the provisions inconsistent with the Constitution of the Russian Federation, the petition also mentions Articles 17 and 18, Paras. 1, 2, 3, 4, and 6, Article 37, Articles 38, 44, 47, 48, 50, 52, 57, 58, 59, 61, 63, 64, and 65 of the said Federal Law, however, the petitioner offered no arguments to substantiate their unconstitutionality. In the course of the hearing, representatives of the Saratov Regional Duma made it clear that those articles, as such, should not be deemed as the subject of application. Consequently, they should not be deemed as the subject of review by the Constitutional Court of the Russian Federation in the given case.

2. Two hundred and twenty five deputies of the State Duma shall be elected in single-mandate electoral districts (one district – one deputy) to be formed on the basis of a unified quota of voters' representation in single-mandate electoral districts (Para. 2) while the other two hundred and twenty five deputies of the State Duma shall be elected in the federal electoral district in proportion to the number of votes cast for federal lists of candidates for election to the State Duma nominated by electoral associations, electoral blocs (Para. 3). In the opinion of the petitioner, that provision violates equality with respect to electoral rights of citizens and, therefore, contradicts Articles 3, 19 and 32 of the Constitution of the Russian Federation.

The Constitution of the Russian Federation does not expressly provide for a specific electoral system to be used in elections of deputies of the State Duma. Having envisaged a two-chamber structure of the Federal Assembly as a representative and legislative body of the Russian Federation, a quantitative composition of the State Duma (450 deputies) and the term of its powers (four years), the Constitution of the Russian Federation states that the procedure of election of deputies to the State Duma shall be established by federal law (Article 96, Para. 2). Such a law is precisely the Federal Law under review, which, proceeding from its Article 5, establishes the so-called mixed (majority-proportional) electoral system for electing deputies of the State Duma.

The mixed electoral system exists in several democratic states and, as is evidenced by the world experience, is quite compatible, by its essence, with the universally recognized principles and norms of the international law pertaining to electoral law that are stipulated under the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (Article 3 of Protocol No. 1 of March 20, 1952) and the International Covenant on Civil and Political Rights of 1966 (Article 25). That system fully corresponds with the purpose of elections as a supreme and direct expression of the power of the people. By using free elections held on the basis of the universal, equal and direct suffrage by secret ballot, it makes it possible to adequately represent opinions and convictions of citizens and express their will regarding the composition of the Parliament as a representative body of the state.

Consequently, the contested provision of Article 5 of the Federal Law "On the Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation" does not contradict the Constitution of the Russian Federation nor does it violate the principle of free elections (Article 3), the right of citizens to take part in management of state affairs both directly and through their representatives, the right to

elect and be elected to bodies of state power (Article 32, Paras. 1 and 2), guarantees of equality of those rights (Article 19) and equality of public associations before the law (Article 13, Para. 4) that are stipulated by the Constitution of the Russian Federation.

3. Pursuant to Para. 2, Article 5 of the Federal Law under review, single-seat electoral districts shall be formed on the basis of a uniform quota of voters' representation fixed with respect to a single-seat electoral district, with the exception of electoral districts within the subjects of the Russian Federation where the number of voters is less than the uniform representation quota; in accordance with Para. 2, Article 11, a territory of a subject of the Russian Federation with the number of voters less than the uniform representation quota, shall form one electoral district. The petitioner believes that the exception from the general rule of formation of single-seat electoral districts established by the said provisions violates the principle of equality with respect to electoral rights and therefore, does not comply with Articles 19 and 32 of the Constitution of the Russian Federation.

The democratic principle of equal elections and the obligation of the state to guarantee equality with respect to electoral rights of citizens, on one hand, and the principles of federalism and equality of federation subjects, on the other hand, may, to a certain extent, present a contradiction of law. As is evidenced by the experience of modern federative states, the legislator, having due regard to specific features of a territorial structure and distribution of population and with the aim of preserving the unity of the state and stability of the constitutional system without which it is impossible to achieve proper implementation of the rights and freedoms of the human being and citizen, makes, as a compelling measure, certain deviations from the generally accepted representation quota, i.e. accepts certain restriction of the equal suffrage in favor of the principles of federalism. Disproportions of that sort in the electoral system may not be regarded as a result of arbitrariness and abuses.

Proceeding from Articles 1, 3, 5, 19, and 32 of the Constitution of the Russian Federation in their interrelation, the legislator shall be obliged to reconcile the provision on guarantees for equality with respect to electoral rights of citizens with the principles of federalism and equality of the subjects of the Russian Federation which are considered to be the fundamental principles of the constitutional system of the Russian Federation.

For the reasons stated above, the legislator is compelled to make certain deviations from the uniform representation quota. Thus, in accordance with Para.1, Article 11 of the Federal Law under review, single-seat electoral districts shall comply with the following requirements: shall be approximately equal in the number of voters registered in their territories within the boundaries of one subject of the Russian Federation, with a permitted deviation not exceeding 10 percent, and in hard-to-reach and remote areas – not exceeding 15 percent; an electoral district shall form a single territory; formation of an electoral district consisting of non-adjacent territories shall not be allowed. Deviations of that sort, as is evidenced by the practice of many countries, are not regarded excessive.

Even more substantial deviation from the uniform representation quota is observed in realizing the provision of Para. 2, Article 5 and Para.2, Article 11 of the Federal Law under review, as in some subjects of the Russian Federation the number of voters is less than the said quota. The said provision is intended to guarantee representation in the

State Duma to the subjects of the Russian Federation with small population.

According to the petitioner, equal representation of the subjects of the Russian Federation is assured through the constitutional procedure of formation of the Federation Council (two representatives from each subject of the Russian Federation) and, therefore, in its opinion, in electing deputies of the State Duma, no exceptions should be made for the subjects of the Russian Federation with the number of voters less than the uniform representation quota.

However, proceeding from Article 94 of the Constitution of the Russian Federation, in interrelation with its Articles 1 and 5, a representative and legislative body of the Russian Federation, being a federative state, is Parliament as a whole, i.e. the Federation Council and the State Duma whose powers are appropriately counter-balanced. Meanwhile, the holding of elections to the State Duma on the basis of a uniform representation quota, without the exception stipulated under the contested provision, would result in a situation when the subjects of the Russian Federation with small population would not be represented in that chamber of Parliament. As a result, the principle of equality of the subjects of the Russian Federation, constituting one of the basic principles of its constitutional system and the representative character of the State Duma would hardly be assured.

Considering the circumstances arisen in the process of adopting the Federal Law under review, specifically, the position taken by the Federation Council, and proceeding from historically motivated specific features of Russia as a federative state, the specificity of its territorial structure and extremely uneven distribution of population in various subjects of the Russian Federation, the legislator, seeking to avert a threat to the foundations of the constitutional system and its stability, was fully entitled, in keeping with Article 55 (Para. 3) of the Constitution of the Russian Federation, to provide in the given Federal Law for a norm establishing deviations from the uniform representation quota.

The provisions of Articles 1, 5, 19, 32, and 55 (Para. 3) of the Constitution of the Russian Federation, in their systemic interrelation, allowing the legislator to make the said deviations, correspond with the universally recognized principles and norms of the international law pertaining to organization of the electoral system and elections based on the equal suffrage. Thus, by the implication of Articles 25 (Subclause "b") and 12 (Clause 3) of the International Covenant on Civil and Political Rights, the equal suffrage may not be subject to any restrictions, except for restrictions that are stipulated by law and required for the protection of state security, health or morals of the population, for ensuring due recognition of and respect for the rights and freedoms of others and for meeting just requirements of morality, public law and order and common wellbeing in a democratic society and that are compatible with other rights recognized under those acts.

Those provisions suggest that for the purpose of preserving the integrity of a federative state, the equal suffrage may be restricted by law in such a way as to guarantee representation of the Federation subjects with small population and thus, to assure an appropriate representative character and legitimacy of a federal parliament.

Considering the issue of the equal suffrage and permissible deviations from it, in terms of requirements of Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, under which the signatory states (and today Russia is one of them) undertake to hold, at reasonable intervals,

free elections by secret ballot under conditions that would ensure free expression of the will of the people in choosing a legislative power, the European Human Rights Commission in its Decision of December 8, 1981 arrived at the following conclusion. The electoral system guaranteeing specified representation in parliament to residents of sparsely populated areas by reducing the weight of votes cast in densely populated areas may not, for that reason, be regarded as conflicting with Article 3 of Protocol No. 1 that makes no requirement for an equal weight of votes cast for each deputy. Consequently, the legislator, taking due regard of the historical context, is in a position to realize the provisions on equal elections and equal suffrage so that the territorial units with small population be assured representation in Parliament.

Thus, the contested provision found in Para. 1, Article 5 and Para.2, Article 11 of the Federal Law "On the Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation" is not at variance with the Constitution of the Russian Federation.

4. Pursuant to Para. 6, Article 14 of the Federal Law under review, a list of voters of an electoral precinct established outside the territory of the Russian Federation shall include citizens of the Russian Federation residing outside the territory of the Russian Federation or staying abroad on long business trips, provided they have a passport of a citizen of the Russian Federation for traveling abroad. In the opinion of the petitioner, the given norm unreasonably restricts electoral rights of the said category of citizens of the Russian Federation and contradicts Articles 32 (Para. 2) and 55 (Para. 3) of the Constitution of the Russian Federation. Notably, the petitioner refers to Article 10 of the Law of the Russian Federation of November 28, 1991 "On the Citizenship of the Russian Federation" under which documents confirming one's citizenship in the Russian Federation shall include an identification card or a passport of a citizen of the Russian Federation and prior to receipt thereof – a birth certificate or other document making a reference to the citizenship of a person.

In the process of the election campaign at the 1995 State Duma elections the contested norm, in keeping with explanations provided by the Central Election Commission of the Russian Federation, was applied precisely in interrelation with the prescriptions of Article 10 of the Law of the Russian Federation "On the Citizenship of the Russian Federation," and thus, electoral rights of the citizens of the Russian Federation, residing at that time outside the territory of the Russian Federation or staying abroad on long business trips, were not violated by that norm.

The Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" adopted on September 19, 1997 established that registration of voters residing outside the territory of the Russian Federation or staying abroad on long business trips shall be on the basis of their permanent residence or stay on long business trips in the territory of a foreign state that shall be set by the diplomatic and consular missions of the Russian Federation (Clause 3, Article 17).

In view of the adoption of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum," as is clear from Para. 7, Article 1 thereof, the provision of Para. 6, Article 14 of the Federal Law under review, may not apply and thus, at the time of application of the Saratov Regional Duma to the Constitutional Court of the Russian Federation it had actually

lost its force. With due regard for the said circumstance and proceeding from the fact that operation of the contested provision did not violate electoral rights of citizens, the proceedings in the case, as far as that part is concerned, shall, by virtue of Article 68 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," be dismissed.

5. The Saratov Regional Duma asserts that Para. 3, Article 36 of the Federal Law under review, under which an electoral association, electoral bloc has the right to nominate as candidates for deputies persons who are not members of public associations comprised therein is at variance with the Constitution of the Russian Federation.

Proceeding from Articles 19 (Para.2) and 32 (Para. 2) of the Constitution of the Russian Federation, the state shall guarantee equality with respect to electoral rights of citizens, regardless of their membership in public associations. By the implication of Article 96 (Para. 2) of the Constitution of the Russian Federation, the legislator shall, when establishing the procedure for elections to the State Duma, also determine the procedure for nomination of candidates. The authorization of electoral associations, electoral blocs to nominate as candidates for deputies persons who are not members of public associations comprised therein contributes to implementation of the right of citizens to elect and be elected to bodies of state power and does not contradict the Constitution of the Russian Federation.

6. Pursuant to Para. 5, Article 37 of the Federal Law under review, a federal list may include candidates for deputies of the State Duma, nominated by the same electoral association, electoral bloc in single-seat districts. In the opinion of the petitioner, the given norm creates double advantage for candidates nominated by electoral associations, electoral blocs over candidates who are nominated directly by voters, i.e. it does not comply with the constitutional principle of equality with respect to electoral rights.

Proceeding from the contested provision in interrelation with Para.3, Article 37, Para.3, Article 36 and Paras. 8, 9 and 10, Article 42 of the Federal Law under review, one and the same person (regardless of whether or not he or she is a member of a public association, including of an electoral association nominating that person as candidate) may be registered as a candidate on a federal list of candidates and simultaneously – in one of single-seat electoral districts and, thus, participate in elections both on a federal list and in a single-seat district; understanding that no citizen may be registered on more than one federal list of candidates and in more than one single-seat electoral district; an electoral association, electoral bloc has the right to nominate not more than one candidate in one single-seat electoral district.

Implementation of the right to be registered on a federal list and simultaneously in a single-seat district, as an initial starting possibility of every citizen associated with the specific features of the mixed electoral system, at the same time, presupposes a necessity to comply with special procedures of nomination (including collection of signatures) and registration. The rules of those procedures are equally applicable to any and all persons claiming inclusion in one or another list of candidates for deputies.

The principle of equality does not imply that the procedure for nomination of candidates for deputies in a single-seat district and in a federal district must necessarily be the same. The most important thing is that appropriate procedures be equally applied with respect to all citizens. Citizens may, on equal terms and subject to appro-

appropriate nomination procedures, be registered in a single-seat district. Likewise, any citizen may, subject to an appropriate procedure, be registered in a federal district: he or she may be nominated by an electoral association, electoral bloc, regardless of his or her membership in public associations comprised therein or by setting up, jointly with other citizens, an electoral association, he or she may exercise his or her right to be nominated as candidate on a federal list of that association.

The mixed electoral system in fact provides for two independent systems of acquisition and distribution of deputy seats – a majority system and a proportional system, with the number of deputy seats in both of them being fixed in advance. Since the possibility to run at elections in the federal district and simultaneously – in a single-seat district (i.e. simultaneously on the basis of the majority and proportional systems), subject to appropriate procedures of nomination and registration, is granted to all citizens on equal terms and inasmuch as a candidate may not occupy both deputy seats at the same time, so under a mixed electoral system, the legislator is entitled to allow for such a possibility.

Consequently, Para. 5, Article 37 of the Federal Law "On the Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation" does not conflict with the principles of free and equal elections nor does it contradict the Constitution of the Russian Federation.

7. Pursuant to Article 39 of the Federal Law under review, an electoral association, electoral bloc that has nominated a federal list of candidates shall be required to collect not less than 200 thousand voter signatures in support of that list, understanding that one subject of the Russian Federation shall account for not more than seven percent of the required number of signatures (Para. 2); the signatures collected in support of a candidate nominated by an electoral association, electoral bloc in a single-seat electoral district and registered by a district electoral commission shall be added by the Central Election Commission of the Russian Federation to the number of signatures in support of the federal list of candidates nominated by that electoral association, electoral bloc (Para. 3). The petitioner believes that those provisions as creating advantages for candidates nominated by electoral associations, electoral blocs, violate the principle of equality with respect to electoral rights of citizens.

In establishing a procedure for nomination and registration of candidates the legislator is entitled, acting in the interests of voters, to provide for special preliminary conditions making it possible to exclude from the electoral process such participants therein that lack sufficient support of voters. Such conditions may include the requirement to collect not less than 200 thousand signatures in support of the federal list of candidates (Para. 2, Article 39) and not less than one percent of voter signatures of the total number of voters in a single-seat electoral district – in support of a candidate nominated directly by voters (Para. 2, Article 41).

The condition envisaged by Para. 2, Article 39 of the Federal Law under review, equally applies to all electoral associations, electoral blocs and to all candidates on federal lists. It does not either infringe upon equality of candidates nominated in single-seat electoral districts. Inasmuch as elections (nomination, registration, voting, determination of results and distribution of seats) are conducted in the federal district and in a single-seat district independently of one another and in a different manner (in the former case, competition is between federal lists of candidates, whereas, in

the latter case – between candidates as individuals), so the guarantees of equality with respect to electoral rights (including those of candidates in single-seat districts) are not violated by the fact that nomination of a list of candidates and nomination of a candidate requires a different number of signatures. Consequently, Para.2, Article 39 of the Federal Law "On the Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation" is consistent with the Constitution of the Russian Federation.

On the other hand, the provision of Para.3, Article 39, puts both voters and candidates for deputies in an unequal position. The signature of a voter in support of a specific candidate in a single-seat electoral district does not necessarily mean that the voter supports the federal list which includes the given deputy, and, therefore, it may not, automatically, without appropriate documentary confirmation that would represent the will expressed by the voter, be added to the number of signatures in support of the federal list. Otherwise, an unjust advantage would be given to such electoral associations that simultaneously nominate their candidates in single-seat electoral districts. The contested norm as failing to take account of those circumstances violates both active and passive electoral right of a citizen and, consequently, contradicts Articles 19 (Paras.1 and 2) and 32 of the Constitution of the Russian Federation.

8. By virtue of Para. 2, Article 62 of the Federal Law under review, electoral associations, electoral blocs whose lists of candidates have gained less than five percent of the votes cast by the voters who participated in the voting shall be excluded from the distribution of deputy seats contested in a federal electoral district. According to the petitioner, that norm is conflicting with Articles 3, 19 and 32 and Article 13 (Para. 4) of the Constitution of the Russian Federation.

The so-called obstruction clause (percentage-based threshold) implying a certain restriction of proportionality of representation is stipulated in the legislation of several countries with a mixed electoral system. Such restriction makes it possible to avoid fragmentation of the deputies' corps in a multitude of smaller factions whose formation may result from the proportional electoral system in the absence of such a threshold aimed at ensuring proper functioning of the parliament, the stability of legislative power and the constitutional system as a whole.

The provision of Para. 2, Article 62 of the Federal Law under review, setting a percentage-based threshold, does not restrict electoral rights of citizens nor does it violate the equality of public associations before the law stipulated under Article 13 (Para. 4) of the Constitution of the Russian Federation.

Proceeding from Articles 13, 19 and 32 of the Constitution of the Russian Federation that are in agreement with Article 26 of the International Covenant on Civil and Political Rights and Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, equality with respect to electoral rights of citizens and equality of electoral associations, electoral blocs implies equality before the law and the right to equal and effective protection under the law without any discrimination on whatever grounds or by virtue of whatever circumstance. However, equality, as applied to electoral rights, may not imply the equality of results, since elections provide voters with a possibility to determine their preferences and to vote for a respective candidate or list of candidates and consequently, imply the presence of winners and losers. The rules under which elections are conducted are the same to all elec-

toral associations, electoral blocs and citizens participating in elections based on federal lists: the conditions for election are the same to all federal lists and every voter is free to vote for any federal list; not a single electoral association that has failed to gain five percent of the votes is included in the distribution of deputy seats.

That procedure does not violate Article 3 of the Constitution of the Russian Federation, nor does it prevent holding free elections, i.e. assuring free expression of the will of the people at elections of a legislative body, nor does it distort the essence of popular representation. Citizens who either abstained from voting altogether or voted but not for the candidates who were returned as deputies, may not be regarded as having been deprived of their representation in parliament. As it follows from Articles 3, 32, 94, 95, and 96 of the Constitution of the Russian Federation in their interrelation, all lawfully elected deputies of the State Duma are representatives of the people and thus, representatives of all citizens who are entitled to administer the affairs of the state through their representatives. A candidate who has won at elections subject to conditions established by law, regardless of what electoral district, whether a single-seat or the federal one, he has been elected in, shall become a deputy of the State Duma, being a representative body of the Russian Federation, i.e. a representative of the people by virtue of Article 3 of the Constitution of the Russian Federation.

Thus, the Constitution of the Russian Federation does not exclude a possibility for the legislator to establish that in order to be included in the distribution of deputy seats, an electoral association, electoral bloc shall gain at elections a certain percent of votes cast by voters in support of the federal list of candidates nominated by that electoral association, electoral bloc. At the same time, the Constitutional Court of the Russian Federation is entitled, within its respective competence, resolving exclusively issues of law, with the aim of protecting the fundamentals of the constitutional system and the fundamental rights and freedoms of a human being and citizen and assuring the supremacy and direct action of the Constitution of the Russian Federation throughout the territory of the Russian Federation, to verify under which constitutionally significant conditions one or another threshold set by the legislator may be acceptable and under which, on the contrary, it becomes excessive.

In countries with a stable multi-party system, a five percent threshold is an average indicator allowing, without distorting the principle of proportionality, to accomplish the tasks for the sake of which it is introduced in proportional and mixed electoral systems and, therefore, is not regarded excessive. Meanwhile, in the Russian Federation with its still emerging and unstable multi-party system, a five percent threshold may be both acceptable and excessive, as the case may be.

According to the data of the Central Election Commission of the Russian Federation, in the presence of a five percent threshold, at the 1993 State Duma elections, electoral associations that had passed that threshold, gained, altogether, 87.06 percent of the total vote of citizens who participated in the voting while, at the 1995 elections – a mere 50.5 percent, in the aggregate. Such substantial decrease in the number of votes cast for electoral associations, electoral blocs that overcame the five percent threshold was explained, primarily, by a dramatic increase in the number of associations that took part in the elections – from 13 in 1993 up to 43 in 1995.

Proceeding from the contested norm in its interrelation with Article 70 of the Federal Law under review, electoral associations, electoral blocs that have managed

to pass a five percent threshold, shall get (by way of distribution between them) not only the seats that they would have, in the absence of such a threshold, along with all associations participating in the elections pro rata the number of votes cast for them but also such other seats which would be due to other associations in case of proportional distribution in the absence of the said threshold, i.e. they shall end up with all the seats contested in a federal electoral district. By virtue of that circumstance and proceeding from universally accepted principles of the power of the people, a democratic majority that, by the implication of Articles 1 and 3 of the Constitution of the Russian Federation, should serve as the basis for determining the will of the people expressed at elections and whose presence is essential for recognition of legitimacy of a body of popular representation which the State Duma is, may not, in the given case, be just a relative majority.

Inasmuch as in 1995, electoral associations that had exceeded the established threshold, gained at elections more than half of all the votes cast by voters who participated in the voting, the principle of majority was not violated. Consequently, the five percent threshold stipulated by Para. 2, Article 62 of the Federal Law under review, with regard to its application in the 1995 electoral process, may not be regarded excessive.

At the same time, a five percent threshold may not be used in defiance of the purpose of proportional elections. Therefore, the legislator should seek, in applying the threshold, to ensure that the proportional representation principle be realized as far as possible. In any case, application of a five percent threshold should be impermissible should electoral associations that have passed the threshold, fail to gain, altogether, at least, an overwhelming (i.e. 50 percent plus one vote) majority of the votes cast by the voters who participated in the voting.

Moreover, it should be remembered that, by the implication of Articles 1 and 13 of the Constitution of the Russian Federation, a democracy based on political plurality and multi-party system, proceeds from the fact that existence of an opposition is essential and allows no monopoly of power. Therefore, should a five percent threshold be exceeded by only one electoral association, electoral bloc, even provided it has won a majority of votes, it may not be given all deputy seats contested in the federal district, since that would contradict the principle of proportionality at elections in the conditions of democracy and, consequently, would make application of a five percent threshold impermissible.

With respect to such cases, the Federal Assembly of the Russian Federation should define a mechanism of legal regulation making it possible to comply with the requirements ensuing from the democratic character of the basic principles of the constitutional system of the Russian Federation. The establishment of specific provisions to account for such a mechanism (setting "a floating" threshold, announced blocking of associations, etc.) is the prerogative of the legislator.

Thus, the provision of Para. 2, Article 62 of the Federal Law "On the Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation" is consistent with the Constitution of the Russian Federation in so far as application of a five percent threshold instituted thereby allows for the inclusion in the distribution of deputy seats of not less than 2 (two) electoral associations that have gained, in the aggregate, more than 50 percent of the votes cast by the voters who participated in

the voting.

9. Pursuant to Para. 1, Article 67 of the Federal Law under review, in the event of early retirement of a deputy elected as a result of the distribution of deputy seats between electoral associations, electoral blocs as per federal lists of candidates, his or her seat shall, by decision of the State Duma, be passed over to the next standing candidate on the same federal list. The petitioner maintains that the given norm violates equality with respect to electoral rights and creates unequal conditions for both candidates in a single-seat district and candidates in the federal district, inasmuch as, in case of early termination of powers of a deputy in a single-seat district, a deputy seat shall be announced vacant and new elections shall be called.

A difference in the methods used in the federal district and in a single-seat district by which a vacant deputy seat is passed over to another deputy is explained by a difference in electoral systems, proportional and majority, applied therein. At elections in the federal district a voter is casting his or her vote not for a single candidate but for a list of candidates as a whole. The use in a single-seat district of the method by which a vacant seat is passed over to another candidate in the federal district would lead to distortion of the will of voters expressed at elections based on a majority system and to violation of equal electoral rights. Therefore, the contested provision may not be regarded as violation of the Constitution of the Russian Federation, including constitutionally guaranteed equal electoral rights.

On the basis of the above and following Article 68; Paras. 1 and 2, Article 71; Articles 72, 74, 75, 79, 86, and 87 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," the Constitutional Court of the Russian Federation

Decided as follows:

1. It shall be recognized that the provision of Article 5 of the Federal Law of June 21, 1995 "On the Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation" establishing the procedure for election of the State Duma, under which one part of deputies shall be elected in single-seat electoral districts whereas another part – in the federal electoral district pro rata the number of votes cast for federal lists of candidates for deputies nominated by electoral associations, electoral blocs, be consistent with the Constitution of the Russian Federation.

2. It shall be recognized that the provision set forth in Para. 2, Article 5 and Para. 2, Article 11 of the Federal Law of June 21, 1995 "On the Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation" on the formation of an electoral district in the territory of a subject of the Russian Federation with the number of voters less than the uniform representation quota be consistent with the Constitution of the Russian Federation.

3. The proceedings in the case regarding verification of constitutionality of Para. 6, Article 14 of the Federal Law of June 21, 1995 "On the Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation" on inclusion of citizens of the Russian Federation, either residing outside the territory of the Russian Federation or staying abroad on long business trips, on the voter list of an electoral precinct formed outside the territory of the Russian Federation, provided they hold a passport of a citizen of the Russian Federation for traveling abroad, shall be terminated.

4. It shall be recognized that the provision of Para. 3, Article 36 of the Federal Law of June 21, 1995 "On the Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation" on the right of an electoral association, electoral bloc to nominate as candidates persons who are not members of public associations comprised therein, be consistent with the Constitution of the Russian Federation.

5. It shall be recognized that the provision of Para. 5, Article 37 of the Federal Law of June 21, 1995 "On the Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation" to the effect that the federal list may include candidates for deputies of the State Duma nominated by the same electoral association, electoral bloc in single-seat electoral districts, be consistent with the Constitution of the Russian Federation.

6. It shall be recognized that the provision of Para. 2, Article 39 of the Federal Law of June 21, 1995 "On the Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation" under which an electoral association, electoral bloc that nominated a federal list of candidates shall collect not less than 200 thousand voter signatures in its support, with one subject of the Russian Federation accounting for not more than seven percent of the required total number of signatures, be consistent with the Constitution of the Russian Federation.

7. It shall be recognized that the provision of Para. 3, Article 39 of the Federal Law of June 21, 1995 "On the Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation" to the effect that signatures collected in support of a candidate nominated by an electoral association, electoral bloc in a single-seat district and registered by a district election commission shall be added by the Central Election Commission of the Russian Federation to the number of signatures in support of the federal list of candidates nominated by that electoral association, electoral bloc be inconsistent with the Constitution of the Russian Federation, its Articles 19 (Paras. 1 and 2) and 32 (Para. 2).

8. It shall be recognized that the provision of Para. 2, Article 62 of the Federal Law of June 21, 1995 "On the Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation" under which electoral associations, electoral blocs whose lists of candidates have gained less than five percent of the votes cast by the voters who participated in the voting, shall be excluded from the distribution of deputy seats contested in the federal electoral district, be consistent with the Constitution of the Russian Federation in so far as application of a five percent threshold allows for participation in the distribution of deputy seats of not less than two electoral associations that have gained, in the aggregate, more than 50 percent of the votes cast by the voters who participated in the voting.

The Federal Assembly of the Russian Federation shall amend the Federal Law "On the Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation" to ensure appropriate realization of the principle of proportionality in determining election results in the federal electoral district, following, in so doing, the Constitution of the Russian Federation with due regard to the provisions

¹ *Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii* (Bulletin of the Constitutional Court of the Russian Federation). 2000. No. 3. P. 21–28.

of Subclause 1 of this Clause and Clause 8 of the whereases of this Decision.

9. It shall be recognized that the provision of Article 67 of the Federal Law of June 21, 1995 "On the Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation" on filling the vacancy of an early retired deputy elected on the federal list be consistent with the Constitution of the Russian Federation.

10. In accordance with Para. 1 and Para. 2, Article 79 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," this Decision shall be final, shall not be subject of appeal, shall be effective immediately following its proclamation and shall be applied directly.

11. In accordance with Article 78 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," this Decision shall be immediately published in the *"Sobraniye zakonodatelstva Rossiiskoi Federatsii"* (Collection of Legislation of the Russian Federation) and the *"Rossiyskaya Gazeta"* newspaper. The Decision shall also be published in the *"Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii"* (Bulletin of the Constitutional Court of the Russian Federation).

**3.5 (11.13) DECISION NO. 4-P OF MARCH 23, 2000 IN THE CASE
ON VERIFICATION OF CONSTITUTIONALITY OF PARAGRAPH 2,
ARTICLE 3 OF THE LAW OF THE ORENBURG OBLAST
OF SEPTEMBER 18, 1997 "ON THE ELECTIONS OF DEPUTIES
OF THE LEGISLATIVE ASSEMBLY OF THE ORENBURG OBLAST"
IN RESPONSE TO COMPLAINT SUBMITTED BY CITIZENS
G.S. BORISOV, A.P. BUTCHNEV, V.I. LOSHMANOV,
AND L.G. MAKHOVA¹**

The Constitutional Court of the Russian Federation presided by T.G. Morshchakova and composed of judges: N.V. Vitruk, G.A. Gadzhiyev, A.L. Kononov, Yu.D. Rudkin, N.V. Seleznyov, A.Ya. Sliva, B.S. Ebzeyev, and V.G. Yaroslavtsev,

Following Article 125 (Para. 4) of the Constitution of the Russian Federation, Clause 3, Para. 1, Paras. 2 and 3, Article 3, Clause 3, Para. 2, Article 22, Articles 36, 74, 86, 96, 97, and 99 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation,"

Reviewed in an open session a case on verification of constitutionality of Para. 2, Article 3 of the Law of the Orenburg Oblast "On the Elections of Deputies of the Legislative Assembly of the Orenburg Oblast."

The case was reviewed in response to a complaint submitted by citizens G.S. Borisov, A.P. Butchnev, V.I. Loshmanov and L.G. Makhova against violation of their constitutional rights by Para. 2, Article 3 of the Law of the Orenburg Oblast of September 18, 1997 "On the Elections of Deputies of the Legislative Assembly of the Orenburg Oblast" (as amended on November 11, 1997).

Upon examination of the report of judge-rapporteur, B.S. Ebzeyev, comments of invited persons: M.A. Mityukov, Plenipotentiary Representative of the President of the Russian Federation at the Constitutional Court of the Russian Federation, and V.V. Lazarev, the permanent representative of the State Duma at the Constitutional

Court of the Russian Federation, as well as M.V. Grishina, a representative of the Central Election Commission of the Russian Federation, A.A. Belkin, a representative of the Office of Prosecutor General of the Russian Federation, P.A. Vysotsky, a representative of the Ministry of Justice of the Russian Federation, as well as other documents and materials, the Constitutional Court of the Russian Federation

Established as follows:

1. The complaint submitted by citizens: G.S. Borisov, A.P. Butchev, V.I. Loshmanov, and L.G. Makhova challenges constitutionality of Para. 2, Article 3 of the Law of the Orenburg Oblast "On the Elections of Deputies of the Legislative Assembly of the Orenburg Oblast" under which elections of the Legislative Assembly of the Orenburg Oblast held throughout the entire territory of the Orenburg Oblast shall be based on a majority system in single-seat and/or multi-seat districts.

The petitioners believe that holding elections within the framework of a common election campaign simultaneously in single-seat and multi-seat districts leads to violation of equality with respect to electoral rights of voters on the basis of their residence, since some voters have one vote each, whereas the others – several votes (depending on the number of seats distributed in a district); in such a situation violated are also the rights of candidates who, due to different conditions in which the election campaign is conducted in single-seat and multi-seat districts, are likewise put in an unequal position.

The said circumstances, as is claimed by the petitioners, indicate that the contested norm is at variance with Articles 3 (Para. 3), 6 (Para. 1), 19 (Para. 2) and 32 of the Constitution of the Russian Federation and Clause "c", Article 25 of the International Covenant on Civil and Political Rights.

As is apparent from the submitted materials, the court of the Orenburg Oblast dismissed the complaint submitted by the petitioners against violation of their rights and freedoms by holding elections of the Legislative Assembly of the Orenburg Oblast simultaneously in single-seat and multi-seat districts, referring to the fact that the Law of the Orenburg Oblast "On the Elections of Deputies of the Legislative Assembly of the Orenburg Oblast" did not contradict the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum." The Civil Judicial Board of the Supreme Court of the Russian Federation that had examined the appeal submitted by the petitioners upheld the decision of the regional court.

2. Pursuant to Article 72 (Clause "b", Para. 1) of the Constitution of the Russian Federation, protection of the rights and freedoms of the human being and citizen, including the electoral rights proclaimed under Article 32 of the Constitution of the Russian Federation, falls within joint jurisdiction of the Russian Federation and the subjects of the Russian Federation, understanding that the subjects of the Russian Federation shall, when introducing specific electoral procedures, and proceeding from the specific features of those procedures, provide for additional guarantees, if required, for electoral rights. Since the Law of the Orenburg Oblast "On the Elections of Deputies of the Legislative Assembly of the Orenburg Oblast" is related to the constitutional rights of the petitioners and was applicable at the elections of the Legislative Assembly of the Orenburg Oblast, their complaint shall, by virtue of Article 125 (Para.

4) of the Constitution of the Russian Federation and Articles 96 and 97 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," be reviewed by the Constitutional Court of the Russian Federation.

The legislative content and implication imparted by the legislator of the Orenburg Oblast to the contested provision of Para. 2, Article 3 of the Law of the Orenburg Oblast "On the Elections of Deputies of the Legislative Assembly of the Orenburg Oblast" is set forth in the Law of the Orenburg Oblast of September 18, 1997 "On Approval of the Scheme of Electoral Districts for Holding Elections of Deputies of the Legislative Assembly of the Orenburg Oblast" under which, in order to distribute 47 seats, 33 electoral districts shall be formed made up of 24 single-seat, six two-seat, one three-seat and two four-seat districts with every voter in multi-seat districts voting at elections for two, three or four candidates respectively. Consequently, the contested provision and the said Law ensuring its implementation in accordance with the electoral procedure established for elections of deputies of the Legislative Assembly of the Orenburg Oblast may be reviewed and assessed only in their interrelation, which is also supported by arguments of the petitioners stated in the complaint.

Thus, the subject to be reviewed in the given case is the provision of Para. 2, Article 3 of the Law of the Orenburg Oblast "On the Elections of Deputies of the Legislative Assembly of the Orenburg Oblast" and the Law of the Orenburg Oblast "On the Approval of the Scheme of Electoral Districts for Holding Elections of Deputies of the Legislative Assembly of the Orenburg Oblast" that determines organizational and legal conditions for realization of the said provision in the process of the March 20, 1998 elections of deputies of the Legislative Assembly of the Orenburg Oblast.

3. In accordance with Article 19 (Para. 2) of the Constitution of the Russian Federation, the state shall guarantee equality of rights and liberties of the human being and citizen, regardless of sex, race, nationality, language, origin, property or employment status, residence, attitude to religion, convictions, membership in public associations or any other circumstance. The principle of equality fully applies to the right of citizens of the Russian Federation stipulated by Article 32 (Para. 2) of the Constitution of the Russian Federation to elect and be elected to bodies of state power and bodies of local self-government and to participate in a referendum, which is in compliance with Clause "b", Article 25 of the International Covenant on Civil and Political Rights, under which every citizen shall have, without any discrimination whatever and without any unjustified restriction, the right and possibility to elect and be elected at genuinely periodic elections held on the basis of the universal and equal suffrage by secret ballot and assuring free expression of voters' will. Only such mechanism of organization and holding of elections that guarantees observance of the said democratic principles may be recognized as constitutionally justified.

The equal electoral right exercised, *inter alia*, in the course of elections of a legislative (representative) body of a subject of the Russian Federation consists, primarily, in the presence with every voter of one vote (or an identical number of votes) and in participation in elections on equal terms. That is achieved, specifically, by including a voter in no more than one voter list, formation of electoral districts that are

essentially equal by the number of voters, compliance with the established quotas of representation, providing candidates with equal legal possibilities to participate in an election campaign and through other legal, organizational and informational means and methods guaranteeing genuine popular representation at elective bodies of public power in conformity with the constitutional principle of the power of the people in a democratic and law-bound state (Articles 1 and 3 of the Constitution of the Russian Federation).

The obligation to undertake legislative and other measures to ensure democratic, free and periodic elections of bodies of state power and bodies of local self-government in accordance with the Constitution of the Russian Federation and international legal commitments of the Russian Federation is placed upon the Russian Federation and the subjects of the Russian Federation with due regard to delineation of scopes of jurisdiction and powers between them that are secured by the Constitution of the Russian Federation and federal laws (Articles 71, 72, and 73 of the Constitution of the Russian Federation).

4. The right of citizens to elect and be elected to bodies of public power in the process of democratic elections is exercised in various forms, including by holding elections both in single-seat and multi-seat districts in which several seats are distributed among elected deputies. At the same time, the use of such electoral system must be accompanied by appropriate guarantees of citizens' participation in elections on equal terms, which also requires – subject to proportionality of representation – that every voter be given either one vote or an identical number of votes. Subject to that condition, the holding of elections simultaneously in single-seat and multi-seat electoral districts does not lead to violation of the constitutional principle of equality with respect to electoral rights.

Thus, in itself, the provision on holding elections on the basis of the majority electoral system simultaneously in single-seat and multi-seat electoral districts cannot be at variance with the Constitution of the Russian Federation and equality stipulated therein with respect to the rights of citizens to elect and be elected to bodies of public power but only provided equal conditions for citizens to exercise their electoral rights and consequently, fair popular representation is ensured.

Meanwhile, the Law of the Orenburg Oblast "On the Elections of Deputies of the Legislative Assembly of the Orenburg Oblast" provides for only an average quota of voters' representation in the formation of electoral districts in the territory of the Oblast (Clause 1, Article 5) and establishes that a scheme of electoral districts shall be approved by the Legislative Assembly of the Orenburg Oblast (Clause 2, Article 5). In addition, the contested provision admits that voters from different – single-seat and multi-seat – districts may have an unequal number of votes, inasmuch as it fails to provide for any conditions that would ensure implementation of the right of citizens to take part in elections on equal terms and, consequently, – in the management of state affairs through their representatives. No such guarantees are likewise found in the Law of the Orenburg Oblast "On the Approval of the Scheme of Electoral Districts for Holding Elections of Deputies of the Legislative Assembly of the Orenburg Oblast."

Consequently, the laws of the Orenburg Oblast reviewed in the given case do not preclude a possibility of unjustified or arbitrary solution of issues pertaining to organization and administration of elections, including the solution inspired by goals

inconsistent with the Constitution of the Russian Federation and federal laws. In fact, that may result in violation of the principle of the power of the people, in particular, that of equal representation of voters and their equality in exercising their electoral rights in the process of formation of a legislative (representative) body of a subject of the Russian Federation.

The provision on holding elections simultaneously in single-seat and multi-seat electoral districts which the territory of the Orenburg Oblast is divided into, must be followed by a statutory definition of objective criteria of classification of a particular territory either as a single-seat or multi-seat district, allowing verification of validity of such decisions and of conditions that would exclude any unequal or distorted – in terms of the constitutional content – representation of voters at a legislative (representative) body of a subject of the Russian Federation or any other forms of inequality in voting. Anything to the contrary inevitably leads to violation, primarily, of the equal active electoral right of citizens.

Non-compliance with the said requirements regarding regulation of elections of deputies of the Legislative Assembly of the Orenburg Oblast held simultaneously in single-seat and multi-seat electoral districts does not preclude the creation of unjustified privileges for an electoral association or a candidate either. Consequently, such regulation acquires an unconstitutional meaning because it violates the equal passive electoral right.

Proceeding from the above-stated, it shall be recognized that the contested provision of Para. 2, Article 3 of the Law of the Orenburg Oblast "On the Elections of Deputies of the Legislative Assembly of the Orenburg Oblast" and the Law of the Orenburg Oblast "On the Approval of the Scheme of Electoral Districts For Holding the Elections of Deputies of the Legislative Assembly of the Orenburg Oblast" that elaborates the former and is based thereupon, be inconsistent with the Constitution of the Russian Federation, its Articles 3 (Paras 2 and 3), 19 (Para. 2) and 32 (Para. 1 and Para. 2).

5. The legislator of the Orenburg Oblast must, proceeding from its constitutional powers defined in accordance with Articles 72 and 73 of the Constitution of the Russian Federation, in the period prior to next regular elections of the Legislative Assembly of the Orenburg Oblast, eliminate the inequality of conditions that citizens find themselves under, in case when elections are held simultaneously in single-seat and multi-seat electoral districts, so that every voter be given either one vote or an identical number of votes. Besides, specific criteria must be established to classify a particular territory either as a single-seat or multi-seat district, since in the practice of organization of the electoral process the possibility to fill in the gaps in legislative regulation of those organizational forms of elections may not be recognized as sufficient to ensure electoral rights of citizens.

In particular, the legislator of the Orenburg Oblast is authorized, considering peculiarities of the administrative-territorial structure of the Oblast and organization of local self-government, the density of the population and other criteria, to adjust the mechanism of elections so that it serves as a guarantee of equality in exercising both active and passive electoral rights. Otherwise, the provision regarding holding elections simultaneously in single-seat and multi-seat districts would not have a constitutionally consistent meaning.

6. Inasmuch as Para. 2, Article 3 of the Law of the Orenburg Oblast "On the

Elections of Deputies of the Legislative Assembly of the Orenburg Oblast," neither by itself nor in its interrelation with the Law of the Orenburg Oblast "On the Approval of the Scheme of Electoral Districts for Holding Elections of Deputies of the Legislative Assembly of the Orenburg Oblast" contains any statutory guarantees of participation of citizens in elections on equal terms and of equality with respect to voters' representation at the Legislative Assembly of the Orenburg Oblast, there is a threat of non-compliance with the constitutional requirement for enforcement of electoral rights of citizens by administration of justice. Meanwhile, denial of reinstatement of violated electoral rights infringes not only upon the constitutional right of citizens to elect and be elected to bodies of public power but also upon the constitutional right to judicial protection. Notably, there is an obvious failure to comply with the obligation, applicable both to the Russian Federation and the subjects of the Russian Federation, proceeding from the requirements established under Articles 18, 45, and 46 (Para. 1 and Para. 2) of the Constitution of the Russian Federation, to create appropriate legal mechanisms so that to guarantee state protection of the rights and freedoms of the human being and citizen.

In particular, the courts, when exercising protection of electoral rights, following the principle of the power of the people and the constitutional requirement of equality with respect to electoral rights of citizens, including regardless of their residence, and proceeding from the implication of the said provisions of the Constitution of the Russian Federation identified by the Constitutional Court of the Russian Federation, have no right to confine themselves to a formal assessment of compliance of a law of a subject of the Russian Federation on elections of deputies of a legislative (representative) body of a subject of the Russian Federation with the norms of federal legislation but must, in each specific case reviewed thereby, actually ensure effective reinstatement of electoral rights.

Proceeding from the above and following Para. 1 and Para. 2, Article 71, Articles 72, 75, 100, and 104 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," the Constitutional Court of the Russian Federation

Decided as follows:

1. Proceeding from the unity of the statutory content of Para. 2, Article 3 of the Law of the Orenburg Oblast of September 18, 1997 "On the Elections of Deputies of the Legislative Assembly of the Orenburg Oblast" (as amended on November 11, 1997) and the Law of the Orenburg Oblast of September 18, 1997 "On the Approval of the Scheme of Electoral Districts for Holding Elections of Deputies of the Legislative Assembly of the Orenburg Oblast," it shall be recognized that they be inconsistent with the Constitution of the Russian Federation, its Articles 3 (Para. 2 and Para. 3), 19 (Para. 2) and 32 (Para. 1 and Para. 2), inasmuch as, by allowing the holding of elections of deputies of the Legislative Assembly of the Orenburg Oblast simultaneously in single-seat and multi-seat districts, they fail to ensure a situation when every voter is given an identical number of votes and participate in elections on equal terms.

Recognition of the said norms as being inconsistent with the Constitution of the

¹ *Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii* (Bulletin of the Constitutional Court of the Russian Federation). 2000. No. 4. P. 30–37.

Russian Federation does not affect the powers of deputies of the Legislative Assembly of the Orenburg Oblast, elected prior to the effective date of this Decision.

2. Following Clause 12, Para. 1, Article 75 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," the following procedure shall be established to ensure execution of this Decision:

1) The Legislative Assembly of the Orenburg Oblast shall, in keeping with the powers specified in Articles 72 and 73 of the Constitution of the Russian Federation and federal laws – prior to holding new elections of the Legislative Assembly of the Orenburg Oblast – shall establish appropriate guarantees ensuing from this Decision to ensure equality with respect to rights of citizens to elect and be elected and their right to participate in elections on equal terms so that the provision of Para. 2, Article 3 of the Law of the Orenburg Oblast "On the Elections of Deputies of the Legislative Assembly of the Orenburg Oblast" and the Law of the Orenburg Oblast "On the Approval of the Scheme of Electoral Districts for Holding Elections of Deputies of the Legislative Assembly of the Orenburg Oblast" based thereupon, acquire a meaning that is consistent with the Constitution of the Russian Federation;

2) When the seat vacated by an early retired deputy is to be filled, the provision of Para. 2, Article 3 of the Law of the Orenburg Oblast "On the Elections of Deputies of the Legislative Assembly of the Orenburg Oblast" and the Law of the Orenburg Oblast "On the Approval of the Scheme of Electoral Districts for Holding Elections of Deputies of the Legislative Assembly of the Orenburg Oblast" based thereupon shall not apply without necessary changes and amendments thereto that ensue from this Decision.

3. Pursuant to Para. 1 and Para. 2, Article 79 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," this Decision shall be final, shall not be subject of appeal, shall be effective immediately following its proclamation, and shall be applied directly.

4. In accordance with Article 78 of the Federal constitutional law "On the Constitutional Court of the Russian Federation," this Decision shall be immediately published in the "*Sobraniye zakonodatelstva Rossiiskoi Federatsii*" (Collection of Legislation of the Russian Federation), the "*Rossiyskaya Gazeta*" and official outlets of the bodies of state power of the Orenburg Oblast. This Decision shall also be published in the "*Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii*" (Bulletin of the Constitutional Court of the Russian Federation).

**3.6 (11.14). DECISION NO. 7-P OF APRIL 25, 2000 IN THE CASE
ON VERIFICATION OF CONSTITUTIONALITY OF PARAGRAPH 11,
ARTICLE 51 OF THE FEDERAL LAW OF JUNE 24, 1999
"ON THE ELECTION OF DEPUTIES OF THE STATE DUMA
OF THE FEDERAL ASSEMBLY OF THE RUSSIAN FEDERATION"¹**

The Constitutional Court of the Russian Federation, presided by O.S. Khryakova and composed of judges M.V. Baglay, Yu.M. Danilov, L.M. Zharkova, G.A. Zhilin, V.D. Zorkin, N.V. Seleznyov, V.G. Strekozov,

With participation of V.M. Platonov – representative of a group of members of

the Federation Council that submitted an petition to the Constitutional Court of the Russian Federation, V.V. Lazarev – permanent representative of the State Duma in the Constitutional Court of the Russian Federation, and L.G. Alekhicheva – a representative of the Federation Council,

Following Article 125 (Clause "a", Para. 2) of the Constitution of the Russian Federation, Subclause "a", Clause 1, Para. 1; Para. 2 and Para. 3, Article 3; Subclause "a", Clause 1, Para. 2, Article 22; Articles 36, 74, 84, 85 and 86 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation,"

Reviewed in an open session the case on verification of constitutionality of Clause 11, Article 51 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation."

The case has been reviewed in response to a petition submitted by 36 members of the Federation Council requesting verification of constitutionality of Clause 11, Article 51 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation."

The case has been reviewed on the grounds of an uncertainty identified in the issue of whether the provision contested in the petition complies with the Constitution of the Russian Federation.

Upon examination of the report of judge-rapporteur V.G. Strekozov, explanations of representatives of the parties, messages of attending representatives of the Central Election Commission of the Russian Federation, E.I. Kolyushin, M.V. Grishina, and I.G. Shablinsky, as well as documents and other materials, the Constitutional Court of the Russian Federation

Established as follows:

1. Pursuant to Clause 11, Article 51 of the Federal Law of June 24, 1999, "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation," if the number of candidates, registered candidates excluded from a federal list of candidates on the basis of their applications or by the decision of an electoral association, electoral bloc exceeds 25 percent of the total number of candidates on the certified federal list of candidates or in the event of withdrawal of one of or several candidates occupying the first three places in the federal part of the certified federal list of candidates (if their withdrawal is not due to compelling reasons indicated in Clause 16 of this Article, namely: legal incompetence identified in the court of law, serious illness, persistent health problems of a registered candidate or their next of kin) the Central Election Commission of the Russian Federation refuses to register the list of candidate or annuls its registration.

Constitutionality of this norm is contested by petitioners only in the part that concerns denial of registration of a federal list of candidates nominated by an electoral association, electoral bloc, or annulment of registration if one of or more candidates occupying the top three positions in the federal part of a certified federal list of candidates withdraw their candidatures due to non-compelling circumstances. The petition argues that consequences of withdrawal of even one of these candidates accounted for by the contested provision deprive the citizens of the Russian Federation who share the views of the electoral association, electoral bloc in question of the right to elect, and candidates included in the list of candidates – of the right to be elected to bodies of state power, violate the constitutional principle of

equality, and impede implementation of the right of citizens to association, which contradicts Articles 19, 29, 30, 32, 45, 55 and 97 of the Constitution of the Russian Federation.

2. Pursuant to Article 32 of the Constitution of the Russian Federation, citizens of the Russian Federation have the right to participate in managing state affairs both directly and through their representatives (Para. 1), to elect and be elected to bodies of state power and bodies of local self-government, and to participate in referenda (Para. 2). Pursuant to Article 3 (Para. 3) of the Constitution of the Russian Federation, referenda and free elections are the supreme direct expression of the power of the people. From the said provisions and Article 19 (Paras. 1 and 2) of the Constitution of the Russian Federation that guarantees equality of all people before the law and court, as well as equality of rights and freedoms of man and citizen, regardless of sex, race, nationality, language, origin, property and official status, place of residence, religion, convictions, membership of public associations, and other circumstances, it follows that the constitutional right of the citizens of the Russian Federation to elect and be elected to bodies of state power and local self-government must be implemented on the basis of the equal suffrage.

This conclusion corresponds with provisions of the Universal Declaration of Human Rights that establishes that everyone has the right to take part in the government of his country, directly or through freely chosen representatives, and that the will of the people must be expressed in periodic and genuine elections which must be held on the basis of the universal and equal suffrage (Paras. 1 and 3, Article 21), as well as the International Covenant on Civil and Political Rights pursuant to which every citizen must have the right to vote and to be elected at genuine periodic elections which must be held on the basis of the universal and equal suffrage by secret ballot, guaranteeing the free expression of the will of the voters, that is free from any discrimination and ungrounded restrictions (Clause "b", Article 25).

Securing the right of citizens to elect and be elected to bodies of state power and local self-government the Constitution of the Russian Federation does not directly provide for the order of its implementation. It follows from its Articles 32 (Paras. 1, 2 and 3), 71 (Clause "c") and 96, that regulation of the electoral right and determination thereby of its specific content, in particular, the establishment of the order of elections, including elections to the State Duma, is the competence of the legislature.

Administering such regulation the legislature must ensure observation of constitutional principles and norms, including those related to conditions and extent of acceptable restrictions of citizens' rights and freedoms.

Pursuant to Article 55 (Para. 3) of the Constitution of the Russian Federation, rights and freedoms of a human being and citizen may be limited by the federal law only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defense of the country and security of the state. Consequently, restrictions of electoral rights of citizens by a federal law are only acceptable under the condition that such restrictions pursue constitutional goals and are proportionate thereto.

3. The Federal Law "On the Election of Deputies of the State Duma of the

Federal Assembly of the Russian Federation" provides for a mixed (majority-proportionate) election system according to which 225 deputies of the State Duma are elected in single-seat electoral districts (one district – one deputy), and 225 deputies – in the federal electoral district in proportion to the number of votes cast for federal lists of candidates to deputies nominated by electoral associations, electoral blocs (Article 3). The order of elections under such a system entails peculiarities, including those related to terms and conditions of registration of citizens as candidates and their implementation of the right to be elected depending on which district – single-seat or federal – they stand as candidates for.

The right to be elected to bodies of state power and local self-government (the passive electoral right) – as one of the key rights of the citizens and the most important element of their legal status in a democratic society – is individual, rather than collective by its nature (the position of the Constitutional Court of the Russian Federation to that effect is expressed in its Decision of June 24, 1997 on the case on verification of constitutionality of Articles 74 (Para. 1) and 90 of the Constitution of the Republic of Khakassia). The rules of registration of a federal list of candidates established by the legislature, even though it is nominated by an electoral association, electoral bloc, must not distort the essence of this right, create ungrounded impediments for its implementation, and violate the principle of the equal suffrage.

4. Article 51 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation" as a general rule provides that a candidate, registered candidate on a federal list of candidates may, at any time but not later than five days prior to voting day, refuse to continue participation in the election on the federal list of candidates by submitting a written application to the Central Election Commission of the Russian Federation (Para. 3), while an electoral association, electoral bloc, has the right to remove some candidates, registered candidates from the federal list certified by (registered with) the Central Election Commission of the Russian Federation (Para. 8).

The contested provision of Clause 11, Article 51 determines legal consequences of removal of one or more candidates occupying the top three positions in the federal part of the certified federal list of candidates: in this case the Central Election Commission of the Russian Federation denies registration of the federal list of candidates or annuls it if registration has already occurred. At the same time, stemming from the law-enforcement practice the contested provision implies that removal of a person from a list of candidates may be through a voluntary withdrawal of a candidate (due to his refusal to continue participation in elections as member of the federal list in question), removal of a candidate by the decision of the electoral association, electoral bloc that nominated him, or removal by the decision of the Central Election Commission – due to inaccuracy of information submitted about the person in question if it is essential (Clause "d", Para. 6, Article 47), when removal from the list is a penalty for violation of the election legislation.

Thus, on whether or not the candidates who occupied the top three positions in the certified federal list of candidates remain on the list depends the possibility of the other candidates on this list to implement their passive electoral right, as does the possibility of citizens implementing their active electoral right to cast

their ballots for the candidates of the electoral association, electoral bloc whose goals and program most adequately reflect their convictions and interests. Therefore, the said legal consequences are associated with restriction of electoral rights of citizens.

At this stage of the election process the principle of the equal electoral right implies legal equality, equal legal status of candidates included in the certified (registered) federal list regardless of which place they occupy therein. But legal consequences accounted for by the contested provision violate this principle because withdrawal of a candidate occupying one of the top three positions in the federal part of the certified federal list, unlike withdrawal of candidates occupying all other positions, results in denial of registration of the entire list of candidates or its annulment.

At the same time, pursuant to the principle of free elections that implies, according to Articles 3 (Para. 3) and 32 (Para. 2) of the Constitution of the Russian Federation, that participation of a citizen in elections both in the capacity of a voter and in the capacity of a candidate, is free and voluntary, from the principle of equality of all people as they exercise their electoral rights, as well as the individual nature of the passive electoral right it follows that refusal of a candidate who occupies one of the top three positions in the federal part of the federal list of candidates to participate in elections, as well as his removal from the list at the initiative of the electoral association, electoral bloc, or the initiative of the Central Election Commission of the Russian Federation, may not be considered as grounds for restriction of the passive electoral right of other candidates on the list.

The mixed (majority-proportionate) electoral system used for elections to the State Duma is designed to ensure its representative nature in compliance with constitutional principles of political diversity and multi-partisanship (Article 3, Para. 3; Article 94 of the Constitution of the Russian Federation) on the basis of the people's will identified by means of voting. Refusal to register a federal list nominated by an electoral association, electoral bloc, or its annulment as a result of withdrawal of at least one candidate who occupied one of the top three positions in the federal part of the list, unjustifiably restrict the active electoral right of the citizens, and deprive them of the possibility to express their will with respect to candidates nominated by a respective electoral association, electoral bloc, thus preventing one from ensuring the representative nature of the State Duma as a body of legislative power.

The special role played in the course of the election campaign by candidates leading the federal part of the federal list of candidates that reflects their political weight and influence within the electoral association, electoral bloc itself, may not be considered as sufficient grounds for introduction of such a restriction of electoral rights at this stage of the electoral process, — a restriction based on such grounds may not be justified by any of the goals listed in Article 55 (Para. 3) of the Constitution of the Russian Federation.

Thus, the contested provision of Clause 11, Article 51 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation," providing for a denial of registration of a federal list of candidates or its annulment due to withdrawal of one or more candidates who occupied the top three

positions in the federal part of this list, unjustifiably restricts the active electoral right of citizens and the passive electoral right of other candidates on the federal list nominated by an electoral association, electoral bloc, and violates the principles of free elections and the equal electoral right, and therefore contradicts Articles 3 (Para. 3), 19 (Paras. 1 and 2), 32 (Paras. 1 and 2), and 55 (Para. 3) of the Constitution of the Russian Federation.

5. Pursuant to Articles 17 (Para. 3) and 32 (Paras. 1 and 2) of the Constitution of the Russian Federation, citizen's implementation of their rights and freedoms, including their right to elect and be elected to bodies of state power and local self-government must not violate rights and freedoms of other people.

Pursuant to Article 30 (Para. 1) of the Constitution of the Russian Federation, everyone has the right to association; the freedom of activity of public associations is guaranteed.

The primary goal of an electoral association as a political public association (Para. 11, Article 2 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum") is participation in elections to bodies of state power, in this case – to the State Duma. In particular, each electoral association, electoral bloc, pursuant to Article 39 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation," has the right to nominate their federal list of candidates.

The Federal Law under discussion, providing a candidate included in such a list with the right to refuse from further participation in elections at his own initiative at any time but not later than five days prior to voting day, does not associate its implementation however with acquisition of consent thereto of an electoral association, electoral bloc.

By virtue of the contested provision, expression of the will of one candidate who occupied one of the top three positions in the federal part of a certified federal list of candidates, results in the fact that due to uncontrollable reasons an electoral association, electoral bloc is groundlessly deprived of a possibility to participate in elections by nominating a federal list of candidates, which illegally restricts the freedom of activities of associations guaranteed by Article 30 (Para. 1) of the Constitution of the Russian Federation. In addition, legal consequences accounted for by the contested provision prevent candidates leading the federal part of the list of candidates from leaving their electoral association, electoral bloc if their convictions change or if the electoral position of their electoral association, electoral bloc changes and they consider their further stay in the said electoral association, electoral bloc impossible, which violates provisions of Article 30 (Para. 2) of the Constitution of the Russian Federation pursuant to which no one may be compelled to join any association or remain in it.

6. Pursuant to the contested provision of Clause 11, Article 51 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation," in connection with provisions contained in Subclause "d", Clause 6 and Clause 9, Article 47, as well as Clause 13 and Clause 15, Article 51, and Chapter XII "Lodging of Complaints about Violations of Electoral Rights of Citizens and Responsibility for Violation of Electoral Rights of Citizens," denial

of registration of a federal list of candidates or its annulment in this case are used as a penalty imposed upon the electoral association, electoral bloc and candidates on the list.

In the meantime, legal penalties may be established by the federal legislature only for violations of the election legislation by participants of the electoral process; they must be proportionate to the deed with which the law associates their application, and they must not lead to illegal restriction of citizens' rights and freedoms. Pursuant to the contested norm however, in case of withdrawal of one or more candidates occupying the top three positions in the federal part of the federal list such a measure as denial of registration of this list of candidates or its annulment is applied against other candidates included in the federal list, and the electoral association, electoral bloc upon the whole in absence of any violations on their part which is not consistent with the generally recognized principles of legal liability, including the general legal principle of fairness, and is unacceptable within a constitutional state (Article 1 of the Constitution of the Russian Federation).

Proceeding from the above and following Para. 1 and Para. 2, Article 71, as well as Articles 72, 75, 79 and 87 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," the Constitutional Court of the Russian Federation

Decided as follows:

1. It shall be recognized that the provision of Clause 11, Article 51 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation" pursuant to which in case of withdrawal of one or more candidates occupying the top three positions in the federal part of a certified federal list of candidates (except for withdrawals due to compelling reasons specified in Clause 16 of the said Article) the Central Election Commission of the Russian Federation denies registration of the federal list of candidates or annuls such registration, be inconsistent with the Constitution of the Russian Federation, its Articles 3 (Para. 3), 19 (Paras. 1 and 2), 30 (Paras. 1 and 2), 32 (Paras. 1 and 2), and 55 (Para. 3).

Recognition of the said provision of Clause 11, Article 51 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation" as inconsistent with the Constitution of the Russian Federation does not affect results of the elections of deputies of the State Duma held on December 19, 1999 and may not serve as grounds for review of these results.

2. Pursuant to Paras. 1 and 2, Article 79 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," this Decision shall be final, shall not be subject of appeal, shall be effective immediately following its proclamation, and shall be applied directly.

3. Pursuant to Article 78 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," this Decision shall be immediately published in the "*Sobraniye zakonodatelstva Rossiiskoi Federatsii*" (Collection of Legislation of the Russian Federation), and the "*Rossiyskaya Gazeta*." This Decision shall also be pub-

¹ *Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii* (Bulletin of the Constitutional Court of the Russian Federation), 2002. No. 3. P. 3–14.

lished in the "*Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii*" (Bulletin of the Constitutional Court of the Russian Federation).

3.7 (11.15). DECISION NO. 1-P OF JANUARY 15, 2002 IN THE CASE ON VERIFICATION OF CONSTITUTIONALITY OF CERTAIN PROVISIONS OF ARTICLE 64 OF THE FEDERAL LAW "ON BASIC GUARANTEES OF ELECTORAL RIGHTS AND THE RIGHT OF CITIZENS OF THE RUSSIAN FEDERATION TO PARTICIPATE IN A REFERENDUM" AND ARTICLE 92 OF THE FEDERAL LAW "ON THE ELECTION OF DEPUTIES OF THE STATE DUMA OF THE FEDERAL ASSEMBLY OF THE RUSSIAN FEDERATION" IN CONNECTION WITH A COMPLAINT SUBMITTED BY CITIZEN A.M. TRASPOV¹

The Constitutional Court of the Russian Federation presided by B.S. Ebzeyev and composed of judges N.S. Bondar, N.V. Vitruk, G.A. Gadzhiyev, A.L. Kononov, T.G. Morshchakova, Yu.D. Rudkin, A.Ya. Sliva, O.I. Tiunov, and V.G. Yaroslavtsev,

With participation of citizen A.M. Traspov, permanent representative of the State Duma at the Constitutional Court of the Russian Federation, V.V. Lazarev, representative of the Federation Council, Doctor of Law, A.S. Avtonomov, and Plenipotentiary Representative of the President of the Russian Federation at the Constitutional Court of the Russian Federation, M.A. Mityukov,

Following Article 125 (Para. 4) of the Constitution of the Russian Federation, Clause 3, Para. 1, Para. 2 and Para. 3, Article 3, Clause 3, Para. 2, Article 22; Articles 36, 96, 97, 99 and 86 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation,"

Reviewed in an open session the case on verification of constitutionality of certain provisions of Article 64 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" and Article 92 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation." The case has been reviewed in response to a grievance submitted by citizen A.M. Traspov who claimed that the said provisions had violated his constitutional rights.

Upon examination of the report of judge-rapporteur Yu.D. Rudkin, explanations of the parties and their representatives, messages of attendees representing: the Supreme Court of the Russian Federation – Judge of the Supreme Court of the Russian Federation V.Yu. Zaitsev, the Central Election Commission of the Russian Federation – R.T. Biktagirov, the Human Rights Ombudsman of the Russian Federation – G.G. Nikitina, as well as documents and other materials, the Constitutional Court of the Russian Federation

Established as follows:

1. Citizen A.M. Traspov contests constitutionality of Clause 3, Article 64 of the Federal Law of September 19, 1997 "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" and Clause 3, Article 92 of the Federal Law of June 26, 1999 "On the Election of Deputies

of the State Duma of the Federal Assembly of the Russian Federation" in the part concerning the authority of a court of an appropriate level to annul decisions of the election commission on vote returns and election results in an electoral district, including such violations of the election legislation as illegal denial of one's registration as a candidate, only if these actions do not allow the results of the expression of voters' will to be reliably determined.

From the documents presented to the Court it follows that on October 19, 1999 the territorial court of the Stavropol krai (territory) sustained a petition submitted by citizen A.M. Traspov in which he complained about the refusal of the district election commission of the Stavropol single-seat electoral district No. 55 to register him as a candidate in the 1999 elections of deputies of the State Duma. But the territorial election commission, which, pursuant to the same court decision, was to consider the registration of A.M. Traspov as a candidate by October 24, 1999, also refused to do so in its Resolution of October 22, 1999.

The complaint about the said Resolution of the territorial election commission submitted by A.M. Traspov to the territorial court of the Stavropol krai was rejected by the decision of the said court of December 17, 1999. On February 1, 2000, the Supreme Court of the Russian Federation partially sustained the cassation appeal of A.M. Traspov contesting this decision, while the Presidium of the Supreme Court of the Russian Federation, having reviewed the case by way of supervision on May 24, 2000, overruled the said decisions and forwarded the case for a new review to the territorial court of the Stavropol krai, which, on July 4, 2000, found the Resolution of the territorial election commission of October 22, 1999 to have been invalid from the moment of its adoption.

Given that by that time the elections to the State Duma had already taken place, A.M. Traspov petitioned to the territorial court of the Stavropol krai demanding that the election results in Stavropol single-seat electoral district No. 55 be annulled, but this claim was rejected on the grounds of the fact that illegal denial of his registration as a candidate had not affected reliability of determination of the results of expression of the will of voters who took part in the voting on December 19, 1999. The Supreme Court of the Russian Federation sustained this decision of the territorial court of the Stavropol krai.

In his complaint to the Constitutional Court of the Russian Federation A.M. Traspov argues that if a citizen is denied registration as a candidate it is impossible to determine results of expression of voters' will in principle; consequently, the contested provisions, due to which vote returns, election results may be annulled by a court of law only in view of the impossibility to reliably determine results of expression of voters' will, deprive the citizen, whose registration as a candidate has been illegally denied, of the right to be elected to bodies of state power and therefore contradict Article 32 (Para. 2) of the Constitution of the Russian Federation and international human rights instruments.

2. Clause 3, Article 64 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" and Clause 3, Article 92 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation" provide for that a court of an appropriate level may annul a decision of an election commission on the

vote returns and election results in an electoral precinct, territory, single-seat electoral district, the federal electoral district if breaches have been committed in respect of the rules for preparation of voters lists, procedures for the formation of election commissions, voting and vote counting (including interference with their monitoring), determination of election results, other provisions of this Federal Law, including illegal denial of registration of a candidate, if such actions (inaction) do not allow the results of the expression of the voters' will to be reliably determined.

Additionally, the provision accounting for annulment of the decision of an election commission on vote returns, election results in view of impossibility to reliably determine results of expression of voters' will, is also contained in Clause 2, Article 64 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" and Clause 2, Article 92 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation." These provisions, taken together with Clause 1, Article 64 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" and Clause 1, Article 92 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation," secure an open list of grounds for denial of candidate's registration and its annulment, providing for the said legal consequences that follow violations accounted for by these norms, as well as other violations.

Thus, in this case, the issue in question is provisions contained in Clause 3, Article 64 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" and Clause 3, Article 92 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation," pursuant to which in the event of violation of the election legislation (including illegal denial of citizen's registration as a candidate or annulment of such registration), confirmation of impossibility of reliable determination of expression of the will of voters who have taken part in the voting is required by the court as the unconditional and only premise for annulment of a decision of an election commission on vote returns, election results in an electoral district.

At the same time, unchallenged by the plaintiff, the authority of the election commission to annul registration of candidates as such is not considered by the Constitutional Court of the Russian Federation in this case.

3. The rights and freedoms of a human being and a citizen are recognized and guaranteed in the Russian Federation pursuant to universally recognized principles and norms of the international law that are integral part of its legal system, as well as in compliance with the Constitution of the Russian Federation (Article 15, Para. 4; Article 17, Para. 1 of the Constitution of the Russian Federation).

Pursuant to the Constitution of the Russian Federation, the supreme direct expression of the power of the people are referenda and free elections; citizens of the Russian Federation have the right to elect and be elected to bodies of state power and local self-government (Article 3, Para. 3; Article 32, Para. 2). These constitutional norms correspond with provisions of the International Covenant on Civil and Political Rights pursuant to which every citizen has the right and opportunity, without discrimination or any unreasonable restrictions, to vote and to be elected at gen-

uine periodic elections which must be by universal and equal suffrage and must be held by secret ballot, guaranteeing the free expression of the will of the electors (Clause "b", Article 25), and the European Convention for the Protection of Human Rights and Fundamental Freedoms, pursuant to which free elections must be conducted under conditions which ensure the free expression of the opinion of the people (Article 3, Protocol No. 1).

Genuinely free democratic elections conducted on the basis of the universal, equal, and direct suffrage by secret ballot predetermine, in particular, the right of any persons who meet the conditions accounted for by the election legislation and who have complied with all its requirements, to participate in elections in the capacity of candidates, as well as the right of other persons to freely express their attitude towards them by voting "pro" or "contra." Consequently, illegal deprivation of a citizen of the opportunity to participate in elections in the capacity of a candidate results in the distortion of the nature of elections as free not only for candidates, but also for voters whose freedom of expression of their will can be restricted by the very fact of their being deprived of the right to vote for any of the legally nominated candidates.

Establishing legal consequences of illegal denial of one's registration as a candidate or exclusion from a list of registered candidates and determining, in connection therewith, methods and forms of legal defense of a violated right, the law must guarantee security of both the active and passive electoral rights, as well as the liability of election commissions for illegal actions impeding proper implementation of the said rights. A court's decision on reinstatement of one's violated passive electoral right, including one's registration as a candidate, may not be always interpreted as violating the active electoral right of citizens who have taken part in the voting, but on the contrary serves to protect it. Such protection must be effective not only when violations of the right to be elected are identified before the voting, but also after it, and, consequently, it does not exclude – as a method to reinstate one's right – annulment of vote returns, election results in order to ensure genuinely free elections, either.

Meanwhile, pursuant to the contested norms, it is implied that implementation of electoral rights in the course of elections is recognized as such to be sufficient grounds to practically ignore significant violations of rights of certain candidates and voters in the election process. It was from this particular interpretation that law-enforcement authorities – the district election commission and courts – proceeded in the case of citizen A.M. Traspov.

This approach does not meet requirements of Articles 17 and 55 of the Constitution of the Russian Federation which taken together imply that only a proportionate restriction of a right established by the federal law may serve the purpose of ensuring the rights of others. At the same time, neither legislator, nor law enforcer may proceed from the assumption that this purpose may be justified by any significant violation of a right, as well as refusal to protect it, because by doing so they would admit derogation of the right as such. The distorted idea of legislator and law enforcer of the purpose that the contested norm must serve leads to derogation of not only electoral rights, but also the right to legal protection (Article 3, Para. 3; Article 32, Para. 1 and Para. 2; Article 46, Para. 1 and Para. 2 of the Constitution of the Russian Federation).

4. From the court decisions made on the case of A.M. Traspov it becomes clear

that the district election commission and courts had failed to ensure timely and effective protection of the passive electoral right of the plaintiff which resulted in the fact that he was illegally deprived of the opportunity to participate in elections as a candidate.

In the meantime, a court decision must serve as effective remedy of a violated right: pursuant to Article 6 of the Federal Constitutional Law "On the Judicial System of the Russian Federation" and Clause 3, Article 63 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum," a court decision is binding upon everyone, including election commissions, and serves as sufficient grounds for registration (reinstatement of registration) without requiring any confirmation from them.

This approach based on the principles of independence of the judicial power and administration of justice ensuring the rights and freedoms of a human being and citizen, including the right to legal protection (Articles 10, 18 and 46, Section 1 of the Constitution of the Russian Federation) corresponds with how the European Court of Human Rights interprets the right to fair and public hearing by an independent and impartial tribunal established by law that is provided for by Clause 1, Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In its decision of March 19, 1997 in the case of "Hornsby vs. Greece" the European Court of Human Rights reiterated its position according to which "the right to a public hearing" would have become illusionary if a state's legal system allowed for a final binding court decision to remain unimplemented because implementation of any court's decision must be regarded as an inalienable part of the right to a fair and public hearing by an independent and impartial tribunal as provided for by Article 6 of the Convention.

5. The district election commission, having failed to eliminate such a violation of plaintiff's electoral rights as illegal denial of registration before the voting, and the courts that failed to annul election results in the electoral district, proceeded from the assumption that the contested provision implies that it is possible to annul election results only if it has been substantiated that the identified violation of electoral rights affected reliability of results of expression of voters' will. Meanwhile, in the conditions of illegal denial of one's registration as a candidate such substantiation is practically unfeasible. Therefore, the courts focus their attention not on ensuring real conditions for genuine and free expression of voters' will in the course of initial or repeat elections, but on formal verification of ballots' authenticity parameters, proper compliance with the voting procedure, and quantitative results of voting, i.e., on verification of results of the voting that has taken place. These activities, however, do not determine how adequately the genuine will of voters is reflected in election results, and annulment of election results is possible in other cases as well – when necessary conditions significantly affecting free expression of voters' will have not been ensured.

Thus, the formulation used in the Law, "if these actions (inaction) do not allow the results of the expression of the voters' will to be reliably determined," allows a law enforcer considering relevant disputes to refuse to establish how significant violations identified in the course of elections affected adequate reflection of voters' will in vote returns, election results, which factually results in the fact that citizens are denied effective legal protection of their electoral rights and, consequently, contradicts the

Constitution of the Russian Federation.

6. Pursuant to Para. 4, Article 79 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," in the event that the declaration of a normative act as unconstitutional has created a gap in legal regulation, the Constitution of the Russian Federation must be directly applied, including the principle of proportionality accounted for thereby which is stipulated by the nature of the Russian Federation as a constitutional state (Article 1, Para. 1; Article 55, Para. 3 of the Constitution of the Russian Federation). Proceeding from this principle, the courts must find adequate forms and methods of protection of the passive and active electoral rights and, acknowledging denial of one's registration as a candidate illegal, they may not limit themselves solely to the establishment of a fact of violation of one's electoral rights. This is also accounted for by Article 18 of the Constitution of the Russian Federation stating that rights and freedoms of a human being and citizen are directly operative and ensured by the administration of justice.

The principle of proportionality requires that in each particular case of violation of electoral rights an appropriate method of reinstatement or compensation must be used that accounts for their peculiarities associated with the fact that being individual these rights are exercised in the process of elections that entail identification of the common will of voters who have taken part in the voting. This, however, must not lead to refusal to use compensation mechanisms to eliminate consequences of identified violations, or exclude liability of the subjects of the electoral process that committed these violations, including election commissions.

Provided that there are lawful grounds to do so, the court has the right to acknowledge impossibility of holding repeat elections to reinstate citizen's passive electoral right. However, negative consequences that are result of illegal actions (inaction) of election commissions, which essentially perform public-authoritative functions, must be compensated and the good name of the citizen – rehabilitated on the basis of acknowledgement and compensation of damages inflicted by the state as provided for by Article 53 of the Constitution of the Russian Federation which, as a universal method of protection of violated rights, implies state guaranties from any privations inflicted upon a citizen by public authorities.

7. Timely, prior to voting, reinstatement of violated electoral rights – to avoid the necessity to annul vote returns, election results in the future – requires additional legislative measures preventing unjustified denial of one's registration as a candidate or annulment of such registration.

Such measures may include, among other things, particularization of grounds for denial of registration, corresponding authorities of election commissions and their liability, improvement of judicial procedures that are used for timely, prior to elections, reinstatement of one's passive electoral right, as well as development of adequate compensation mechanisms used to reinstate one's rights violated as a result of illegal denial of registration.

Proceeding from the above and following Paras. 1 and 2 of Article 71; Articles 72,

¹ *Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii* (Bulletin of the Constitutional Court of the Russian Federation), 2002. No. 3. P. 14–24.

74, 75, 79 and 100 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," the Constitutional Court of the Russian Federation

Decided as follows:

1. It shall be recognized that provisions of Clause 3, Article 64 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" and Clause 3, Article 92 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation" which in the event of illegal denial of one's registration as a candidate restrict the authority of the court to annul vote returns, election results and identify how adequately the genuine will of voters is reflected therein, substituting such identification with formal "determination of reliability of results of the expression of the will of voters" who have participated in voting, thereby derogating and restricting electoral rights and the right of citizens to legal protection, be inconsistent with the Constitution of the Russian Federation, its Articles 3 (Para. 1, Para. 2, and Para. 3), 32 (Para. 1 and Para. 2), and 46 (Para. 1 and Para. 2).

2. Pursuant to legal positions provided in this Decision, as well as Para. 2, Article 100 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," citizen A.M. Traspov shall have the right to petition to a court of general jurisdiction to seek protection of his violated rights.

3. This Decision shall be final, shall not be subject of appeal, shall be effective immediately following its proclamation, shall be applied directly, and shall not require approval of other bodies and officials.

4. Pursuant to Article 78 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," this Decision shall be immediately published in the "*Sobraniye zakonodatelstva Rossiiskoi Federatsii*" (Collection of Legislation of the Russian Federation), the "*Rossiyskaya Gazeta*," and official outlets of bodies of state power of the Stavropol krai. This Decision shall also be published in the "*Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii*" (Bulletin of the Constitutional Court of the Russian Federation).

3.8 (11.16). DECISION NO. 2-P OF JANUARY 22, 2002 IN THE CASE ON VERIFICATION OF CONSTITUTIONALITY OF PARAGRAPH 2, ARTICLE 69, PARAGRAPH 2, ARTICLE 70, AND ARTICLE 90 OF THE CONSTITUTION OF THE REPUBLIC OF TATARSTAN, AND CLAUSE 2, ARTICLE 4 AND CLAUSE 8, ARTICLE 21 OF THE LAW OF THE REPUBLIC OF TATARSTAN "ON THE ELECTION OF PEOPLE'S DEPUTIES OF THE REPUBLIC OF TATARSTAN" IN CONNECTION WITH A GRIEVANCE SUBMITTED BY CITIZEN M.M. SALYAMOV¹

The Constitutional Court of the Russian Federation presided by M.V. Baglay and composed of judges N.S. Bondar, N.V. Vitruk, G.A. Gadzhiyev, Yu.M. Danilov, L.M. Zharkova, G.A. Zhilin, V.D. Zorkin, A.L. Kononov, T.G. Morshchakova, Yu.D. Rudkin, N.V. Seleznyov, A.Ya. Sliva, V.G. Strekozov, O.I. Tiunov, O.S. Khokhrya-

kova, B.S. Ebzeyev, and V.G. Yaroslavtsev,

With participation of citizen M.M. Salyamov, representatives of the State Council of the Republic of Tatarstan – Chairman of the State Council of the Republic of Tatarstan, F.Kh. Mukhametshin, and Candidate of Juridical Sciences, Sh.Sh. Yagudin,

Following Article 125 (Para. 4) of the Constitution of the Russian Federation, Clause 3, Para. 1; Paras. 2 and 3, Article 3; Clause 1, Para. 2, Article 21; Articles 36, 96, 97, 99 and 100 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation,"

Reviewed in an open session the case on verification of constitutionality of Para. 2, Article 69, Para. 2, Article 70, and Article 90 of the Constitution of the Republic of Tatarstan, as well as Clause 2, Article 4, and Clause 8, Article 21 of the Law of the Republic of Tatarstan "On the Election of People's Deputies of the Republic of Tatarstan."

The case has been reviewed in response to a grievance submitted by citizen M. M. Salyamov claiming that a number of provisions of the Constitution of the Republic of Tatarstan and the Law of the Republic of Tatarstan "On the Election of People's Deputies of the Republic of Tatarstan" had violated his constitutional rights.

Upon examination of the report of judge-rapporteur V.G. Strekozov, explanations of representatives of the parties, messages of attendees representing: the State Duma – Deputy Chairman of the State Duma Committee on State Development, A.I. Saliy, the President of the Russian Federation – Plenipotentiary Representative of the President of the Russian Federation at the Constitutional Court of the Russian Federation, M.A. Mityukov, the Central Election Commission of the Russian Federation – E.I. Kolyushin, the Office of Prosecutor General of the Russian Federation – V.Ya. Bolyshev, as well as documents and other materials, the Constitutional Court of the Russian Federation

Established as follows:

1. To participate in the 1999 elections to the State Council of the Republic of Tatarstan citizen M.M. Salyamov was nominated as a candidate in the Aznakayevsky administrative-territorial electoral district No. 22, but on November 10, 1999 the Aznakayevsky district election commission passed a decision denying him registration on the grounds of the fact that he did not permanently reside and work in the territory of the said electoral district. On November 15, 1999, the Central Election Commission of the Republic of Tatarstan passed a Resolution sustaining the decision of the district election commission that had been appealed by M.M. Salyamov, while the Aznakayevsky city court refused to consider his grievance contesting this decision having justified its decision by the fact that the plaintiff was registered as a candidate in a different administrative-territorial election district.

In his grievance submitted to the Constitutional Court of the Russian Federation citizen M.M. Salyamov contests constitutionality of a number of provisions of the Constitution of the Republic of Tatarstan and the Law of the Republic of Tatarstan "On the Election of People's Deputies of the Republic of Tatarstan." From the said grievance and documents attached thereto it follows that plaintiff's case was adjudicated using a number of normatively interrelated provisions regulating elections to the State Council of the Republic of Tatarstan in administrative-territorial electoral districts (Para. 2, Article 69, Para. 2, Article 70; Article 90 of the Constitution of the

Republic of Tatarstan and Clause 2, Article 4 of the Law of the Republic of Tatarstan of November 29, 1994 "On the Election of People's Deputies of the Republic of Tatarstan" as amended on July 21, 1999 and January 21, 2000), as well as a provision pursuant to which the right to be nominated as a candidate and the right to be elected to the State Council of the Republic of Tatarstan in an administrative-territorial electoral district is granted to citizens of the Republic of Tatarstan who permanently reside or work in the territory of the said electoral district (Para. 2, Article 70 of the Constitution of the Republic of Tatarstan and Clause 8, Article 21 of the Law of the Republic of Tatarstan of November 29, 1994 "On the Election of People's Deputies of the Republic of Tatarstan" as amended on July 21, 1999 and January 21, 2000).

The petitioner claims that the said provisions violate his constitutional right to elect and be elected to bodies of state power (the active and passive suffrage), and therefore they do not comply with Article 32 of the Constitution of the Russian Federation.

Other provisions of the Constitution of the Republic of Tatarstan and the Law of the Republic of Tatarstan "On the Election of People's Deputies of the Republic of Tatarstan" that are also contested by M. M. Salyamov in his case, as it follows from documents attached to his grievance, was not applied and was not subject to application and therefore, pursuant to Articles 96 and 97 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," their constitutionality is not verified in this case.

Thus, in this case, the issue in question is the provisions contained in Para. 2, Article 69, Para. 2, Article 70, and Article 90 of the Constitution of the Republic of Tatarstan, as well as Clause 2, Article 4, and Clause 8, Article 21 of the Law of the Republic of Tatarstan "On the Election of People's Deputies of the Republic of Tatarstan" that are associated with implementation of electoral rights of citizens secured by the Constitution of the Russian Federation in the process of their participation in the formation of the State Council of the Republic of Tatarstan – the single-chamber legislative (representative) body of the Republic of Tatarstan.

2. Constitutional regulation underpinning the election legislation of the Russian Federation and its subjects contains norms-principles related to the foundations of the constitutional system, as well as other norms predetermining the legal base of elections to bodies of popular representation. First and foremost, they are: recognition of the human being, his rights and freedoms to be the supreme value observation and protection of which is an obligation of the state (Articles 2 and 18 of the Constitution of the Russian Federation), ensuring of equal rights of citizens of the Russian Federation throughout its entire territory (Para. 2, Article 6; Paras. 1 and 2, Article 19 of the Constitution of the Russian Federation); proclamation of the multinational people of Russia to be the bearer of sovereignty and the only source of power in the Russian Federation that exercises its power directly, as well as through bodies of state power and local self-government, and proclamation of free elections and referenda to be the supreme direct expression of the power of the people (Article 3 of the Constitution of the Russian Federation); as well as securing the unity of the system of state authority as the foundation of the federative structure of the Russian Federation (Para. 3, Article 5 of the Constitution of the Russian Federation).

3. To further develop the said constitutional provisions, Article 32 of the

Constitution of the Russian Federation provides for that citizens of the Russian Federation have the right to participate in managing state affairs both directly and through their representatives, including the right to elect and be elected to bodies of state power and local self-government and participate in referenda (Paras. 1 and 2); deprived of the right to elect and be elected are only citizens recognized by court as legally unfit, as well as citizens kept in places of confinement by a court sentence (Para. 3). In the Russian Federation as a constitutional state these rights are recognized and guaranteed in compliance with universally recognized principles and norms of the international law (Para. 1, Article 1; Article 2; Para. 1, Article 17 of the Constitution of the Russian Federation).

Ratified by the Russian Federation, the European Convention for the Protection of Human Rights and Fundamental Freedoms secures the right to free elections and for the purpose of its implementation establishes the obligation of the state to hold free elections at reasonable intervals by secret ballot, under conditions which ensure the free expression of the opinion of the people in the choice of the legislature (Article 3 of Protocol No. 1); pursuant to the International Covenant on Civil and Political Rights every citizen must have the right and opportunity, without discrimination or any unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote and to be elected at genuine periodic elections which must be by universal and equal suffrage and must be held by secret ballot, guaranteeing the free expression of the will of the electors (Article 25).

The said norms, as it follows from Article 15 (Para. 4) taken together with Article 55 (Para. 1) of the Constitution of the Russian Federation, are an integral part of the legal system of the Russian Federation and the principles of the electoral right secured thereby are recognized and guaranteed by the Russian Federation as constitutional rights and freedoms.

In addition, the Constitution of the Russian Federation proclaims that elections are free (Para. 3, Article 3), and as applied to elections of the President of the Russian Federation it is directly secured that elections are held on the basis of the universal equal and direct suffrage by secret ballot (Para. 1, Article 81). At the same time, this special norm regulating the order of election of the President of the Russian Federation – by virtue of Articles 1, 2, 3, 17, 19, 60, and 81 of the Constitution of the Russian Federation – expresses general principles underpinning implementation of the constitutional right of the citizen of the Russian Federation to elect and be elected at genuine free elections. Correspondingly, bodies of popular representations formed in the Russian Federation by means of free elections must be formed on the basis of the universal equal and direct suffrage by secret ballot.

The provision on the right to participate in free elections of a legislative (representative) body on the basis of the universal equal and direct suffrage by secret ballot is the essence of the right of citizens secured by Article 32 of the Constitution of the Russian Federation without which it loses its real substance. But regulation and protection of rights and freedoms of a human being and citizen fall within the jurisdiction of the Russian Federation (Clause "c", Article 71), whereas subjects of the Russian Federation, exercising their authority in the sphere of protection of rights and freedoms that fall within the joint jurisdiction of the Russian Federation and its subjects (Clause "b", Para. 1, Article 72) may not lower the level of constitutional

guarantees of electoral rights ensured in the Russian Federation in compliance with the universally recognized principles and norms of the international law and respective provisions of the Constitution of the Russian Federation.

4. The order of formation of legislative (representative) bodies relates to general principles of organization of legislative (representative) bodies of state power in the Russian Federation, constitutes one of the essential elements of their status and also the constitutional status of the subjects of the Russian Federation. The Constitution of the Russian Federation provides that the status of a republic is determined by the Constitution of the Russian Federation and constitution of the republic (Para. 1, Article 66); establishment of the general principles of organization of the system of bodies of state power and local self-government falls within the joint jurisdiction of the Russian Federation and its subjects (Clause "m", Para. 1, Article 72); the system of bodies of state authority of the republics, territories, regions, cities of federal importance, autonomous regions or autonomous areas is established by the subjects of the Russian Federation independently and according to the principles of the constitutional system of the Russian Federation and the general principles of the organization of representative and executive bodies of state authority provided for by the federal law (Para. 1, Article 77).

Among such general principles are principles of the electoral right, including free elections held on the basis of the universal equal and direct suffrage by secret ballot, observation of which makes elections a genuine expression of people's will, and the legislative body – genuinely representative. They are universal by nature and mandatory both for the formation of representative and legislative body of the Russian Federation (Article 94 of the Constitution of the Russian Federation) and for the formation of legislative (representative) bodies of the subjects of the Russian Federation, including the Republic of Tatarstan as a subject of the Russian Federation (Para. 1, Article 65 of the Constitution of the Russian Federation).

5. Pursuant to Para. 2, Article 69, Para. 2, Article 70, and Article 90 of the Constitution of the Republic of Tatarstan, the State Council of the Republic of Tatarstan as the legislative (representative) body of this subject of the Russian Federation, which is a single-chamber parliament consisting of 130 deputies, is elected in administrative-territorial and territorial electoral districts formed in the order provided for by law. Pursuant to Clause 2, Article 4 of the Law of the Republic of Tatarstan "On the Election of People's Deputies of the Republic of Tatarstan," an administrative-territorial electoral district is formed in a district, city of republican subordination, and a district in a city; one people's deputy is elected in each of them.

Pursuant to Articles 3, 11, 17, 32, 71 (Clause "d"), 72 (Clause "m", Para. 1) and 77 (Para. 1) of the Constitution of the Russian Federation taken together with the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 3, Protocol No. 1) and the International Covenant on Civil and Political Rights (Article 25), holding elections to legislative (representative) bodies of state authority (including those of the subjects of the Russian Federation) simultaneously in different, from the viewpoint of the order of their formation, electoral districts is not excluded, provided that equal conditions for implementation of electoral rights by citizens and, consequently, fair popular representation are ensured (decisions of the Constitutional Court of the Russian Federation of March 23, 2000

in the case on verification of constitutionality of Para. 2, Article 3 of the Law of the Orenburg Oblast of September 18, 1997 "On the Election of Deputies of the Legislative Assembly of the Orenburg Oblast" and of June 10, 1998 in the case on verification of constitutionality of certain provisions of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum").

This means, that a combination of different methods of ensuring representation, including individual and collective, in a legislative (representative) body of a subject of the Russian Federation may be used only if requirements of the Constitution of the Russian Federation that guarantees election of a legislative (representative) body of state power on the basis of free universal equal and direct elections by secret ballot are complied with, so that to ensure that neither the real substance of the constitutional right of the citizen to elect and be elected to bodies of legislative (representative) power, nor the essence of genuinely popular representation accounted for, among other factors, by the organizational structure and procedures of parliamentary activities, are lost.

In the meantime, from the contested provisions of the Constitution of the Republic of Tatarstan taken together with its Articles 84, 89-91, and 95 it follows that deputies of the State Council elected in territorial districts and administrative-territorial districts and working in the parliament on the permanent basis or, on the contrary, without leaving their permanent jobs, respectively, have different rights and obligations in adoption of laws because only the most significant bills (including the Constitution of the Republic of Tatarstan, laws amending and supplementing it, as well as some other laws, in particular, those approving the budget) are adopted at plenary sessions, i.e., when all the elected deputies are in attendance, whereas some other issues (including adoption of most of the laws) are handled only by the corps of deputies working in the parliament on a permanent basis.

This indicates that deputies belonging to different parts of the corps differ not only by their status but also by the influence they produce on decision-making, which also points to inequality of the voters they represent from administrative-territorial and territorial districts, i.e., inequality that undermines genuinely popular representation in the elective legislative body. To exclude such consequences under different orders of election of the two parts of the corps of deputies procedures are required that ensure separate voting when the parliament passes normative decisions. In a single-chamber legislative body, which is the State Council of the Republic of Tatarstan, it is impossible to ensure such voting and decision-making procedures; in absence of procedures ensuring separate voting for 63 deputies elected from administrative-territorial districts and 67 deputies elected from territorial districts it is impossible to acknowledge that reflection of the genuine will of the popular representation body is ensured in the decisions it makes.

6. Pursuant to the Constitution of the Republic of Tatarstan, administrative-territorial electoral districts are formed in the order accounted for by the law (Para. 2, Article 69). At the same time, the Constitution of the Republic of Tatarstan, providing that the territory of the Republic of Tatarstan is divided into districts and cities of republican subordination, and districts – into urban and rural settlements, and that large cities may be divided into districts (Article 63), does not identify

administrative-territorial units that directly constitute the Republic of Tatarstan, nor does it contain a concrete list of such units.

Hence, formation, modification, and elimination of such units in the Republic of Tatarstan are not regulated by the Constitution of the Republic of Tatarstan. Thus, at the level of constitution of a subject of the Russian Federation it is not regulated which particular territories must be collectively represented within the parliament, what the numbers of deputies elected in administrative-territorial and territorial districts are, and, consequently, the legal composition of the legislature is not properly established.

At the same time, the administrative-territorial division of the republic as a subject of the Russian Federation, since it is connected with its territorial structure that also accounts for territorial organization of state authority, is one of the elements of the constitutional status of the subject of the Russian Federation, and, pursuant to Article 66 (Para. 1) taken together with Articles 1 (Para. 1), 11 (Para. 2), 71, 72, 73, 76, and 77 of the Constitution of the Russian Federation, must be established by the constitution of the republic which must contain a concrete list of administrative-territorial units directly constituting it (Decision of the Constitutional Court of the Russian Federation of January 24, 1997 in the case on verification of constitutionality of the Law of the Republic of Udmurtia of April 17, 1996 "On the System of Bodies of State Authority in the Republic of Udmurtia"). This is a premise that is also required by laws of the subject of the Russian Federation to determine organization of electoral districts.

Regulation of organization of electoral districts in the Republic of Tatarstan has no relevant constitutional base, therefore the Law of the Republic of Tatarstan "On the Election of People's Deputies of the Republic of Tatarstan" only provides that an administrative-territorial electoral district is formed in a district, city of republican subordination, and district within a city (Clause 2, Article 4) and does not contain a concrete list either of administrative-territorial or territorial districts, granting the authority to form electoral districts to the Central Election Commission of the Republic of Tatarstan (Article 9).

Thus, by virtue of the contested provisions of the Constitution of the Republic of Tatarstan and the Law of the Republic of Tatarstan "On the Election of People's Deputies of the Republic of Tatarstan" and despite the requirements of Articles 10, 11, 66, and 77 of the Constitution of the Russian Federation, issues that fall exclusively within constitutional and legislative regulation are handled by the republican Central Election Commission, i.e., an executive body. As a result, significant elements of the order of formation of the legislative (representative) body of state power and implementation of the electoral right are determined on the basis of illegally delegated law-making. This provides for a possibility to organize elections in such a fashion that contradicts goals and principles secured by the Constitution of the Russian Federation and federal laws. In particular, the contested provisions allow for provision of electors with unequal numbers of votes in different – administrative-territorial and territorial – districts.

To avoid such consequences in elections held simultaneously in administrative-territorial and territorial districts, appropriate constitutional and legislative determination of objective criteria used for identification of a territory as a territori-

al district and of an administrative-territorial unit as an administrative-territorial district, that would allow for a possibility to verify justification of such decisions, is required (in addition to observation of all other requirements), as are conditions excluding unequal and distorted – from the viewpoint of its constitutional substance – representation of electors in the legislative (representative) body of a subject of the Russian Federation. Arbitrary formation and modification of electoral districts ultimately leads to violation of the equal suffrage and consequently – to violation of the principle of free elections as the basis of formation of legislative (representative) bodies of state authority.

It follows from the above that the contested provisions of the Constitution of the Republic of Tatarstan and the Law of the Republic of Tatarstan "On the Election of People's Deputies of the Republic of Tatarstan" violating constitutional guarantees of suffrage and formation of bodies of popular representation are inconsistent with the Constitution of the Russian Federation, its Articles 3 (Para. 2 and Para. 3), 19 (Para. 1 and Para. 2), and 32 (Para. 1 and Para. 2).

7. Pursuant to the contested normative provision contained in Para. 2, Article 70 of the Constitution of the Republic of Tatarstan and Clause 8, Article 21 of the Law of the Republic of Tatarstan "On the Election of People's Deputies of the Republic of Tatarstan," the right to be nominated as a candidate and elected as a deputy of the State Council of the Republic of Tatarstan in an administrative-territorial electoral district is granted to citizens of the Republic of Tatarstan who permanently reside or work on the territory of this electoral district. This determines conditions for implementation of the passive electoral right in elections to the State Council of the Republic of Tatarstan.

At the same time, such conditions may not distort constitutional principles of suffrage, nor may they abolish or derogate the passive electoral right itself that belongs to the citizens of the Russian Federation. Introduction of citizenship requirements by a subject of the Russian Federation, as well as requirements of permanent or predominant residence on its territory (or on the territory of a certain electoral district) means that citizens of the Russian Federation who do not meet these requirements are deprived of this right. However, by virtue of Article 32 (Para. 2) taken together with Articles 6 (Para. 2) and 19 (Paras. 1 and 2) of the Constitution of the Russian Federation, every citizen of the Russian Federation has the right on the territory of the Russian Federation to be elected to bodies of state power, including bodies of state power of a particular subject of the Russian Federation on the basis of the equal suffrage principle. Hence, conditions of implementation of the passive electoral right by citizens of the Russian Federation must be uniform throughout its entire territory; the subject of the Russian Federation that normatively establishes additional requirements for implementation of the passive electoral right that are not consistent with the federal laws violates equality of electoral rights of citizens of the Russian Federation.

Provision of a possibility to implement one's passive electoral right in elections to legislative (representative) bodies of subjects of the Russian Federation only to those citizens of the Russian Federation who are citizens of a republic and permanently reside or work in the territory of an electoral district (or the territory of a subject of the Russian Federation) restricts the universal equal suffrage impeding free elections

both for the candidate implementing his right to nominate his candidature in elections and be elected, and for electors implementing their right to nominate a particular candidate and vote for him.

Pursuant to Articles 32 and 55 (Para. 3) of the Constitution of the Russian Federation, these rights may be limited only by the federal law and only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defense of the country and security of the state, i.e., such limitation must pursue constitutional goals and be proportionate so that these rights would not lose their true substance.

Therefore, the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" (Paras. 4 and 5, Article 4), linking implementation of the active electoral right in elections to bodies of state power of the subjects of the Russian Federation with such a requirement as permanent or predominant residence of a citizen on the territory of a respective subject of the Russian Federation, proceeds at the same time from the fact that the passive electoral right may not be restricted by such requirements because otherwise it would contradict the Constitution of the Russian Federation.

Thus, the contested norms of Para. 2, Article 70 of the Constitution of the Republic of Tatarstan and Clause 8, Article 21 of the Law of the Republic of Tatarstan "On the Election of People's Deputies of the Republic of Tatarstan" illegally restrict the guarantees of the universal and equal suffrage of the citizens of the Russian Federation that ensures free expression of the will of the people in elections of legislative (representative) bodies of state power which is not consistent with the Constitution of the Russian Federation, its Articles 3 (Para. 2 and Para. 3), 19 (Para. 1 and Para. 2), 32 (Para. 1 and Para. 2), and 55 (Para. 3).

Proceeding from the above and following Para. 1 and Para. 2 of Article 71; Articles 72, 74, 75, and 100 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," the Constitutional Court of the Russian Federation

Decided as follows:

1. It shall be recognized that interrelated provisions regulating elections to the State Council of the Republic of Tatarstan in administrative-territorial and territorial districts accounted for by Para. 2, Article 69, Para. 2, Article 70, and Article 90 of the Constitution of the Republic of Tatarstan, as well as Clause 2, Article 4 of the Law of the Republic of Tatarstan "On the Election of People's Deputies of the Republic of Tatarstan," be inconsistent with the Constitution of the Russian Federation, its Articles 3 (Paras. 2 and 3), 19 (Paras. 1 and 2), and 32 (Paras. 1 and 2) because these provisions violate the guarantees of free elections on the basis of the universal and equal suffrage.

This conclusion does not exclude – in observation of requirements of the Constitution of the Russian Federation and taking into account legal positions provided for by this Decision, – a possibility to account for organization of a legislative (representative) body of a subject of the Russian Federation by means of elections held in electoral districts differing by the order of their formation.

2. It shall be recognized that normative provisions contained in Para. 2, Article 70

of the Constitution of the Republic of Tatarstan and Clause 8, Article 21 of the Law of the Republic of Tatarstan "On the Election of People's Deputies of the Republic of Tatarstan," pursuant to which the passive electoral right in elections to the State Council of the Republic of Tatarstan in an administrative-territorial electoral district is granted only to those citizens who permanently reside or work in the territory of the said electoral district, be inconsistent with the Constitution of the Russian Federation, its Articles 3 (Para. 2 and Para. 3), 19 (Para. 1 and Para. 2), 32 (Para. 1 and Para. 2), and 55 (Para. 3).

3. Recognition of the said provisions as inconsistent with the Constitution of the Russian Federation shall not affect results of the most recent elections to the State Council of the Republic of Tatarstan and shall not predetermine appraisal of decisions made thereby as such.

Pursuant to Article 125 (Para. 6) of the Constitution of the Russian Federation, Para. 1, Article 79; Clause 3, Para. 2, Article 80; and Para. 3 and Para. 4, Article 87 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," within six months of the publication of this Decision the State Council of the Republic of Tatarstan shall introduce all the required changes accounted for thereby into the Constitution of the Republic of Tatarstan, the Law of the Republic of Tatarstan "On the Election of People's Deputies of the Republic of Tatarstan," as well as other normative legal acts containing the same provisions as this Decision has found inconsistent with the Constitution of the Russian Federation; until such provisions are appropriately amended they shall not be applied by courts, other bodies, and officials.

Pursuant to Clause 12, Para. 1, Article 75 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," until the Constitution of the Republic of Tatarstan is appropriately amended, legislative acts of the Republic of Tatarstan shall be adopted by the current corps of deputies at plenary sessions of the State Council of the Republic of Tatarstan.

4. Pursuant to Para. 1, Article 79 and Para. 3, Article 87 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," within six months of the publication of this Decision the subjects of the Russian Federation shall appropriately amend their normative acts that contain the same provisions as this Decision has found inconsistent with the Constitution of the Russian Federation.

5. Pursuant to Paras. 1 and 2, Article 79 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," this Decision shall be final, shall not be subject of appeal, shall be effective immediately following its proclamation, shall be applied directly, and shall not require approval of other bodies and officials.

6. Pursuant to Article 78 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," this Decision shall be immediately published in the "*Sobraniye zakonodatelstva Rossiiskoi Federatsii*" (Collection of Legislation of the Russian Federation), the "*Rossiyskaya Gazeta*," and official outlets of bodies of state power of the Republic of Tatarstan. This Decision shall also be published in the "*Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii*" (Bulletin of the

¹ *Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii* (Bulletin of the Constitutional Court of the Russian Federation). 2002. No. 5. P. 51–64.

Constitutional Court of the Russian Federation).

3.9 (11.17). DECISION NO. 10-P OF JUNE 11, 2002 ON THE CASE ON VERIFICATION OF CONSTITUTIONALITY OF PROVISIONS OF CLAUSE 1, ARTICLE 64, CLAUSE 11 OF ARTICLE 32, CLAUSE 8 AND CLAUSE 9, ARTICLE 35, CLAUSE 2 AND CLAUSE 3 OF ARTICLE 59 OF THE FEDERAL LAW "ON BASIC GUARANTEES OF ELECTORAL RIGHTS AND THE RIGHT OF CITIZENS OF THE RUSSIAN FEDERATION TO PARTICIPATE IN A REFERENDUM" IN CONNECTION WITH INQUIRIES OF THE SUPREME COURT OF THE RUSSIAN FEDERATION AND THE REGIONAL COURT OF THE TULA OBLAST¹

The Constitutional Court of the Russian Federation presided by L.M. Zharkova and composed of judges M.V. Baglay, Yu.M. Danilov, G.A. Zhilin, V.D. Zorkin, V.O. Luchin, N.V. Seleznyov, V.G. Strekozov, and O.S. Khokhryakova,

With participation of the judge of the Supreme Court of the Russian Federation, A.M. Maslov, judge of the regional court of the Tula oblast, G.V. Pechkina, permanent representative of the State Duma at the Constitutional Court of the Russian Federation, V.V. Lazarev, representative of the Federation Council – Chairman of the Committee of the Federation Council on Constitutional Legislation, Yu.A. Sharandin,

Following Article 125 (Para. 4) of the Constitution of the Russian Federation, Clause 3, Para. 1; Para. 1, Paras. 3 and 4, Article 3; Clause 3, Para. 2, Article 22; Articles 36, 74, 101, 102, 104, and 86 of the Federal Constitutional Law "On the Constitution of the Russian Federation,"

Reviewed in an open session the case on verification of constitutionality of provisions of Clause 1, Article 64, Clause 11, Article 32, Clause 8 and Clause 9, Article 35, Clause 2 and Clause 3, Article 59 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum."

The case has been reviewed in response to petitions of the Civil Judicial Board of the Supreme Court of the Russian Federation and the regional court of the Tula oblast submitted to the Constitutional Court of the Russian Federation in compliance with Article 125 (Para. 4) of the Constitution of the Russian Federation and Articles 101–103 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation." The case has been reviewed on the grounds of an uncertainty identified in the issue of whether or not the provisions contested by the petitioners that regulate annulment of registration of a candidate in elections, the order of withdrawal of candidature by a registered candidate, as well as the possibility of repeat voting on one candidature, comply with the Constitution of the Russian Federation.

Proceeding from the fact that both petitions concern the same subject matter, the Constitutional Court of the Russian Federation, following Article 48 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," has combined proceedings on these inquiries in one case.

Upon examination of the report of judge-rapporteur V.G. Strekozov, explanations

of representatives of the parties, messages of attendees representing: the Ministry of Justice of the Russian Federation – E.E. Kretova; the Office of Prosecutor General of the Russian Federation – V.Ya. Bolyshev; the Central Election Commission of the Russian Federation – N.A. Kulyasova, as well as documents and other materials, the Constitutional Court of the Russian Federation

Established as follows:

1. The Civil Judicial Board of the Supreme Court of the Russian Federation, reviewing by way of supervision the case on a grievance submitted by D.N. Bizyukov contesting the decision of the Balakovo territorial election commission of November 24, 2000 pertaining to registration of A.I. Saurin as a candidate for the post of the head of the Balakovo municipality and a candidate for the Balakovo Municipal Council, contests constitutionality of Clause 1, Article 64 of the Federal Law of September 19, 1997 "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" (as amended on July 10, 2001), which provides for a possibility of invalidation (annulment) of candidate's registration.

Pursuant to the petition and documents attached thereto, the Balakovo city court of the Saratov region passed a decision on December 22, 2000 refusing to sustain a complaint submitted by D.N. Bizyukov in which he argued that A.I. Saurin had provided the election commission with inaccurate information about his private property. However, in response to a protest issued by the Prosecutor of the Saratov oblast, the Presidium of the regional court of the Saratov oblast passed a Resolution on January 3, 2001 (after A.I. Saurin had received 49.6% of votes in the elections that took place on December 24, 2000 and the right to participate in the second round of the elections) overruling the decision of the court of the first instance and forwarded the case for a new review. On January 9, 2001, the Balakovo city court passed a decision overruling the decision of the election commission to register A.I. Saurin as a candidate.

In his protest forwarded to the Civil Judicial Board of the Supreme Court of the Russian Federation, the Deputy Chairman of the Supreme Court of the Russian Federation required to overrule the Decision of the Presidium of the regional court of the Saratov oblast of January 3, 2001 and decisions of the Balakovo city court of January 9, 2001 as passed in violation of norms of the material and procedural law, in particular, Clause 1, Article 64 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum," and sustain the decision of the court of the first instance of December 22, 2000.

Having suspended proceedings on the case, the Civil Judicial Board of the Supreme Court of the Russian Federation petitioned to the Constitutional Court of the Russian Federation because it is of the opinion that the possibility to annul registration of a candidate who, according to results of voting held in general elections, i.e., as a result of expression of voters' will, has been included in the ballot for repeat elections, accounted for by this norm, violates the right of citizens guaranteed by Article 32 (Para. 2) of the Constitution of the Russian Federation to elect and be elected to bodies of state power.

2. The regional court of the Tula oblast, which is reviewing the grievance submit-

ted by V.V. Sokolovsky on violations of the election legislation by the election commission of the Tula oblast, contests constitutionality of provisions of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum," pursuant to which a candidate shall be entitled to withdraw any time, however, not later than three days before election day (Clause 11, Article 32); registered candidates who are excluded from the repeat voting (run-off) shall lose their status from the day of the announcement of the repeat voting by the relevant election commission (Clause 8, Article 35); if one of the candidates who are to participate in repeat voting has withdrawn before voting day, his/her place, upon decision of the election commission, shall be given to the candidate participating in the previous voting who gained the next largest number of votes; this candidate shall again acquire the rights and obligations associated with the candidate status (Clause 9, Article 35; Clause 2, Article 59); federal constitutional laws, federal laws, laws of the subjects of the Russian Federation may stipulate voting with regard to one candidate during repeat voting, should after all other candidates have withdrawn, only one candidate remain in the ballot as of the day of repeat voting (Clause 3, Article 59).

Pursuant to the inquiry and documents attached thereto, as well as clarifications provided by a representative of the regional court of the Tula oblast at the session of the Constitutional Court of the Russian Federation, on April 18, 2001, prior to the repeat voting in the elections of the governor – head of the executive body of state power of the Tula oblast – scheduled for April 22, 2001, one of the candidates whose name was included in the ballot in compliance with vote returns of general elections announced his withdrawal. Registration of this candidate was annulled on April 19, 2001, and his place was given to the candidate who had gained the next largest number of votes – V.V. Sokolovsky, who also submitted an application to withdraw his candidature. However, his application was declined by the election commission of the Tula oblast that passed a resolution to that effect on April 19, 2001 claiming that the three-day period accounted for by Clause 11, Article 32 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" during which the candidate was not allowed to remove his candidature, had already begun. Having disagreed with the refusal V.V. Sokolovsky appealed the Resolution of the election commission at the regional court of the Tula oblast.

Having concluded that applicable provisions of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" are inconsistent with Articles 17, 18, 32, and 55 of the Constitution of the Russian Federation, the regional court of the Tula oblast, having suspended proceedings on the case, petitioned to the Constitutional Court of the Russian Federation requesting that their constitutionality be verified. The petitioner is of the opinion that the ban on candidate's withdrawal of his candidature within three days of voting day established by Clause 11, Article 32, taken together with Clause 8 and Clause 9, Article 35, and Clause 2, Article 59, illegally undermines the voluntary nature of the passive electoral right of citizens, while the ability of a subject of the Russian Federation accounted for by Clause 3, Article 59 to provide for unacceptability of repeat voting on one candidature in a relevant election law

(such an order, in particular, is secured by the Law of the Tula oblast "On the Election of the Governor – Head of the Executive Body of State Power of the Tula Region") does not ensure integrity of regulation within the area of implementation of electoral rights of citizens of the Russian Federation on the basis of the principle of equality in the entire territory of the Russian Federation and provides for a possibility of artificial sabotage of elections which leads to violation of constitutional guarantees of citizens' electoral rights.

Thus, in connection with the case under review, the regional court of the Tula oblast essentially contests the following provisions of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum": interrelated provisions contained in Clause 11, Article 32, Clause 8 and Clause 9, Article 35, and Clause 2, Article 59, pursuant to which a candidate may not withdraw his candidature within the last three days before voting day, including repeat voting; the provision of Clause 3, Article 59, pursuant to which an election law of a subject of the Russian Federation may account for a norm that does not allow repeat voting on one candidature.

3. The Constitution of the Russian Federation provides that the supreme direct expression of the power of the people shall be referenda and free elections (Para. 3, Article 3); citizens of the Russian Federation shall have the right to elect and be elected to state bodies of power and local self-government bodies, and also to participate in referenda (Para. 2, Article 32); these rights are recognized and guaranteed in the Russian Federation as a law-bound state in compliance with universally recognized principles and norms of the international law (Para. 1, Article 1; Articles 2 and 17, Section 1).

Ratified by the Russian Federation, the European Convention for the Protection of Human Rights and Fundamental Freedoms secures the right to free elections and for the purpose of its implementation establishes the obligation of the state to hold free elections at reasonable intervals by secret ballot, under conditions which ensure the free expression of the opinion of the people (Article 3, Protocol No. 1). Pursuant to the International Covenant on Civil and Political Rights every citizen must have the right and opportunity, without discrimination or any unreasonable restrictions, to participate in managing state affairs directly and through freely elected representatives, to vote and to be elected at genuine periodic elections which must be by universal and equal suffrage and must be held by secret ballot, guaranteeing the free expression of the will of the electors (Article 25). Pursuant to Article 15 (Para. 4) of the Constitution of the Russian Federation, taken together with its Article 17 (Para. 1), the said suffrage principles secured by norms that are integral part of the legal system of the Russian Federation, are recognized and guaranteed by the Russian Federation as constitutional rights and freedoms.

Pursuant to Articles 3 (Para. 3), 15 (Para. 4), 17 (Para. 1), 19 (Paras. 1 and 2), and 81 (Para. 1) of the Constitution of the Russian Federation, the essence of the right secured by Article 32 (Para. 2) of the Constitution of the Russian Federation is participation in free elections held on the basis of the universal equal and direct suffrage by secret ballot which is also secured by the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" as the principle of holding elections and referenda in the Russian

Federation (Clause 1, Article 3).

By means of genuinely free democratic elections held in a democratic law-bound state on the basis of the universal equal and direct suffrage by secret ballot citizens exercise their electoral rights – the active electoral right, i.e., the right to elect their representatives to bodies of state power and local self-government, and the passive electoral right, i.e., the right to be elected to these bodies.

In order to exercise one's passive electoral right, including the right to nominate one's candidature in elections, the will of the person who wishes to be a candidate is not enough – a candidate must be able to meet certain requirements established directly by the Constitution of the Russian Federation, among which is the requirement for the candidate to be a citizen of the Russian Federation (Paras. 1 and 2, Article 32), and be of a certain age with which the Constitution of the Russian Federation associates the ability of the citizen of the Russian Federation to independently and fully exercise his rights and duties (Article 60); in addition, citizens recognized by court as legally unfit, as well as citizens kept in places of confinement by a court sentence are deprived of the right to elect and be elected (Para. 3, Article 32); some additional requirements concerning candidate's age and duration of permanent residence in the Russian Federation apply to candidates in elections of the President of the Russian Federation (Para. 2, Article 81).

Particularizing the said provisions of the Constitution of the Russian Federation in compliance with its Articles 71 (Clause "c"), 72 (Clause "m", Para. 1), and 76 (Paras. 1 and 2), the federal legislature determines the order and conditions of implementation of the active and passive electoral rights. In doing so, it excludes distortion of the constitutional principles of the electoral right, abolition or derogation of electoral rights granted to citizens of the Russian Federation, which, pursuant to Article 55 (Para. 3) of the Constitution of the Russian Federation, may be limited by the federal law only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defense of the country and security of the state, i.e., must pursue constitutional goals and be proportionate so that these rights would not lose their true substance.

4. Pursuant to Clause 1, Article 64 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum," candidate's registration may be invalidated (annulled) not later than the day preceding the voting day on grounds associated with violations of the election legislation and accounted for by the said Federal Law, as well as other laws. Additionally, Article 64 provides for a possibility for a court to annul decision of election commission on vote returns, election results (Clauses 2-5) which leads to repeat elections.

4.1. Pursuant to Clauses 1-5, Article 64, Clause 10 and Clause 11, Article 32, and Clause 2 and Clause 7, Article 45 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum," candidate's registration may be invalidated before voting day, including repeat voting, and it does not necessarily lead to invalidation of previous vote returns or predetermine cancellation of repeat voting should it be appointed, and consequently, new elections.

Establishing grounds and order of annulment of candidate's registration, to

ensure genuinely free and equal elections, the legislature must guarantee effective protection of citizens from violation of their active and passive electoral rights regardless of whether such violations should be identified before or after voting. Pursuant to Articles 3 (Para. 2 and Para. 3), 32 (Para. 2), and 55 (Para. 3) of the Constitution of the Russian Federation, annulment of candidate's registration before voting is possible not only at his own request, but also against his will, e.g., in manner of a penalty for committed violations; otherwise invalidation of candidate's registration would always require invalidation of vote returns and appointment of new elections which would threaten to sabotage elections and violate rights and legal interests of other candidates and citizens which is not acceptable.

Thus, the possibility of annulment of candidate's registration, including annulment of such registration before repeat voting, does not contradict the Constitution of the Russian Federation.

4.2. Pursuant to Clause 1, Article 64, taken together with Clause 10, Article 32, Clause 7, Article 45, and Article 63 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum," the right to decide to cancel candidate's registration not later than 16 days before voting day, including before repeat voting, is vested with election commission, whereas the right to do so 15-1 days before voting is vested with a court.

Annulment of registration, which implies that a candidate stops implementing rights and obligations associated with the status of a registered candidate, also affects electoral rights of other citizens, especially when it comes to a candidate who has reached the second round of elections, i.e., whose status of a registered candidate is accounted for by voters' will expressed in the first round of elections. Therefore, in the event when annulment of candidate's registration is accounted for not by the fact that the candidate has implemented his right to withdraw his candidature or lost his passive electoral right, but by a penalty imposed upon him for violations of the election legislation on the grounds accounted for by the federal law, a decision to that effect – since it requires that circumstances be examined and facts underpinning it proved – may be, pursuant to Articles 3, 32, and 46 of the Constitution of the Russian Federation, passed by the court as a body of state authority that administers justice and is competent to resolve such a dispute on the merits.

Hence, the provision pursuant to which registration is annulled "not later than on the day preceding voting" cannot but imply that by that moment a relevant court decision passed in compliance with an appropriate procedure has already taken effect. Otherwise it would exclude the possibility of real reinstatement of rights which is not consistent with guarantees of legal protection accounted for by Article 46 of the Constitution of the Russian Federation and Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Decision of the Constitutional Court of the Russian Federation of December 25, 2001 in the case on verification of constitutionality of Para. 2, Article 208 of the Civil Procedural Code of RSFSR).

4.3. Annulment of candidate's registration applied as a penalty for a legal offence and associated with restriction of electoral rights must be administered on the basis of the principle of proportionality accounted for by Article 55 (Para. 3) of the Constitution of the Russian Federation. Therefore, passing a respective decision the

court may not proceed only from formal grounds for annulment of registration accounted for by Clause 1, Article 64 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum."

Annulment of candidate's registration as means of reinstatement of violated rights of other individuals is only sufficient when the committed violations do not require the court to annul the decision of the election commission on vote returns upon the whole. Pursuant to the legal position expressed by the Constitutional Court of the Russian Federation in its Decision of January 15, 2002 in the case on verification of constitutionality of Clause 3, Article 64 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum," invalidation of vote returns, election results is associated with identification of such significant violations of the electoral process due to which proper conditions were not ensured for genuinely free expression of voters' will and which led to inadequate reflection of the true will of voters in vote returns. The court, deciding on whether or not invalidation of vote returns, election results is required, by virtue of Articles 3 (Paras. 1, 2, and 3), 32 (Paras. 1 and 2), and 46 (Paras. 1 and 2) of the Constitution of the Russian Federation, may not limit itself to formal determination of reliability of results of expression of voters' will, but must establish that significant violations identified in the course of elections have led to distortion of voters' will or precluded its adequate reflection in vote returns, election results. Otherwise, effective judicial protection of citizens' electoral rights and implementation of the constitutional principle of free and equal elections are not ensured.

Pursuant to Articles 1 (Para. 1), 3 (Paras. 1, 2, and 3), 32 (Paras. 1 and 2), and 46 (Paras. 1 and 2) of the Constitution of the Russian Federation and the legal position formulated thereupon by the Constitutional Court of the Russian Federation (Decision of November 17, 1998 in the case on verification of constitutionality of certain provisions of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation"), the will expressed by the people in free elections is determined on the basis of a democratic majority which is required to recognize elections to be legitimate. Hence, if registration of a candidate who in the course of general elections received a significantly greater percentage of votes as compared to other candidates, is annulled, holding repeat voting questions legitimacy of such elections. Therefore, with respect to such cases the federal legislature must regulate the issue of appointment of new elections proceeding from the said constitutional and legal criterion.

5. Pursuant to the provision contained in Clause 11, Article 32, taken together with Clause 8 and Clause 9, Article 35, and Clause 2, Article 59 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum," a candidate may not withdraw his candidature within the last three days before the day of voting, including repeat voting, even if the election commission decides to give him the place of a withdrawn candidate within this period.

5.1. Pursuant to Article 32 (Para. 2) of the Constitution of the Russian Federation, to be elected to bodies of state power and local self-government is a right, not an obligation of a citizen. Consequently, a candidate must be guaranteed a possi-

bility to withdraw his candidature in elections. At the same time, given that a citizen's implementation of his passive electoral right affects rights and interests of other individuals and under certain circumstances a candidate's refusal to participate in elections may result in the setting of a new voting date or the setting of new elections, the federal legislature, proceeding from requirements of Articles 17 (Para. 3) and 55 (Para. 3) of the Constitution of the Russian Federation, in order to prevent negative consequences for the electoral process and minimize abuse of the freedom of participation in elections, has the right to account for a certain period within which a registered candidate may withdraw his candidature, provided that it ensures a balance between the freedom of participation in elections and requirements of their productivity, and impossibility of abuse of rights and sabotage of elections, and observes criteria of possible restrictions of electoral rights.

The three-day period established by Clause 11, Article 32 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" within which a candidate is not allowed to withdraw his candidature, is not unreasonable because on the one hand, before this term the candidate has enough time to make a decision to remove his candidature, and on the other hand – this period enables election commissions to undertake necessary organizational measures, including those that are required to replace the candidate.

At the same time, such a ban may not be unconditional. Even within the said period a candidate must have a possibility to remove his candidature due to compelling circumstances such as a serious illness, permanent health condition, and other analogous circumstances preventing the candidate from further implementation of his passive electoral right. In such cases a refusal to satisfy candidate's request to remove his candidature is incompatible with electoral purposes and is disproportionate limitation of citizen's freedom to exercise this right.

Consequently, Clause 11, Article 32 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" is inconsistent with the Constitution of the Russian Federation, its Articles 3 (Para. 3), 32 (Para. 2), and 55 (Para. 3), to the extent to which it prevents a candidate from removing his candidature due to compelling circumstances within the last three days before voting day.

5.2. Pursuant to Clause 8 and Clause 9, Article 35, and Clause 2, Article 59 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum," when repeat voting is set registered candidates who do not participate in repeat voting lose their status on the day of setting of repeat voting by the election commission, but if one of the candidates who is to participate in repeat voting has withdrawn his candidature his place, by decision of the election commission, is given to the candidate with the next largest number of votes received in the previous voting and he acquires rights and obligations accounted for by the status of candidate, again.

In the meantime, pursuant to the Constitution of the Russian Federation, citizens exercise their passive electoral right on the basis of the principle of free elections (Article 3, Para. 3; Article 32, Para. 2), i.e., on the voluntary, rather than coercive basis. Therefore, a candidate who has lost the status of a registered candidate may not

be vested with rights and obligations associated with the status of a registered candidate without his consent. Otherwise it would violate constitutional criteria of free elections that determine, among other factors, acceptable boundaries within which the passive electoral right may be limited.

Consequently, the provision of Clause 11, Article 32, taken together with Clause 8 and Clause 9, Article 35, and Clause 2, Article 59 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum," pursuant to which a candidate who has not reached the second round of elections based on results of previous voting may be required, instead of a withdrawn candidate, to participate in repeat voting without his consent, is inconsistent with the Constitution of the Russian Federation, its Articles 3 (Para. 3), 19 (Paras. 1 and 2), 32 (Para. 2), and 55 (Para. 3), to the extent to which this provision excludes the possibility for such a candidate to withdraw his candidature, if the election commission has decided to give him the place of a withdrawn candidate, when less than three days are left till the voting day.

6. Pursuant to Clause 3, Article 59 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum," holding repeat voting in the event when on the day of repeat voting there is only one candidate left in the ballot due to the fact that all other candidates have withdrawn their candidatures, is only possible when this is accounted for by a relevant federal law or a law of a subject of the Russian Federation.

By virtue of Articles 1 (Para. 1), 3 (Para. 3), 15 (Para. 4), 17 (Para. 1), and 32 (Para. 2) of the Constitution of the Russian Federation, taken together with Article 3 of Protocol No. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 25 of the International Covenant on Civil and Political Rights, alternativeness that provides electors with a real possibility to choose from among several candidates by means of free expression of their will on the basis of the principle of equality is one of the most important conditions of genuinely free elections in a democratic law-bound state.

If the number of candidates in an electoral district equals or is smaller than the established number of mandates the voter is deprived of such a possibility and elections become only a formal voting session. Therefore, Clause 14, Article 32 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" provides for that if by voting day no candidates remain in the electoral district or the number of registered candidates equals or is smaller than the established number of mandates or only one list of candidates has been registered, elections in the given electoral district shall be postponed by a resolution of the appropriate election commission for not longer than six months to allow additional candidates (lists of candidates) to be nominated and subsequent electoral actions to be taken. This provision is a real guarantee of free elections and the electoral right (Article 3, Para. 3; Article 32 of the Constitution of the Russian Federation).

Alternativeness, as a condition required to ensure free elections, is the essence of the electoral right. At any rate, without voting on several candidatures in general elections, it loses its real substance and citizens are factually deprived of the possibility to exercise their electoral rights, and therefore in this particular aspect these rights

may not be restricted. It also means that elections must be recognized to not have taken place if only two candidates had been included in the electoral ballot and none of them received a sufficient number of votes required to be elected.

At the same time, the legislature, to ensure a balance between constitutionally protected values and interests in the sphere of implementation of electoral rights and administration of democracy through elective bodies of state power, has the right to account for a second round of elections, i.e., repeat voting on two or more candidates that received the largest numbers of votes, that are held in the event when none of the candidates included in the electoral ballot of the first round of elections has received a sufficient number of votes required to be elected.

Given that voters had a real possibility to choose from among several candidates in the first round of elections, i.e., free elections on the alternative basis were held, and given that the legislature does not exclude the possibility of annulment of registration of a candidate included in the repeat voting ballot (Clause 11, Article 32, Clause 8 and Clause 9, Article 35, Clause 2, Article 59 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum"), due to which, on the day of repeat voting the electoral ballot may be found to contain only one candidature, regardless of the will of voters, the federal legislature, in order to ensure productivity of elections, has the right to account for a possibility of repeat voting on one candidature which, by virtue of Articles 3 (Paras. 2 and 3), 19 (Paras. 1 and 2), 32 (Paras. 1 and 2), 71 (Clause "c"), and 76 (Para. 1) of the Constitution of the Russian Federation, must be implemented on the basis of universally recognized principles of democracy and democratic majority as one of the criteria of legitimacy of elections (Decision of the Constitutional Court of the Russian Federation of November 17, 1998 in the case on verification of constitutionality of certain provisions of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation"). In view of these requirements, Clause 3, Article 59 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" provides for that a candidate may be considered elected if he receives not less than 50% of votes of voters who have taken part in the voting.

Establishment of a ban on repeat voting in the event when on the day of such voting there is only one candidature left in the election ballot, is restriction of citizens' electoral rights which may not be introduced without observing criteria accounted for by Article 55 (Para. 3) of the Constitution of the Russian Federation. At any rate, a law of a subject of the Russian Federation may not directly account for such a ban.

In the meantime, it follows from the contested provision that as applied to elections to bodies of state power of subjects of the Russian Federation it is a law of a subject of the Russian Federation that may establish this ban (which is the case with the Law of the Tula region "On the Election of the Governor – Head of the Executive Body of State Power of the Tula Region"), i.e., a law of a subject of the Russian directly restricts electoral rights of citizens which, pursuant to Articles 55 (Para. 3), 71 (Clause "c"), and 76 (Para. 1) of the Constitution of the Russian Federation, is unacceptable. At the same time, integrity of regulation of rights and freedoms of the human being and citizen is not ensured (Article 71, Clause "c"; Article 76, Para. 1 of the Constitution of the Russian Federation), which ultimately leads – in violation of

requirements of Articles 19 (Paras. 1 and 2), and 32 (Para. 2) of the Constitution of the Russian Federation – to inequality of electoral rights of citizens of the Russian Federation depending on the place of residence, and violation of the principle of legal equality upon the whole.

Thus, the contested provision of Clause 3, Article 59 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum," since it secures the possibility of holding repeat voting on one candidature if it is accounted for by respective federal laws, does not contradict the Constitution of the Russian Federation. At the same time, the part of this provision that accounts for a possibility of a law of a subject of the Russian Federation to establish a ban on repeat elections on one candidature is not consistent with the Constitution of the Russian Federation, its Article 19 (Paras. 1 and 2), 32 (Para. 2), 55 (Para. 3), and 71 (Clause "c").

Proceeding from the above and following Article 125 (Para. 6) of the Constitution of the Russian Federation, Article 6; Paras. 1 and 2, Article 71; Articles 72, 75, 79, 86, and 87 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," the Constitutional Court of the Russian Federation

Decided as follows:

1. It shall be recognized that Clause 1, Article 64 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" be consistent with the Constitution of the Russian Federation to the extent to which it secures the very possibility of invalidation (annulment) of registration of a candidate, including annulment of candidate's registration before repeat voting.

It shall be recognized that Clause 1, Article 64 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" be inconsistent with the Constitution of the Russian Federation, its Articles 32 (Para. 2), 46 (Para. 2), and 55 (Para. 3), to the extent to which on the basis thereof the election commission has the right to decide to annul registration of a candidate as a penalty for violations of the election legislation.

The constitutional-legal sense of the provision of Clause 1, Article 64 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" identified in this Decision shall be universally mandatory and shall exclude any other interpretation by the law enforcer.

2. It shall be recognized that Clause 11, Article 32 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" be inconsistent with the Constitution of the Russian Federation, its Articles 3 (Para. 3), 32 (Para. 2), and 55 (Para. 3), to the extent to which it prevents a candidate to withdraw his candidature before voting, including repeat voting, due to compelling circumstances, less than three days before the day of voting, and excludes – taken together with Clause 8 and Clause 9, Article 35, and Clause 2, Article 59 of the said Federal Law – the possibility of a candidate included without his consent in the ballot for repeat voting, to withdraw his candidature if the decision of the election commission to give him the place of a withdrawn candidate is

¹ *Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii* (Bulletin of the Constitutional Court of the Russian Federation). 2002. No. 6. P. 3–16.

made within the specified three-day term.

3. It shall be recognized that Clause 3, Article 59 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" be consistent with the Constitution of the Russian Federation in the part in which it secures the possibility of holding repeat voting on one candidature if it is provided for by a relevant federal law.

It shall be recognized that Clause 3, Article 59 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" be inconsistent with the Constitution of the Russian Federation, its Articles 19 (Paras. 1 and 2), 32 (Para. 2), 55 (Para. 3), and 71 (Clause "c"), in the part in which it accounts for a possibility for a law of a subject of the Russian Federation to ban repeat voting in the event when there is only one candidate left in the electoral ballot on the day of repeat voting.

4. The Federal Assembly of the Russian Federation shall amend the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" appropriately, in compliance with requirements of the Constitution of the Russian Federation and in consideration of this Decision.

5. This Decision shall be final, shall not be subject of appeal, shall be effective immediately following its proclamation, shall be applied directly, and shall not require approval of other bodies and officials.

6. Pursuant to Article 78 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," this Decision shall be immediately published in the "*Sobraniye zakonodatelstva Rossiiskoi Federatsii*" (Collection of Legislation of the Russian Federation), the "*Rossiyskaya Gazeta*," and official outlets of bodies of state power of the Saratov and Tula regions. This Decision shall also be published in the "*Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii*" (Bulletin of the Constitutional Court of the Russian Federation).

3.10 (11.18). DECISION NO. 12-P OF JULY 9, 2002 ON THE CASE ON VERIFICATION OF CONSTITUTIONALITY OF PROVISIONS OF CLAUSE 5, ARTICLE 18 AND ARTICLE 301 OF THE FEDERAL LAW "ON THE GENERAL PRINCIPLES OF ORGANIZATION OF LEGISLATIVE (REPRESENTATIVE) AND EXECUTIVE BODIES OF STATE POWER OF THE SUBJECTS OF THE RUSSIAN FEDERATION," ARTICLE 108 OF THE CONSTITUTION OF THE REPUBLIC OF TATARSTAN, ARTICLE 67 OF THE CONSTITUTION (MAIN LAW) OF THE SAKHA (YAKUTIA) REPUBLIC AND PARA. 3, ARTICLE 3 OF THE LAW OF THE SAKHA (YAKUTIA) REPUBLIC "ON ELECTION OF THE PRESIDENT OF THE SAKHA (YAKUTIA) REPUBLIC"¹

The Constitutional Court of the Russian Federation presided by M.V. Baglay and composed of judges N.S. Bondar, N.V. Vitruk, G.A. Gadzhiyev, Yu.M. Danilov, L.M. Zharkova, G.A. Zhilin, V.D. Zorkin, S.M. Kazantsev, Yu.D. Rudkin, N.V. Seleznyov,

A.Ya. Sliva, V.G. Strekozov, O.S. Khokhryakova, B.S. Ebzeyev, V.G. Yaroslavtsev,

With participation of representatives of a group of deputies of the State Duma who submitted their inquiry to the Constitutional Court of the Russian Federation, deputies of the State Duma A.V. Mitrofanov and A.I. Saliy, representatives of the bodies that passed the contested bills, deputy of the State Duma S.A. Popov, Chairman of the Federation Council Committee on Constitutional Development, Yu.A. Sharandin, Plenipotentiary Representative of the President of the Russian Federation at the Constitutional Court of the Russian Federation, M.A. Mityukov, Chairman of the State Council of the Republic of Tatarstan, F.Kh. Mukhametshin, deputy of the Chamber of the Republic of the State Assembly (Il Tumen) of the Sakha (Yakutia) Republic, A.N. Kim-Kimen,

Following Article 125 (Clause "a" and Clause "b", Para. 2; Para. 4) of the Constitution of the Russian Federation, Clause 1 and Clause 3, Para. 1, Article 3; Clause 1, Para. 2, Article 21; Articles 36, 74, 84, 85, 86, 101, and 102 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation,"

Reviewed in an open session the case on verification of constitutionality of provisions of Clause 5, Article 18 and Article 30¹ of the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation," Article 108 of the Constitution of the Republic of Tatarstan, Article 67 of the Constitution (Main Law) of the Sakha (Yakutia) Republic and Para. 3, Article 3 of the Law of the Sakha (Yakutia) Republic "On Election of the President of the Sakha (Yakutia) Republic."

The case has been reviewed in response to a petition submitted by a group of deputies of the State Duma to verify constitutionality of Article 30¹ of the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation," petition of a group of deputies of the State Duma to verify constitutionality of Article 108 of the Constitution of the Republic of Tatarstan, and petition of the Supreme Court of the Sakha (Yakutia) Republic to verify constitutionality of Clause 5, Article 18 of the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation" and the provision contained in the second sentence of Article 67 of the Constitution (Main Law) of the Sakha (Yakutia) Republic and Para. 3, Article 3 of the Law of the Sakha (Yakutia) Republic "On Election of the President of the Sakha (Yakutia) Republic."

The case has been reviewed on the grounds of an uncertainty identified in the issue of whether or not the contested provisions of the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation" concerning the number of terms a person may serve as the chief executive official of a subject of the Russian Federation (head of the executive body of state power of a subject of the Russian Federation) and the possibility for this person to serve in the said position more than two terms in a row, as well as the provisions of the Constitution of the Republic of Tatarstan, the Constitution (Main Law) of the Sakha (Yakutia) Republic, and the Law of the Sakha (Yakutia) Republic "On Election of the President of the Sakha (Yakutia) Republic" determining terms of service of chief executive officials (heads of supreme executive bodies of state power) of the said subjects of the Russian

Federation, are consistent with the Constitution of the Russian Federation.

Given that all the petitions pertain to the same subject matter the Constitutional Court of the Russian Federation, following Article 48 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," has combined proceedings on these petitions in one case.

Upon examination of reports of judge-rapporteurs G.A. Gadzhiyev, N.V. Seleznyov, and B.S. Ebzeyev, explanations of representatives of the parties, messages of attendees representing: the Supreme Court of the Russian Federation – judge of the Supreme Court of the Russian Federation, A.V. Kharlanov, the Office of Prosecutor General of the Russian Federation – G.A. Abuzova, the Ministry of Justice of the Russian Federation – E.E. Kretova, the Constitutional Court of the Russian Federation

Established as follows:

1. The petition submitted by a group of deputies of the State Duma contests constitutionality of Article 30¹ of the Federal Law of October 6, 1999 "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation" pursuant to which the provision of Clause 5, Article 18 of the said Federal Law, pursuant to which the chief executive official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation) may be elected for a term of not more than five years and may not be elected for the same office for more than two terms in a row, is applied without consideration of the term for which the individual occupying the post of the chief executive official of a subject of the Russian Federation (head of the executive body of state power of a subject of the Russian Federation) had already been elected before the said Federal Law took effect. According to the petitioners the contested provision is inconsistent with the norms of the Constitution of the Russian Federation regulating establishment by subjects of the Russian Federation of their own systems of bodies of state power in compliance with the foundations of the constitutional system and general principles of organization of representative and executive bodies of state power accounted for by the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation."

Another group of deputies of the State Duma contests in its petition constitutionality of Article 108 of the version of the Constitution of the Republic of Tatarstan that was effective prior to April 19, 2002. According to the petitioners, the fact that this Article does not contain a norm providing that the same person may not be elected President of the Republic of Tatarstan for more than two terms in a row makes it inconsistent with Article 72 (Clause "a", Para. 1) of the Constitution of the Russian Federation and Clause 5, Article 18 of the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation" and therefore may not be applied.

The Supreme Court of the Sakha (Yakutia) Republic petitioned to the Constitutional Court of the Russian Federation requesting verification of constitutionality of Clause 5, Article 18 of the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation" in the part concerning the prohibition for the same person to be elected chief executive official of a subject of the Russian

Federation (head of the supreme executive body of state power of a subject of the Russian Federation) for more than two terms in a row, as well as verification of constitutionality of the provision contained in the second sentence of Article 67 of the Constitution (Main Law) of the Sakha (Yakutia) Republic and Para. 3, Article 3 of the Law of the Sakha (Yakutia) Republic "On Election of the President of the Sakha (Yakutia) Republic," pursuant to which no one may be elected President of the Sakha (Yakutia) Republic more than twice. According to the petitioner, the Constitution of the Russian Federation does not directly restrict the number of possible terms one person may serve in the position of the chief executive official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation), and it may not be established by a federal law or a legislative act of a subject of the Russian Federation, and therefore the contested norms, as restricting the passive electoral right of citizens, are inconsistent with Article 32 (Para. 2 and Para. 3), 55 (Para. 2 and Para. 3), 71 (Clause "c"), and 76 (Para. 2 and Para. 5) of the Constitution of the Russian Federation.

Given that the petition of the Supreme Court of the Sakha (Yakutia) Republic was forwarded to the Constitutional Court of the Russian Federation in the order accounted for by Article 125 (Para. 4) of the Constitution of the Russian Federation in connection with review of a specific case – on registration of M.N. Nikolayev as a candidate for the position of the President of the Sakha (Yakutia) Republic, and taking into account the fact that M.N. Nikolayev has withdrawn his candidature, this issue is no longer acceptable in compliance with requirements of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation."

Thus, the matter at issue in this case is Article 30¹ of the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation" in interconnection with Clause 5 of its Article 18, which provides for as a general principle of organization of legislative (representative) and executive bodies of State Power of the Subjects of the Russian Federation that the same individual may not be elected chief executive official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation) for more than two terms in a row, and determine conditions and the order of its application, as well as Article 108 of the version of the Constitution of the Republic of Tatarstan that was effective prior to April 19, 2002, pursuant to which the same person could be elected President of the Republic of Tatarstan for an unlimited number of terms.

2. From the petition submitted by the group of deputies of the State Duma contesting constitutionality of Article 30¹ of the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation," it follows that first and foremost the petitioners demand appraisal of the order and conditions of application of the general principle established by this Article and secured by Clause 5, Article 18 of the said Federal Law.

2.1. Pursuant to Article 1 (Section 1) of the Constitution of the Russian Federation, the Russian Federation is a democratic federal law-bound state with a republican form of government. This predetermines the principles of organization of bodies of state power, their organization, the order of their formation and operation, as well as the

nature of their interaction within the common system of state power.

By virtue of the constitutional principle of democracy, the multinational people of Russia is the bearer of sovereignty and the only source of power in the Russian Federation that exercises its power both directly and through bodies of public power (Para. 1 and Para. 2, Article 3, the Constitution of the Russian Federation); citizens participate in management of state affairs and have the right to elect and be elected to bodies of state power (Article 32, the Constitution of the Russian Federation); the same principle secures replacement of the head of the state elected directly by the people (Para. 1 and Para. 3, Article 81 of the Constitution of the Russian Federation).

It follows from the above provisions that appropriate bodies and officials become bearers of state power as a result of free elections as the supreme direct expression of the power of the people on the basis of expression of the will of the majority, and they exercise their authority within the boundaries and formats accounted for by the Constitution and laws of the Russian Federation, and the right to exercise authority is only granted for a certain period of time (the term of legislature). Renewal of this authority in contravention of requirements of the Constitution of the Russian Federation and respective federal laws, as well as constitutions, charters, and laws of subjects of the Russian Federation, would be a violation of Article 3 (Para. 4) of the Constitution of the Russian Federation.

This approach does not contradict commitments of the Russian Federation secured by its international treaties which, pursuant to Article 15 (Para. 4) of the Constitution of the Russian Federation, are an integral part of the legal system of the Russian Federation, in particular, the European Convention for the Protection of Human Rights and Fundamental Freedoms that requires that member states hold free elections at reasonable intervals by secret ballot, under conditions which ensure the free expression of the opinion of the people in the choice of the legislature (Article 3, Protocol No. 1), and the International Covenant on Civil and Political Rights pursuant to Article 25 of which (Clause "a" and "b") every citizen must have the right and opportunity, without discrimination or any unreasonable restrictions, to participate in managing state affairs directly and through freely elected representatives. At the same time, pursuant to the Decision of the Constitutional Court of the Russian Federation of April 30, 1997 in the case on verification of constitutionality of the Decree of the President of the Russian Federation, the law of the Perm oblast, and the law of the Vologda oblast concerning the order of elections to legislative (representative) bodies of State Power of the Subjects of the Russian Federation, and taking into account the federative nature of the Russian Federation, the right of citizens to participate in free periodic elections secured by the International Covenant on Civil and Political Rights must be regarded from the viewpoint of its relationship with the right of the subjects of the Russian Federation to independently establish the system of their bodies of state power in compliance with general principles of their organization accounted for by the federal law or determined directly by constitutional provisions, first and foremost those pertaining to the foundations of the constitutional system.

The principles of the constitutional system of the Russian Federation as a democratic federative law-bound state with a republican form of government accounted for by democracy and implemented through free periodic elections, by virtue of the federative structure based on state integrity of the Russian Federation and unity of the system of

state power (Article 1, Para. 1; Article 5, Para. 3 of the Constitution of the Russian Federation) apply to organization of state power, its formation and conditions of replacement of officials in respective posts in subjects of the Russian Federation.

Consequently, when subjects of the Russian Federation organize bodies of state power and establish the order of their formation and operation they must ensure compliance with the foundations of the constitutional system of the Russian Federation as constitutional values and legal imperatives that are common for the Russian Federation and its subjects (Article 77, Section 1 of the Constitution of the Russian Federation). Pursuant to current federal constitutional regulation, state power of the subjects of the Russian Federation must be based on the same formation and operation principles, including electiveness and replacement, as the federal state power (decisions of the Constitutional Court of the Russian Federation of January 18, 1996 in the case on verification of constitutionality of a number of provisions of the Charter (Main Law) of the Altay krai (territory), of February 1, 1996 in the case on verification of constitutionality of a number of provisions of the Charter – Main Law – of the Chita oblast, of December 10, 1997 in the case on verification of constitutionality of a number of provisions of the Charter (Main Law) of the Tambov oblast, of June 7, 2000 in the case of verification of constitutionality of certain provisions of the Constitution of the Altay Republic and the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation").

The Constitution of the Russian Federation does not directly provide for a maximum number of terms the same person may occupy the post of the chief executive official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation) as an element of the mechanism of formation of bodies of executive power of the subjects of the Russian Federation, nor does it directly secure the order of determination of repeatability of terms of occupation of the respective post. Its Article 77 (Para. 1) contains a general requirement: the subjects of the Russian Federation establish the system of bodies of state power independently and according to the principles of the constitutional system of the Russian Federation and the general principles of organization of representative and executive bodies of state power accounted for by the federal law. For optimal implementation of the constitutional principle of republicanism the number of such terms – by virtue of the unity of the system of state power in the Russian Federation (Para. 3, Article 5 of the Constitution of the Russian Federation) – is accounted for by the guiding norm of Article 81 (Para. 3) of the Constitution of the Russian Federation pursuant to which the same person may not occupy the post of the President of the Russian Federation for more than two terms running.

Thus, the constitutional principle of a democratic federal law-bound state with a republican form of government, democracy, and free elections as the supreme direct expression of the power of the people, the unity of the system of state power in interconnection with the goal directly expressed in the Preamble of the Constitution of the Russian Federation to assert the firmness of the democratic basis of Russia, predetermine the right and duty of the legislator to account for such organization of state power, including the order and conditions of formation of its bodies, that would guarantee protection from distortion of the democratic nature of the constitutional sys-

tem of the Russian Federation.

2.2. Establishment of general principles of organization of the system of bodies of state power falls within the joint jurisdiction of the Russian Federation and its subjects (Clause "m", Para. 1, Article 72; Para. 1, Article 77 of the Constitution of the Russian Federation). Regulation of relationships within the sphere of joint jurisdiction is ensured by federal laws and laws of subjects of the Russian Federation adopted in compliance therewith (Para. 2 and Para 5, Article 76 of the Constitution of the Russian Federation). At the same time, by virtue of the said Articles of the Constitution of the Russian Federation and Clause 2, Article 12 of the Federal Law of June 24, 1999 "On the Principles and Order of Delineation of Jurisdictions and Distribution of Authorities Among Bodies of State Power of the Russian Federation and Bodies of State Power of the Subjects of the Russian Federation" particularizing them, the lack of an appropriate federal law regulating issues falling within the joint jurisdiction in itself does not prevent a subject of the Russian Federation from adopting a normative act of its own that will have to be brought in compliance with the federal law once the latter is passed.

2.3. The chief executive official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation) vested with public authority within the system of state power has a special constitutional-legal status that accounts, among other things, for his or her replacement due to electiveness of the post, as well as a number of other conditions pertaining to election to the said post.

Effectiveness of the constitutional requirement of replacement of chief executive officials of subjects of the Russian Federation (heads of supreme executive bodies of State Power of the Subjects of the Russian Federation), application of which in view of the lack of an appropriate federal law was possible in a variety of forms, could not be blocked by a lengthy absence of a federal law on the general principles of organization of the system of bodies of state power and must have been ensured by the subjects of the Russian Federation themselves in consideration of the boundaries of their jurisdictions accounted for by the Constitution of the Russian Federation. Therefore, prior to the adoption of the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation," the subjects of the Russian Federation used to independently establish terms of legislature of their chief executive officials (heads of supreme executive bodies of state power), as well as various forms of their rotation (including the number of possible terms for which the same person may occupy the same post).

Admissibility of establishment of requirements concerning the passive electoral right with respect to the number of terms for which the same person may occupy the post of the chief executive official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation) in legislation of the subjects of the Russian Federation, considering that their limits are determined by the federal law, is accounted for by the delineation of jurisdictions between the Russian Federation and its subjects accounted for by the Constitution of the Russian Federation, by virtue of which such requirements, being a part of the general principles of organization of the system of bodies of state power, fall within the

joint jurisdiction of the Russian Federation and its subjects.

Hence, introduction of a maximum number of terms, for which the same person may occupy a certain elective post, by a law of a subject of the Russian Federation in the capacity of an element of the publicly-legal status of the chief executive official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation), that serves public goals and ensures a balance of such constitutional values and institutions as a democratic federal law-bound state with a republican form of government, democracy and participation of citizens in management of state affairs, their electoral rights, may not be regarded as a violation of requirements of Article 55 (Para. 3) of the Constitution of the Russian Federation, including the possibility of restriction of rights of citizens by a federal law only.

2.4. Proceeding from the foundations of the constitutional system of Russia as a federal state, Article 81 (Para. 3) of the Constitution of the Russian Federation and relevant provisions of constitutions and charters of subjects of the Russian Federation, the norm of Clause 5, Article 18 of the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation," the federal legislator has introduced reasonable uniformity in regulation of the issue of the maximum number of terms for which the same person may occupy the post of the chief executive official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation). At the same time – in order to overcome the uncertainty that emerged in the law-enforcement practice with respect to effectiveness of the general principle secured by the said norm as applied to duration and circle of individuals – the Federal Law of February 8, 2001 supplemented the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation" with Article 30¹, pursuant to which the provision of Clause 5 of its Article 18 must be applied without consideration of the term for which the individual occupying the post of the chief executive official of a subject of the Russian Federation (head of the executive body of state power of a subject of the Russian Federation) had already been elected before the said Federal Law took effect.

Such regulation ensures equal status of chief executive officials of the subjects of the Russian Federation (heads of executive bodies of State Power of the Subjects of the Russian Federation) and conditions and the order of occupation of a certain post by the same person that are the same for all subjects of the Russian Federation and that comply with the constitutional principle of equality of the subjects of the Russian Federation, including their relations with federal bodies of state power (Para. 1 and Para. 4, Article 5 of the Constitution of the Russian Federation).

At the same time, taking into account the fact that Section 2 of the Constitution of the Russian Federation, "Concluding and Transitional Provisions," does not contain any provisions on terms of authority of chief executive officials of the subjects of the Russian Federation (heads of executive bodies of State Power of the Subjects of the Russian Federation) elected to their posts before the Constitution of the Russian Federation became effective, the federal legislator did not and could not make the norm limiting the number of possible terms for which the same person may occupy the post of the chief executive official of a subject of the Russian Federation (head of

executive body of state power of a subject of the Russian Federation) retroactive.

Hence, the norm of Clause 5, Article 18 of the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation" – in consideration of its interconnection with Article 30¹ – regulates relations that emerged after the said Federal Law became effective, on the basis of principles accounted for thereby that uniformly apply to organization of state power in all subjects of the Russian Federation. At the same time, the phrase "this Federal Law" contained in the text of Article 30¹ implies the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation" because the norm-principle secured by Clause 5 of its Article 18 took effect on the day of official publication of this Federal Law, i.e., on October 19, 1999. It is on this date that the limitation of the number of repeatable terms for which the same individual may occupy the post of the chief executive official of a subject of the Russian Federation (head of executive body of state power of a subject of the Russian Federation) introduced by the federal legislator, became effective.

2.5. By virtue of requirements of Article 76 (Para. 2 and Para. 5) of the Constitution of the Russian Federation, once the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation" has taken effect the subjects of the Russian Federation must bring their legislation in compliance with the said Federal Law for which purpose and to ensure continuity of power its Article 30 provides for a two-year transitional period.

The said period, however, may not be interpreted either as providing subjects of the Russian Federation with a chance to make the already effective provision contained in Clause 5, Article 18 retroactive, because even the federal legislator does not have such authority, or as granting them the right to defer its enactment which is supported by the authentic will of the legislator expressed in Article 30¹. Therefore, for subjects of the Russian Federation whose legislation at that moment did not provide for a limitation of the number of terms for which the same person may be elected chief executive official of a subject of the Russian Federation (head of executive body of state power of a subject of the Russian Federation), the provision of Clause 5, Article 18, in its interconnection with Article 30¹ of the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation," is effective since the day of enactment of the said Federal Law, i.e., since October 19, 1999. It means that as applied to such cases the first of the two possible terms for any person, including those who at that moment occupied respective posts, must be the term for which the said person was elected after October 19, 1999.

At the same time, by virtue of Clause 5, Article 18, Articles 30, 30¹ and 31 of the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation," enactment of federal legislation on October 19, 1999 that regulates the maximum number of terms for which the same person may be elected chief executive official of a subject of the Russian Federation (head of executive body of state power of a subject of the Russian Federation) implies that bringing their legislation (including constitutions and charters)

in compliance with requirements of the said Federal Law the subjects of the Russian Federation, which had established such limitations earlier than the said Federal Law, have the right – pursuant to Articles 5 (Para. 2 and Para. 3), 72 (Clause "a" and Clause "m", Para. 1), 76 (Para. 2 and Para. 5), and 77 (Para. 1) of the Constitution of the Russian Federation and proceeding from the fact that the provisions of Clause 5, Article 18 and Article 30¹ may not be retroactive – to independently establish the order (method) of achieving such compliance and determine whether calculation of the number of terms established thereby earlier continues or begins from the moment of enactment of the said Federal Law.

If a subject of the Russian Federation adopts a law pursuant to which previous normative provisions lose their effect, the provision of Clause 5, Article 18 of the said Federal Law is applied to the person that occupied the post of the chief executive official of a subject of the Russian Federation (head of executive body of state power of a subject of the Russian Federation) on the day of enactment of the said Federal Law without consideration of the term that had begun prior to the day of enactment of the said Federal Law. If previous provisions prohibiting occupation of an elective office for more than two terms running are not abolished (recognized to have lost effect) by a subject of the Russian Federation, Clause 5, Article 18, as containing essentially the same norm, renders the said provisions compliant with federal legislation.

Different interpretation of Article 30¹ in its interconnection with Clause 5, Article 18 of the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation" as applied to such subjects of the Russian Federation would mean, by virtue of Articles 72 (Clause "m", Para. 1) and 76 (Para. 2 and Para. 5) of the Constitution of the Russian Federation, unacceptable limitation of authority of subjects of the Russian Federation that have the right to abolish their own legal provisions because they were established earlier in order to regulate the said issue before adoption of federal legislation.

Thus, Article 30¹ of the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation" in its constitutional-legal sense identified in this Decision and in interconnection with Clause 5, Article 18 of the said Federal Law, does not contradict the Constitution of the Russian Federation.

3. In their petition a group of deputies of the State Duma argue that Article 108 of the Constitution of the Republic of Tatarstan in its version that was effective prior to April 19, 2002 was not applicable because it essentially permitted election of the same person to the office of the President of the Republic of Tatarstan for more than two terms running.

3.1. The Constitution of the Republic of Tatarstan adopted on April 19, 2002 provides that the same person may not be elected President of the Republic of Tatarstan for more than two terms in a row (Article 91, Para. 5). The previous Constitution of the Republic of Tatarstan did not contain such a restriction (Article 108 of the Law of the Republic of Tatarstan as amended on November 27, 1996) and consequently prior to the enactment of the Federal Law of October 6, 1999 "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation" – in its normative sense with-

in the legal system of the Russian Federation – allowed the same person to be elected President of the Republic of Tatarstan for an unlimited number of terms.

Upon adoption of the said Federal Law this norm lost this implication. Given that its application did not result in violation of constitutional rights and freedoms of citizens the proceedings initiated by the Constitutional Court of the Russian Federation on this case in this part are subject to termination in compliance with Para. 2, Article 43 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation."

3.2. Article 76 (Para. 2) of the Constitution of the Russian Federation provides that on the issues under the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation federal laws shall be issued and laws and other normative acts of the subjects of the Russian Federation shall be adopted according to them. From this provision taken together with Article 4 of the Constitution of the Russian Federation, pursuant to which the sovereignty of the Russian Federation covers its entire territory (Para. 1), and the Constitution of the Russian Federation and federal laws have supremacy throughout the entire territory of the Russian Federation (Para. 2), as well as Articles 15 (Para. 1 and Para. 2), 76 (Para. 1), and 77 (Para. 1), that ensure legal integrity of the Russian Federation and operation of its legal system, it follows that upon enactment of the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation" the contested norm of Article 108 of the Constitution of the Republic of Tatarstan acquired a different legal meaning because Clause 5, Article 18 of the said Federal Law, essentially, contains an injunction of direct application.

The general principle of organization of legislative (representative) and executive bodies of State Power of the Subjects of the Russian Federation secured by Clause 5, Article 18 includes a provision pursuant to which the same person may not be elected to a respective post for more than two terms in a row which does not require any particularization taking into account peculiarities of subjects of the Russian Federation, and the provision pursuant to which the term of legislature of the chief executive official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation) may not exceed five years, which requires particularization in legislation of the subjects of the Russian Federation, which is required, among other things, to calculate the moment of the beginning and termination of authority of a respective official by law enforcers, first and foremost, by election commissions of the subjects of the Russian Federation.

In itself, the lack of a provision in legislation of a subject of the Russian Federation pursuant to which the same person may not be elected chief executive official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation) for more than two terms in a row, does not impede direct application of the norm of Clause 5, Article 18 of the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation." This injunction of the federal legislator compliance with which is an unconditional obligation of respective law enforcers does not require confirmation in legislation of subjects of the Russian Federation. As to the term of authority of the President of the Republic

of Tatarstan, its duration – in compliance with Article 1 of the Law of the Republic of Tatarstan "On Election of the President of the Republic of Tatarstan" (as amended on December 19, 2000), as well as Article 91 (Para. 3) of the current Constitution of the Republic of Tatarstan – is five years which is consistent with the boundaries determined by the said Federal Law.

Thus, the norm of Article 108 contained in the version of the Constitution of the Republic of Tatarstan that was effective prior to April 19, 2002, as not impeding direct application of Clause 5, Article 18 of the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation," did not contradict the Constitution of the Russian Federation. At the same time, interpretation of other bills of the Republic of Tatarstan could not differ from the constitutional-legal sense of Article 108 of the Constitution of the Republic of Tatarstan identified in this Decision.

Proceeding from the above and following Clause 2, Para. 1, Article 43; Article 68; Para. 1 and Para. 2, Article 71; Articles 72, 74, 75, 79, 87, and 100 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," the Constitutional Court of the Russian Federation

Decided as follows:

1. It shall be recognized that the provision of Article 30¹ of the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation" in its interconnection with Clause 5 of its Article 18 be consistent with the Constitution of the Russian Federation because this provision in its constitutionally-legal sense implies that the norm of Clause 5, Article 18 containing a general principle pursuant to which the same person may not be elected chief executive official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation) for more than two terms running, took effect on October 19, 1999.

Therefore, for the subjects of the Russian Federation whose legislation at that moment did not provide for a limitation of the number of terms for which the same person could be elected chief executive official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation), the first of the two possible terms for any person, including those who at that time occupied a respective post, shall be the term for which that person was elected after October 19, 1999; the subjects of the Russian Federation that had accounted in their constitutions and charters for a limitation that did not contradict the said general principle, shall have the right to independently determine the method of calculation of the said terms – whether calculation established by a subject of the Russian Federation earlier continues or begins after enactment of the said Federal Law.

2. It shall be recognized that the norm of Article 108 of the Constitution of the Republic of Tatarstan in the sense that it had during the period following enactment of the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation" until adoption of a new Constitution of the Republic of Tatarstan on

¹ *Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii* (Bulletin of the Constitutional Court of the Russian Federation). 2003. No. 4. P. 30–51.

April 19, 2002, be consistent with the Constitution of the Russian Federation because within the legal system of the Russian Federation it could not be considered during the specified period to have impeded direct application of systemically-united provisions of Clause 5, Article 18 and Article 30¹ of the said Federal Law in their constitutional-legal interpretation provided in this Decision.

3. Proceedings initiated in response to the petition of the Supreme Court of the Sakha (Yakutia) Republic shall be terminated because this petition is no longer acceptable in compliance with requirements of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation."

4. Pursuant to Para. 1 and Para. 2, Article 79 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," this Decision shall be final, shall not be subject of appeal, shall be effective immediately following its proclamation, shall be applied directly, and shall not require approval of other bodies and officials.

5. Pursuant to Article 78 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," this Decision shall be immediately published in the "*Sobraniye zakonodatelstva Rossiiskoi Federatsii*" (Collection of Legislation of the Russian Federation), the "*Rossiyskaya Gazeta*," and official outlets of bodies of state power of the Republics of Tatarstan and Sakha (Yakutia). This Decision shall also be published in the "*Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii*" (Bulletin of the Constitutional Court of the Russian Federation).

3.11 (11.19). DECISION NO. 10-P OF JUNE 11, 2003 IN THE CASE ON VERIFICATION OF CONSTITUTIONALITY OF THE FEDERAL CONSTITUTIONAL LAW "ON AMENDMENTS AND ADDENDA TO THE FEDERAL CONSTITUTIONAL LAW "ON THE REFERENDUM OF THE RUSSIAN FEDERATION"¹

The Constitutional Court of the Russian Federation presided by Chairman V.D. Zorkin and composed of judges M.V. Baglay, N.S. Bondar, G.A. Gadzhiyev, Yu.M. Danilov, L.M. Zharkova, G.A. Zhilin, S.M. Kazantsev, M.I. Kleandrov, A.L. Kononov, L.O. Krasavchikova, V.O. Luchin, Yu.D. Rudkin, N.V. Seleznyov, A.Ya. Sliva, V.G. Strekozov, O.S. Khokhryakova, B.S. Ebzeyev, V.G. Yaroslavtsev,

With participation of representatives of a group of deputies of the State Duma that submitted an inquiry to the Constitutional Court of the Russian Federation, deputies of the State Duma V.L. Zorkaltsev, V.I. Ilyukhin, and A.I. Lukyanov, representatives of the State Duma as the party that adopted the contested bill, deputies of the State Duma A.I. Alexandrov, V.V. Grebennikov, and G.B. Mirzoyev, representative of the Federation Council at the Constitutional Court of the Russian Federation, member of the Federation Council, Yu.A. Sharandin, Plenipotentiary Representative of the President of the Russian Federation at the Constitutional Court of the Russian Federation, M.A. Mityukov,

Following Article 125 (Para. 2) of the Constitution of the Russian Federation, Subclause "a", Clause 1, Para. 1, Para. 3 and Para. 4, Article 3, Para. 1, Article 21; Articles 36, 74, 84, 85, and 86 of the Federal Constitutional Law "On the Constitutional Court

of the Russian Federation,"

Reviewed in an open session the case on verification of constitutionality of the Federal Constitutional Law of September 27, 2002 "On Amendments and Addenda to the Federal Constitutional Law "On the Referendum of the Russian Federation."

The case has been reviewed in response to a petition submitted by a group of deputies of the State Duma requesting verification of constitutionality of provisions of the Federal Constitutional Law "On Amendments and Addenda to the Federal Constitutional Law "On the Referendum of the Russian Federation" that account for a period during which initiation and conduct of a referendum of the Russian Federation is not allowed, as well as constitutionality of the said Federal Constitutional Law upon the whole from the viewpoint of its adoption by the State Duma. The case has been reviewed on the grounds of an uncertainty identified in the issue of whether or not provisions of the contested Federal Constitutional Law and the order in which it was adopted are consistent with the Constitution of the Russian Federation.

Upon examination of the report of judge-rapporteur S.M. Kazantsev, explanations of representatives of the parties, as well as the message of a representative of the Central Election Commission of the Russian Federation invited to participate in the session, N.A. Kulyasova, as well as documents and other materials, the Constitutional Court of the Russian Federation

Established as follows:

1. Pursuant to Para. 1, Article 8 of the Federal Constitutional Law of October 10, 1995 "On the Referendum of the Russian Federation," a referendum of the Russian Federation may be initiated by not less than two million citizens of the Russian Federation who have the right to participate in a referendum of the Russian Federation (Clause 1), as well as by the Constitutional Assembly in the event accounted for by Para. 3, Article 135 of the Constitution of the Russian Federation (Clause 2). Additionally, Para. 4, Article 12 of the initial version of the said Federal Constitutional Law prohibited holding elections of the President of the Russian Federation, federal bodies of state authority, bodies of state authority of subjects of the Russian Federation, and bodies of local self-government simultaneously with a referendum of the Russian Federation.

The Federal Constitutional Law of September 27, 2002 "On Amendments and Addenda to the Federal Constitutional Law "On the Referendum of the Russian Federation" supplemented Article 8 of the Federal Constitutional Law "On the Referendum of the Russian Federation" with Para. 3 that provides as follows: "Subjects specified in Clause 1, Para. 1 of this Article shall not initiate a referendum of the Russian Federation during an election campaign held throughout the entire territory of the Russian Federation in compliance with a decision made by an authorized federal body, as well as in the event when holding a referendum of the Russian Federation falls within the last year of authority of the President of the Russian Federation, State Duma of the Federal Assembly of the Russian Federation" (Clause 1, Article 1). At the same time, Para. 4, Article 12 provides as follows: "Holding a referendum of the Russian Federation shall not be allowed (except for cases when a referendum of the Russian Federation is initiated in compliance with international treaties of the Russian Federation) during an election campaign held throughout the entire territory of the Russian Federation pursuant to a decision of an authorized fe-

deral body or if holding a referendum of the Russian Federation falls within the last year of authority of the President of the Russian Federation, other elective federal bodies of state power" (Clause 2, Article 1).

The deputies of the State Duma who have petitioned to the Constitutional Court of the Russian Federation argue that the Federal Constitutional Law "On Amendments and Addenda to the Federal Constitutional Law "On the Referendum of the Russian Federation," having extended the period during which initiation and conduct of a referendum of the Russian Federation is not allowed, violated and in fact revised provisions of the Constitution of the Russian Federation providing that the people exercise their power directly and that the referendum is the supreme direct expression of the power of the people which are an integral part of the foundations of the constitutional system of the Russian Federation and as such may not be revised by the Federal Assembly of the Russian Federation, and that it disproportionately restricted the right of the citizens of the Russian Federation to participate in a referendum which contradicts Article 1 (Para. 1), 2, 3, 16 (Para. 1), 29 (Para. 1 and Para. 3), 32 (Para. 2), 55 (Para. 2 and Para. 3), and 135 (Para. 1 and Para. 2) of the Constitution of the Russian Federation.

In addition, as it follows from the petition and presentations of representatives of the petitioners made at the session of the Constitutional Court of the Russian Federation, constitutionality of the Federal Constitutional Law "On Amendments and Addenda to the Federal Constitutional Law "On the Referendum of the Russian Federation" is contested only with respect to a referendum initiated by the citizens of the Russian Federation; petitioners do not raise the issue of holding a referendum on the draft of a new Constitution of the Russian Federation that is initiated in compliance with Article 135 (Para. 3) of the Constitution of the Russian Federation by the Constitutional Assembly. Consequently, by virtue of Para. 3, Article 74 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," the issue of whether or not the provision of Clause 2, Article 1 of the Federal Constitutional Law "On Amendments and Addenda to the Federal Constitutional Law "On the Referendum of the Russian Federation" regulating the time of holding a referendum of the Russian Federation applies to cases of holding a referendum on the draft of a new Constitution is not considered by the Constitutional Court of the Russian Federation under this case.

The petition also claims that in the course of adoption of the Federal Constitutional Law "On Amendments and Addenda to the Federal Constitutional Law "On the Referendum of the Russian Federation" provisions of Articles 71 (Clause "b") and 72 (Clause "b", Para. 1) of the Constitution of the Russian Federation regulating the areas of jurisdiction of the Russian Federation and areas of joint jurisdiction of the Russian Federation and its subjects were violated, as was the voting procedure accounted for by Article 108 (Para. 2) of the Constitution of the Russian Federation.

2. Pursuant to the Constitution of the Russian Federation, the multinational people of the Russian Federation are the bearer of the sovereignty and the sole source of power in the Russian Federation; the people exercise their power directly, as well as through bodies of state authority and local self-government; referenda and free elections are the supreme direct expression of the power of the people (Article 3, Para. 1, Para. 2, and Para. 3).

Proclaiming referenda and free elections to be the supreme direct expression of

the power of the people and guaranteeing the right of the citizens of the Russian Federation to participate in free elections and referenda in its Article 32 (Para. 2) the Constitution of the Russian Federation proceeds from the fact that the said supreme forms of direct democracy, each having their own designation within the process of exercising democracy, are equal and, being interconnected, compliment each other.

The order in which they are listed in Article 3 of the Constitution of the Russian Federation (referenda – free elections) does not imply that the referendum is given a priority role, nor does Article 32 of the Constitution of the Russian Federation that determines the right of citizens to participate in direct democracy and lists the right to elect and be elected to bodies of public power in the first place and the right to participate in a referendum – in the second place, indicate that elections are given a priority role.

2.1. In accordance with the designation of the institute of free elections (formation and periodic replacement of the composition of bodies of public power) the Constitution of the Russian Federation secures the principle of periodicity of elections of the President of the Russian Federation and deputies of the State Duma, as well as the terms of their conduct (Para. 1, Article 81; Para. 2, Article 92; Para. 1, Article 96; Para. 2, Article 109). Periodicity of elections accounted for by international commitments of the Russian Federation, namely the International Covenant on Civil and Political Rights (Clause "a" and Clause "b", Article 25) and the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 3, Protocol No. 1), is a condition required for democratic development of the country designed to ensure the democratic and legal nature of bodies of public power by regular renewal of their composition.

As to the institute of referendum that is designed to pass decisions of state importance by means of national voting, the Constitution of the Russian Federation secures the authority of the President of the Russian Federation to appoint a referendum in the order established by the Federal Constitutional Law (Clause "c", Article 84), lack of authority of a temporary acting President of the Russian Federation to appoint a referendum (Para. 3, Article 92), grounds for appointing a referendum on the draft of a new Constitution of the Russian Federation, and conditions under which it may be considered adopted (Para. 3, Article 135). The Constitution of the Russian Federation does not directly account for periodicity or terms of conducting referenda, nor does it provide for circumstances that may impede holding a referendum.

The said provisions of the Constitution of the Russian Federation in interconnection with its Articles 3, 32 (Para. 1 and Para. 2), and 71 (Clause "a" and Clause "b") determine the nature and content of legislative regulation of conditions and order of conducting referenda and elections to bodies of public power to ensure free expression of citizens' will as they exercise their electoral rights and the right to participate in a referendum. Addressing the said issues the federal legislator has a sufficient scope of discretion which is nevertheless restricted by peculiarities of the supreme forms of direct democracy, their designation and correlation.

Given that each of these forms is designed to achieve independent goals, the federal legislator determines both the time of conducting elections and the time of holding a referendum. Since simultaneous conduct of elections and a referendum due to

objective circumstances can impede adequate expression of citizens' will and reduce effectiveness of either form of direct democracy, the federal legislator has the right to undertake regulatory measures to ensure that a referendum campaign does not coincide in time with an election campaign. Still, it must comply with requirements of the Constitution of the Russian Federation, including the principle of periodic elections secured thereby.

2.2. Determining conditions and the order of holding a referendum the federal legislator must strictly abide by the constitutional foundations of the institute of referendum as one of the forms of direct expression of the power of the people and may not alter, derogate, or disproportionately restrict the right of the citizens of the Russian Federation to participate in a referendum.

The constitutional foundations of referendum are particularized in the Federal Constitutional Law "On the Referendum of the Russian Federation" and the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" that determine the principles and the order of preparation and conduct of a referendum, as well as guarantees of implementation of the constitutional right of the citizens of the Russian Federation to participate in a referendum.

Pursuant to the Federal Constitutional Law "On the Referendum of the Russian Federation," the referendum of the Russian Federation may not be conducted in the time of war or under conditions of emergency introduced throughout the entire territory of the Russian Federation, as well as during the first three months following abolition of the war or emergency situation (Article 4). In addition, Para. 4, Article 12, in its initial version, did not allow conducting elections of the President of the Russian Federation, federal bodies of state power, bodies of state power of subjects of the Russian Federation, as well as bodies of local self-government simultaneously with a referendum of the Russian Federation. The same Federal Constitutional Law forbids authorized subjects to initiate a new referendum during the period between initiation of a referendum of the Russian Federation and official publication of its results (Para. 2, Article 8).

2.3. The Federal Constitutional Law "On Amendments and Addenda to the Federal Constitutional Law "On the Referendum of the Russian Federation," leaving the principles of holding a referendum of the Russian Federation intact, established periods during which its initiation and conduct are not allowed in connection with preparation and conduct of elections, namely, during an election campaign held throughout the entire territory of the Russian Federation pursuant to a decision of an authorized federal body, as well as when holding a referendum falls within the last year of authority of the President of the Russian Federation, other elective federal bodies of state power.

Such regulation in itself may not be interpreted as establishment of the priority of free elections over the referendum. It is designed to ensure coordinated conduct of elections and referendum to ensure that these forms of direct democracy do not detract from each other or impede each other's application.

The periods accounted for by the contested provisions during which a referendum of the Russian Federation may not be initiated and held must not lead to factual abolition of the institute of referendum. Given that the federal legislation is designed to

ensure equal opportunities of the citizens of the Russian Federation to participate in elections to federal bodies of state authority and in a referendum of the Russian Federation, the periods during which the citizens may exercise free expression of their will in one form or the other must be proportionate. At any rate, the period during which the citizens of the Russian Federation have the right to initiate and directly participate in a referendum of the Russian Federation must take up not less than one half of the election cycle (the duration of which, in compliance with Articles 81 (Para. 1) and 96 (Para. 1) of the Constitution of the Russian Federation, is four years) so that – taking into account the duration of a referendum campaign established by the current legislation – to ensure the possibility of holding not less than two referenda within a four-year election cycle.

Provisions of the Federal Constitutional Law "On Amendments and Addenda to the Federal Constitutional Law "On the Referendum of the Russian Federation" are correlated with the currently existing terms required to hold elections of the President of the Russian Federation and deputies of the State Duma and the time allotted by the legislation to conduct a referendum campaign. In addition, even when repeat elections of the President of the Russian Federation or deputies of the State Duma are required (Article 78 of the Federal Law "On Elections of the President of the Russian Federation," Article 87 of the Federal Law "On the Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation"), the term during which a referendum may be initiated and held will exceed two years.

Consequently, the subjects specified in Clause 1, Para. 1, Article 8 of the Federal Constitutional Law "On the Referendum of the Russian Federation" have the possibility to freely exercise their constitutional right to hold a referendum during the period established by the Federal Constitutional Law "On Amendments and Addenda to the Federal Constitutional Law "On the Referendum of the Russian Federation."

At any rate, alteration of terms of conduct of presidential or parliamentary elections accounted for by various circumstances, e.g., such as adoption of new legislative acts on the terms and order of holding elections and referenda, must not reduce the period during which the citizens of the Russian Federation have the possibility to initiate and directly participate in a referendum of the Russian Federation to less than a half of the election cycle.

Thus, the norms of the Federal Constitutional Law "On Amendments and Addenda to the Federal Constitutional Law "On the Referendum of the Russian Federation" in the part that establishes periods during which initiation and conduct of a referendum of the Russian Federation by the citizens of the Russian Federation is not allowed does not contradict the Constitution of the Russian Federation, including its Articles 3, 16, 32, and 55.

3. The petition of the group of deputies of the State Duma claims that the Federal Constitutional Law "On Amendments and Addenda to the Federal Constitutional Law "On the Referendum of the Russian Federation" is not consistent with Article 71 (Clause "c") and 72 (Clause "b", Para. 1) of the Constitution of the Russian Federation and requirements of the Federal Law "On the Principles and Order of Delineation of Areas of Jurisdiction and Distribution of Authorities Among the Bodies of State Power of the Russian Federation and Bodies of State Power of

Subjects of the Russian Federation" accounted thereby on submission of draft federal laws on areas of joint jurisdiction to legislative (representative) bodies of state power of the subjects of the Russian Federation adopted by the State Duma in the first reading to solicit amendments thereto within a period of thirty days while consideration of the said draft laws in the second reading is not allowed until this term expires (Article 13).

According to the petitioners it is this particular procedure that should have been applied by the State Duma when adopting the contested Federal Constitutional Law because the amendments and addenda it introduced into the Federal Constitutional Law "On the Referendum of the Russian Federation" concern protection of the right of the citizens of the Russian Federation to participate in a referendum, i.e., an area that falls within the joint jurisdiction of the Russian Federation and its subjects.

In the meantime, pursuant to the Constitution of the Russian Federation, protection of rights and freedoms of a human being and citizen falls within the jurisdiction of the Russian Federation (Clause "c", Article 71), as well as the area of joint jurisdiction of the Russian Federation and its subjects (Clause "b", Para. 1, Article 72), while regulation of rights and freedoms of the human being and citizen falls within the jurisdiction of the Russian Federation (Clause "c", Article 71). From Article 76 (Para. 1) of the Constitution of the Russian Federation it follows that federal constitutional laws are only adopted with respect to the jurisdiction of the Russian Federation. By virtue of Article 84 (Clause "c") of the Constitution of the Russian Federation, the referendum of the Russian Federation is appointed and held in the order established by a federal constitutional law.

It follows from the said constitutional provisions that adoption of a federal constitutional law designed to regulate the right of citizens to participate in a referendum of the Russian Federation – national voting of the citizens of the Russian Federation on the most important state issues, determination of the order of its preparation and conduct – falls within the jurisdiction of the Russian Federation, not within the area of joint jurisdiction of the Russian Federation and its subjects. Exercising its authority accounted for by Article 71 (Clause "c") of the Constitution of the Russian Federation the State Duma adopted the Federal Constitutional Law "On the Referendum of the Russian Federation" and then introduced amendments and addenda thereto having adopted the Federal Constitutional Law of September 27, 2002.

The order of adoption of federal laws, including federal constitutional laws (Articles 104-108) secured by the Constitution of the Russian Federation does not account for submission of a respective draft law on the jurisdiction of the Russian Federation to subjects of the Russian Federation and subsequent consideration of their proposals and comments by the Federal Assembly of the Russian Federation. The Federal Law "On the Principles and Order of Delineation of Areas of Jurisdiction and Distribution of Authorities Among the Bodies of State Power of the Russian Federation and Bodies of State Power of Subjects of the Russian Federation" does not account for it either.

Thus, despite the argument of the petitioners, Articles 71 and 72 of the Constitution of the Russian Federation were not violated when the State Duma adopted the Federal Constitutional Law "On Amendments and Addenda to the

Federal Constitutional Law "On the Referendum of the Russian Federation."

4. Constitutionality of the order of adoption of the Federal Constitutional Law "On Amendments and Addenda to the Federal Constitutional Law "On the Referendum of the Russian Federation" is contested by the petitioners on the grounds that this Federal Constitutional Law was not approved by two thirds of the total number of deputies of the State Duma, i.e., not less than 300 votes as required by Article 108 (Para. 2) of the Constitution of the Russian Federation. Essentially not contesting the right of a deputy to vote for another deputy at his or her request, the petitioners claim that in this case 122 deputies who missed the session of the chamber but delegated their votes to other deputies may not be considered to have participated in the voting because in their notices delegating their votes to their colleagues they did not specify how exactly their colleagues should have voted for them on the draft law ("pro", "contra", or "abstained").

The issue of importance of compliance with the voting procedure in adoption of federal laws by the State Duma has already been addressed by the Constitutional Court of the Russian Federation. In the Decision of July 20, 1999 passed in the case on verification of constitutionality of the Federal Law "On Valued Items of Culture Moved to the Union of the Soviet Socialist Republics as a Result of World War II and Located on the Territory of the Russian Federation" the Constitutional Court of the Russian Federation expressed its legal position pursuant to which the constitutional norms regulating the status of the State Duma and the order of its operation account for a requirement to normatively secure the voting procedure used in adoption of federal laws in the Order of Business of the State Duma requiring personal presence of deputies in sessions and voting in the course of the legislative process. Availability of such rules and their observation are an essential procedural element of the due order of adoption of federal laws based on requirements of the Constitution of the Russian Federation that guarantees conformity of a passed decision with the real expression of deputies' will. At the same time, the principle of deputy's personal participation in voting does not exclude introduction of addenda to the Order of Business of the State Duma that concern delegation of deputy's vote accounted for by his or her missing a session due to exclusive circumstances.

In connection therewith, Clause 2, Article 85 of the Order of Business of the State Duma has been modified by its Resolutions No. 4324-II GD of September 21, 1999 and No. 3172-III GD of October 23, 2002 to account for a possibility of a deputy of the State Duma to delegate his or her vote to another deputy in the event of missing a session of the State Duma. According to materials of this case, many federal laws were adopted in 1999-2003 on the basis of this norm.

Consequently, verification of constitutionality of the order of adoption of the contested Federal Constitutional Law would in fact mean verification of the said norm of the Order of Business of the State Duma and, correspondingly, would predetermine appraisal of other laws adopted in the same order. Meanwhile, constitutionality of Clause 2, Article 85 of the Order of Business of the State Duma (neither in the previous version that was effective at the time of adoption of the Federal Constitutional Law "On Amendments and Addenda to the Federal Constitutional Law "On the Referendum of the Russian Federation," nor in its current version) has never been contested before and is not contested by the peti-

tioners under this case.

Thus, this petition in the part that concerns verification of constitutionality of the order of adoption of the Federal Constitutional Law "On Amendments and Addenda to the Federal Constitutional Law "On the Referendum of the Russian Federation" from the viewpoint of its compliance with requirements of Article 108 (Para. 2) of the Constitution of the Russian Federation, by virtue of Para. 1, Article 43, Article 68, Para. 3, Article 74, and Article 85 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," may not be considered acceptable and proceedings on this case are subject to termination.

Proceeding from the above and following Para. 1, Article 43, Article 68, Para. 1 and Para. 2, Article 71; Articles 72, 74, 75, 79, and 87 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," the Constitutional Court of the Russian Federation

Decided as follows:

1. It shall be recognized that the Federal Constitutional Law of September 27, 2002 "On Amendments and Addenda to the Federal Constitutional Law "On the Referendum of the Russian Federation" in the part that establishes the period during which the citizens of the Russian Federation may not initiate and hold a referendum of the Russian Federation be consistent with the Constitution of the Russian Federation, because by virtue of the constitutional-legal implication of the provisions of the said Federal Constitutional Law the period during which the citizens may initiate and directly participate in a referendum of the Russian Federation must be not less than two years in order to ensure holding of at least two referenda within a four-year election cycle.

The constitutional-legal implication of the provisions of the Federal Constitutional Law "On Amendments and Addenda to the Federal Constitutional Law "On the Referendum of the Russian Federation" identified by the Constitutional Court of the Russian Federation in this Decision shall apply universally and shall not be interpreted otherwise.

2. Proceedings on this case in the part that concerns verification of constitutionality of the order of adoption of the Federal Constitutional Law "On Amendments and Addenda of the Federal Constitutional Law "On the Referendum of the Russian Federation" by the State Duma shall be terminated because in the said part the petition does not meet acceptability criteria established by the Federal Constitutional Law "On the Constitutional Court of the Russian Federation."

3. Pursuant to Para. 1 and Para. 2, Article 79 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," this Decision shall be final, shall not be subject of appeal, shall be effective immediately following its proclamation, shall be applied directly, and shall not require approval of other bodies and officials.

4. Pursuant to Article 78 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," this Decision shall be immediately published in the "*Sobraniye zakonodatelstva Rossiiskoi Federatsii*" (Collection of Legislation of the Russian Federation), and the "*Rossiyskaya Gazeta*." This Decision shall also be published in the "*Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii*" (Bulletin of the

¹ *Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii* (Bulletin of the Constitutional Court of the Russian Federation). 2003. No. 6. P. 3–30.

Constitutional Court of the Russian Federation).

3.12 (11.20). DECISION NO. 15-P OF OCTOBER 30, 2003 IN THE CASE ON VERIFICATION OF CONSTITUTIONALITY OF CERTAIN PROVISIONS OF THE FEDERAL LAW "ON BASIC GUARANTEES OF ELECTORAL RIGHTS AND THE RIGHT OF CITIZENS OF THE RUSSIAN FEDERATION TO PARTICIPATE IN A REFERENDUM" IN CONNECTION WITH PETITIONS SUBMITTED BY GROUPS OF DEPUTIES OF THE STATE DUMA AND GRIEVANCES SUBMITTED BY CITIZENS S.A. BUNTMAN, K.A. KATANYAN, AND K.S. ROZHKOVA¹

The Constitutional Court of the Russian Federation presided by Chairman V.D. Zorkin and composed of judges M.V. Baglay, N.S. Bondar, G.A. Gadzhiyev, Yu.M. Danilov, L.M. Zharkova, G.A. Zhilin, S.M. Kazantsev, M.I. Kleandrov, A.L. Kononov, L.O. Krasavchikova, V.O. Luchin, Yu.D. Rudkin, N.V. Seleznyov, A.Ya. Sliva, V.G. Strekozov, O.S. Khokhryakova, B.S. Ebzeyev, V.G. Yaroslavtsev,

With participation of representatives of a group of deputies of the State Duma that submitted a petition to the Constitutional Court of the Russian Federation, deputies of the State Duma A.N. Kotyusov and B.B. Nadezhdin, as well as attorney-at-law V.Yu. Prokhorov, citizen S.A. Buntman and his representative – attorney-at-law P.A. Astakhov, citizens K.A. Katanyan and K.S. Rozhkov, representatives of the State Duma – deputies of the State Duma V.V. Grebennikov and S.A. Popov, Plenipotentiary Representative of the Federation Council at the Constitutional Court of the Russian Federation, member of the Federation Council, Yu.A. Sharandin, and Plenipotentiary Representative of the President of the Russian Federation at the Constitutional Court of the Russian Federation, M.A. Mityukov,

Following Article 125 (Clause "a", Para. 2 and Para. 4) of the Constitution of the Russian Federation, Subclause "a", Clause 1 and Clause 3, Para. 1; Para. 3 and Para. 4, Article 3; Para. 1, Article 21; Articles 36, 74, 84, 85, 86, 96, 97, and 99 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation,"

Reviewed in an open session the case on verification of constitutionality of certain provisions of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum."

The case has been reviewed in response to petitions submitted by a group of deputies of the State Duma and grievances submitted by citizens S.A. Buntman, K.A. Katanyan, and K.S. Rozhkov that contest constitutionality of certain provisions of Articles 45, 46, 48, 49, 50, 52, and 56 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum." The case has been reviewed on the grounds of an uncertainty identified in the issue of whether or not the legal provisions contested by the petitioners are consistent with the Constitution of the Russian Federation.

Given that all the petitions pertain to the same subject matter the Constitutional Court of the Russian Federation, following Article 48 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," combined the pro-

ceedings on these inquiries into one case.

Upon examination of the report of judge-rapporteurs M.V. Baglay and V.G. Strekozov, explanations of the parties and their representatives, presentation of an expert, Doctor of Law M.A. Fedotov, messages of session participants, Plenipotentiary Representative of the Government of the Russian Federation at the Constitutional Court of the Russian Federation, M.Yu. Barshchevsky, representatives of the Central Election Commission of the Russian Federation, V.I. Lysenko and M.V. Grishina, representative of the Office of Prosecutor General of the Russian Federation, M.N. Malinovsky, as well as documents and other materials, the Constitutional Court of the Russian Federation

Established as follows:

1. The petition of the group of deputies of the State Duma and grievances submitted by citizens S.A. Buntman, K.A. Katanyan, and K.S. Rozhkov contest constitutionality of certain provisions of Articles 45, 46, 48, 49, 50, 52, and 56 of the Federal Law of June 12, 2002 "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" (as amended on July 4, 2003) concerning regulation of activities of members of the press in connection with their provision of informational support to elections and referenda.

1.1. The deputies of the State Duma who have petitioned to the Constitutional Court of the Russian Federation claim that provisions of Subclause "d", Subclause "e", and Subclause "g" of Clause 2, Article 48 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" that defines the notion and determines varieties of election campaigning contradict Article 29 and Article 55 (Para. 3) of the Constitution of the Russian Federation. According to the petitioners, these provisions allow qualification of any activity associated with distribution of information about candidates, lists of candidates, electoral associations, electoral blocs as election campaigning, which, in interconnection with Subclause "g", Clause 7, Article 48 of the same Federal Law, pursuant to which members of the press are forbidden to conduct election campaigning, referendum campaigning, when they are engaged in professional activities, means disproportionate restriction of the freedom of speech, the right of everyone to transmit, produce, and distribute information, and violates guarantees of the freedom of mass communication.

1.2. By order of the chief editor of the "Echo of Moscow" radio station its employee, S.A. Buntman, was reprimanded for a disciplinary offence he committed when providing live-air comments during an election campaign on elections of the Governor of St. Petersburg, in violation of Articles 45, 48, and 49 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum," he expressed his opinion on possible consequences of election of one of the candidates, as well as his opinion with respect to this candidate's nomination for the said post, and declared that given the circumstances he would vote against all candidates.

The lawsuit filed by S.A. Buntman to disqualify the reprimand, which, he assumed, had been made on the basis of legal provisions that contradicted Articles 3, 29, and 32 of the Constitution of the Russian Federation, was declined by a court of general jurisdiction, which argued that in compliance with Article 125 (Para. 4) of the

Constitution of the Russian Federation verification of constitutionality of a law falls within the jurisdiction of the Constitutional Court of the Russian Federation.

The petition that citizen S.A. Buntman submitted to the Constitutional Court of the Russian Federation claims that the provision of Clause 5, Article 45 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" that forbids provision of comments related to news on election events in television and radio programs and printed periodicals, as well as Article 48 of the said Federal Law that regulates issues related to election campaigning, violate constitutional guarantees of the freedom of information and electoral rights. At the session of the Constitutional Court of the Russian Federation petitioner's representative, attorney-at-law P.A. Astakhov, particularized the subject of the grievance in the part concerning Article 48 and requested verification of constitutionality of Subclause "c" and Subclause "g", Clause 2, that qualify, in their interconnection with Subclause "g", Clause 7 of the said Article, a description of possible consequences of election or non-election of a candidate and other actions undertaken to encourage or encouraging electors to vote for candidates or against them, as well as against all candidates, as election campaigning.

1.3. A court of general jurisdiction refused to take legal action requested by citizen K.A. Katanyan against the editorial board of the "Vremya MN" newspaper to invalidate the order by which he was reprimanded for a disciplinary offence. The court argued that the plaintiff, who at the time of the decision was an editor of the political department of the "Vremya MN" newspaper, had violated provisions of Articles 45, 46, 48, 50, and 52 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" that prohibit election campaigning by members of the press when they are engaged in their professional activities and require that equal attention be paid to all contenders without any preference to any particular candidate.

In his grievance submitted to the Constitutional Court of the Russian Federation K.A. Katanyan argues that Clause 2, Article 45; Clause 2, Article 46; Subclause "b"- "g", Clause 2, Clause 5, Subclause "g", Clause 7, Article 48; Clause 11, Article 50; Clause 5, Article 52; and Clause 6, Article 56 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" disproportionately restrict the right of citizens to participate in free elections, the right of everyone to freely produce and distribute information, the right of everyone to freely use his abilities and property to undertake entrepreneurial and other legally permitted economic activity, and therefore they contradict Articles 3, 29, 32, 34, and 55 (Para. 3) of the Constitution of the Russian Federation.

Meanwhile, as it follows from the whereases of the court decision passed on the case of K.A. Katanyan, having examined case materials (including clarifications of the plaintiff and the content of his article published in the "Vremya MN" newspaper) the court of general jurisdiction concluded that the information published by the plaintiff facilitated development of positive attitude of electors with respect to one of the candidates for the post of the Head of the Republic of Mordovia, and, having given preference to one of the candidates, violated their equality which does not comply with requirements of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum." This

means that, essentially, the court based its decision on Clause 5, Article 45 of the said Federal Law and Subclause "b", Clause 2 of its Article 48, in their interconnection with Subclause "g", Clause 7 of the same Article, which qualify expression of preference with respect to one of the candidates, in particular, indication of which candidate the elector will vote for, as election campaigning.

Thus, only these legal provisions – by virtue of Article 125 (Para. 4) of the Constitution of the Russian Federation, as well as Clause 3, Para. 1; Para. 3, Article 3; Para. 1, Article 36; Para. 3, Article 74; Para. 1, Article 96; and Clause 2, Article 97 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" – are the subject of verification of the Constitutional Court of the Russian Federation on this grievance; in the part concerning verification of other norms of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" contested by K.A. Katanyan, proceedings on his grievance are subject to termination in compliance with Clause 2, Para. 1, Article 43 and Article 68 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation."

1.4. By resolution of a justice of the peace citizen K.S. Rozhkov was penalized with an administrative fine for publication of materials in the "Svetlogorye" newspaper, of which he is the founder and chief editor, that contained qualities of election campaigning accounted for by Subclause "c", Subclause "g", Clause 2, Article 48 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" that were manifested by means of a description of possible consequences of election of one of the candidates to the post of the Mayor of the city of Kaliningrad, and distribution of information in which data about this candidate combined with negative comments thereabout prevailed, which, as pointed out by the justice of the peace, by virtue of Subclause "g", Clause 7, Article 48 of the said Federal Law, is forbidden for members of the press when they are engaged in their professional activities during an election campaign. The resolution also states that K.S. Rozhkov had published the said materials before the 30-day period of election campaigning accounted for by Clause 2, Article 49 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" began on television and radio channels and in print periodicals.

In his grievance submitted to the Constitutional Court of the Russian Federation K.S. Rozhkov requests verification of constitutionality of Clause 2, Article 48 and Clause 2, Article 49 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum," which in his opinion define the notion of election campaigning illegally broadly and provide for the possibility to qualify any data and information about candidates as election campaigning which leads to violation of the freedom of information and the right to free elections secured by the Constitution of the Russian Federation (Articles 29, 3, and 32).

K.S. Rozhkov does not contest constitutionality of Subclause "g", Clause 7, Article 48 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" that establishes an unconditional ban on election campaigning, referendum campaigning by mem-

bers of the press when they are engaged in professional activities, and thereby excludes them from the number of subjects of legal election campaigning, consequently forbidding application of Clause 2, Article 49 of the said Federal Law on the possibility of election campaigning in the specified period thereto. Not questioning the necessity of legislative differentiation between election campaigning and informing of electors the petitioner essentially associates violation of his constitutional rights with uncertainty of provisions of Clause 2, Article 48 of this Federal Law that define the types of activities that qualify as election campaigning.

Given that the court qualified K.S. Rozhkov as a member of the press and applied to him Subclause "g", Clause 7, Article 48 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" that prohibits election campaigning by entities that fall within this category, one must not presume that Clause 2, Article 49 of the same Federal Law, which is addressed to entities that by virtue of its Articles 50 and 51 are authorized to conduct election campaigning in mass media, could be applied to him simultaneously.

Consequently, the provisions contained in Subclause "c" and Subclause "d", Clause 2, Article 48 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" are subject of verification conducted in response to the grievance submitted by citizen K.S. Rozhkov; in the part concerning verification of constitutionality of Clause 2, Article 49 of the said Federal Law proceedings on this grievance are subject to termination.

1.5. Thus, in compliance with requirements of Articles 3, 84, 85, 96, and 97 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" the matter at issue under this case are the following provisions of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum":

Clause 5, Article 45 that establishes requirements with respect to the contents of reports concerning election events, events related to a referendum, in television and radio programs and publications in print periodicals;

Provisions of Subclauses "b", "c", "d", "e", "f", "g", Clause 2, Article 48 that determine normative contents of election campaigning, in interconnection with the provision of Subclause "g", Clause 7 of the same Article, pursuant to which members of the press are forbidden to conduct election campaigning, referendum campaigning, when they are engaged in professional activities.

2. Pursuant to the Constitution of the Russian Federation, in the Russian Federation, as a democratic law-bound state, free elections and referenda are the supreme direct expression of the power of the people (Article 1, Para. 1; Article 3, Para. 3); the citizens of the Russian Federation have the right to participate in the management of state affairs both directly and through their representatives, to elect and be elected to bodies of state power and local self-government, to participate in a referendum (Article 32, Para. 1 and Para. 2). The Constitution of the Russian Federation also provides that everyone is guaranteed the freedom of ideas and speech, everyone shall have the right to freely seek, receive, transmit, produce, and distribute information in any legal manner, the freedom of mass communication is guaranteed (Article 29, Para. 1, Para. 4, and Para. 5); pursuant to Article 2, recognition, obser-

vance and protection of the said rights and freedoms is the obligation of the state.

These provisions correspond with the requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms pursuant to which free elections must be held at reasonable intervals by secret ballot, under conditions which ensure the free expression of the opinion of the people in the choice of the legislature (Article 3, Protocol No. 1); everyone has the right to freedom of expression which includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers (Clause 1, Article 10).

To guarantee free elections and referenda the federal legislator – by virtue of Articles 3, 29, 32 in their interconnection with Articles 71 (Clause "c"), 72 (Clause "b", Para. 1), and 76 (Para. 1 and Para. 2) of the Constitution of the Russian Federation – has the right to establish the order and conditions of their informational support. At the same time, elections may be considered free only when the right to information and the freedom of speech are truly guaranteed. Therefore, the legislator must ensure the rights of citizens to receive and impart information on elections and referenda and observe with respect to this subject of regulation the balance of constitutionally protected values – the right to free elections and the freedom of speech and information – excluding inequality and disproportionate restrictions (Articles 19 and 55 of the Constitution of the Russian Federation; Clause 2, Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms; Clause 3, Article 19 of the International Covenant on Civil and Political Rights).

3. In the Russian Federation, as a democratic and law-bound state, implementation of such social function as provision of informational support to elections and referenda by members of the press must facilitate deliberate expression of citizens' will and ensure transparency of elections and referenda. Proceeding from the fact that the exercise of the freedom of mass communication, pursuant to Article 29 of the Constitution of the Russian Federation, Clause 2, Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and Clause 3, Article 19 of the International Covenant on Civil and Political Rights, imposes on members of the press special duties and a special responsibility; their representatives, acting on the basis of editorial independence and norms of self-regulation developed by the journalist community, i.e., professional rules and ethical principles, must assume ethical and weighted positions and cover election campaigns in a fair, balanced, and unbiased fashion.

The Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum," pursuant to which informational support of elections and referenda includes informing of electors and election campaigning, proceeds from the fact that members of the press when they are engaged in their professional activities must not be subjects of campaigning activities. This follows directly from the contents of Chapter VII, "Guarantees of the Rights of Citizens to Receive and Disseminate Information about Elections and Referenda" of the said Federal Law: if citizens and public associations are recognized to have the right to conduct election campaigning in the forms permitted by law and by legal methods (Clause 1, Article 48), members of the press have only the right to inform electors (Article 45), and when they are engaged in professional activities they

are forbidden to conduct election campaigning and issue and distribute any campaigning materials (Subclause "g", Clause 7, Article 48). Pursuant to the Code of Administrative Violations of the Russian Federation, violation of this ban results in administrative penalty (Article 5.8).

The difference between informing of electors and election campaigning accounted for by the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" is designed to ensure free expression of citizens' will and transparency of elections, and complies with requirements of Articles 3 (Para. 3), 29 (Para. 1, Para. 3, Para. 4, and Para. 5), 32 (Para. 1, Para. 2, and Para. 3) of the Constitution of the Russian Federation, because elections may be considered free only when the right to objective information and the freedom to hold opinions are truly guaranteed. As applied to mass media, the freedom to hold opinions may not be equated with the freedom of election campaigning that is not required to be objective. Therefore, to ensure protection of the right to free elections, which are integral part of the foundations of the constitutional system, including free expression of voters' will, the freedom to hold opinions, pursuant to Articles 3 (Para. 3), 17 (Para. 3), 29 (Para. 5), 32 (Para. 2), and 55 (Para. 3) of the Constitution of the Russian Federation, may be restricted for members of the press by a federal law.

At the same time, as it follows from the legal positions formulated by the Constitutional Court of the Russian Federation, restrictions of constitutional rights, including, consequently, the freedom of mass communication, must be necessary and proportionate to constitutionally recognized purposes of such restrictions; in the events when constitutional norms enable the legislator to establish restrictions of rights provided thereby, it may not exercise such regulation that would infringe upon the very essence of one right or another and lead to the loss of its real substance; admitting the possibility of restriction of one right or another in compliance with constitutionally authorized purposes the state, ensuring a balance of constitutionally protected values and interests, must not use extreme but only necessary measures that are strictly substantiated by those purposes; public interests listed in Article 55 (Para. 3) of the Constitution of the Russian Federation may justify legal restrictions of rights and freedoms only if such restrictions comply with requirements of fairness, are adequate, proportionate, and necessary for the protection of constitutional values, including rights and lawful interests of other persons, are not retroactive and do not affect the very essence of the constitutional law, i.e., they do not limit boundaries and application of core contents of respective constitutional norms; to exclude the possibility of disproportionate restriction of rights and freedoms of a human being and citizen within a particular law-enforcement situation the norm must be formally defined, precise, and clear and it should not allow liberal interpretation of established limitations and, consequently, their arbitrary application.

The above legal positions of the Constitutional Court of the Russian Federation correspond with legal positions of the European Court of Human Rights in the cases associated with determination of boundaries of the freedom to hold opinions and the right to information during an election campaign. In particular, the decision of February 19, 1998 in the case of "Bowman vs. the United Kingdom" provides that the freedom of speech guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms must be considered in light of the right to

free elections. The European Court stresses that free elections and the freedom of speech, especially the freedom of political debates, form the basis "of any democratic system, both rights are interconnected and strengthen one another; it is especially important therefore that any information and opinions could circulate freely during the period preceding elections; nevertheless, under certain circumstances, these two rights may conflict each other and in that case it may be deemed necessary to establish certain limitations of the freedom of speech before or during elections, which would be unacceptable under regular circumstances; their purpose is to ensure free expression of opinions of the people in the choice of the legislature.

4. Pursuant to Clause 5, Article 45 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum," in television and radio programs and in the publications carried by the print media, reports concerning election events, events related to a referendum must be always presented in the form of separate news items, without any comments; such news items must not give preference to any candidate, electoral association, electoral bloc, referendum initiative group, another group of referendum participants, in particular with regard to the time devoted to cover their election activities, the amount of space allocated in the print media for such reports.

Provisions of Clause 2, Article 48 of this Federal Law qualify the following as election campaigning in the period of an election campaign:

- expression of preference for any of the candidates, an electoral association, electoral bloc, in particular, statements indicating the candidate, list of candidates, electoral association, electoral bloc for which a voter will vote (Subclause "b");

- description of possible consequences of the election or non-election of a candidate (list of candidates) (Subclause "c");

- dissemination of materials with a marked predominance of information about some candidates, electoral associations, electoral blocs in combination with positive or negative comments (Subclause "d");

- dissemination of information about the activities of a candidate unrelated to his professional activity or performance of his official duties (Subclause "e");

- activity promoting formation of a positive or negative attitude of voters towards a candidate, an electoral association, an electoral bloc of which the candidate is a member, toward an electoral association, an electoral bloc which nominated the candidate, candidates, list of candidates (Subclause "f");

- other actions which aim at encouraging or are encouraging voters to vote for or against a candidate, list of candidates or against all candidates, all lists of candidates (Subclause "g").

Pursuant to Subclause "g", Clause 7, Article 48, election campaigning, referendum campaigning may not be conducted and any kind of propaganda materials may not be produced and distributed by members of the press when they are engaged in their professional activities.

4.1. As applied to members of the press, the said provisions of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" concerning regulation of public relations in the sphere of informational support of elections, must be regarded in their interconnection with other provisions of this Federal Law that also reflect differences in

implementation of their activities designed to inform electors and use mass media for election campaigning.

For example, Article 44 provides that informational support of elections and referenda includes information of voters, referendum participants and election campaigning, referendum campaigning and must be conducive to conscious expression of citizens' will and to openness of elections, referenda. In the meantime, according to Article 45, informational materials carried by the mass media or otherwise disseminated must be objective and accurate and must not violate the equality of candidates, electoral associations, electoral blocs (Clause 2), and mass media outlets are free in their activity aimed at informing voters, referendum participants (Clause 4).

As far as election campaigning is concerned, it is defined as activities during an election campaign that are aimed at encouraging or are encouraging voters to vote for or against a candidate, certain candidates, a list of candidates or against all candidates (against all lists of candidates) (Clause 4, Article 2) and manifested in calls for voting for or against a candidate (list of candidates) (Subclause "a", Clause 2, Article 48), as well as other actions specified in Subclauses "b"- "g", Clause 2, Article 48. Consequently, the notion of "election campaigning" entails an aggregate of activities undertaken to encourage or encouraging electors to vote for or against a candidate, candidates, or lists of candidates and exercised by a candidate, electoral association, electoral bloc independently or involving other persons in a manner provided by law (Clause 4, Article 48) from the day of nomination or registration (Clause 1, Article 49), and on television and radio channels and in print periodicals – 30 days prior to voting (Clause 2, Article 49).

Given that both campaigning and informing of any kind can encourage electors to make a particular choice, considering that reliable and objective information about a candidate helps electors to form their preferences better than simple calls to vote "pro" or "contra", it is evident that the presence of a special purpose in election campaigning – to incline electors to vote in a certain fashion, ensure support or, on the contrary, counteract a concrete candidate, electoral association – can serve as the sole criterion that enables one to distinguish between election campaigning and informing of voters. Otherwise, the boundary between informing and election campaigning would become less distinct so that any activities undertaken to inform electors could be qualified as campaigning which, by virtue of the ban existing for members of the press, would illegally restrict constitutional guarantees of the freedoms of speech and information and violate the principles of free and transparent elections.

By virtue of the provisions of Clause 2, Article 48, in their interconnection with Subclause "g" of its Clause 7 and Clause 4, Article 2, consequences of election campaigning as an illegal activity undertaken by a member of the press while implementing professional activities are not an element of the objective side of the corpus delicti of this tort which is limited only by the illegal action itself that does not account for confirmation of the fact that distributed information indeed influenced or could influence the attitude of a certain group of electors towards a certain candidate or electoral association. Thus, the intent as a required element of the subjective side of the formal corpus delicti of such an offence as illegal campaigning may not comprise its consequences and is only realization of the direct purpose of this tort. This is why informing of electors through mass media, including presentation of reports on events in the course of which calls were made to vote for or against a candidate or other campaigning activities

accounted for by Clause 2, Article 48, may not be considered campaigning without identification of the purpose of election campaigning whose presence or absence, at any rate, is subject to identification by courts of general jurisdiction and (or) other law enforcers as they qualify particular activities as illegal election campaigning.

4.2. Clause 2, Article 48 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" qualifies expression of preference for any of the candidates, an electoral association, electoral bloc, in particular, statements indicating the candidate, list of candidates, electoral association, electoral bloc for which a voter will vote (Subclause "b") as election campaigning. A positive or negative opinion expressed about one of the candidates in itself is not election campaigning and may not serve as grounds for imposition of administrative penalty upon a member of the press, unless the presence of a special purpose is proved, namely, a design to support or counteract a certain candidate, electoral association, electoral bloc. "Expression of preference" is nothing but a variety of expression of opinions. Consequently, as applied to professional activities of members of the press, interpretation of such an activity as expression of preference as a legal offence – without a proof of its being designed as election campaigning – would mean restriction of the freedom to hold opinions and violation of the freedom of mass communication (Para. 1, Para. 3, Para. 5, Article 29 of the Constitution of the Russian Federation).

It is the purpose of election campaigning that is implied by Subclause "c", Clause 2, Article 48 that recognizes description of possible consequences of election or non-election of a candidate (list of candidates) as a variety of election campaigning because in absence of such a purpose such "description" would be nothing but a variety of expression of opinions.

Subclause "d", Clause 2, Article 48 qualifies dissemination of materials with a marked predominance of information about some candidates, electoral associations, electoral blocs in combination with positive or negative comments, as election campaigning. But information about a candidate cannot but prevail in media reports on election events conducted by this candidate and, consequently, the primary meaning of the election campaigning activity accounted for by this Subclause is attributed to positive or negative comments about the candidate, which is also a variety of expression of opinions and may not be qualified as election campaigning in absence of an election campaigning purpose.

Subclause "e", Clause 2, Article 48 qualifies dissemination of information about the activities of a candidate unrelated to his professional activity or performance of his official duties as election campaigning. Application of this norm with respect to members of the press as subjects that are prohibited to engage in election campaigning, without a proof of their election campaigning purpose would mean significant restriction of the right of voters to receive reliable, objective, and multifaceted information about candidates because in order to develop a comprehensive idea about one candidate or another a voter must be aware of his current professional, as well as other activities. At the same time, it would infringe upon the rights of citizens to freely seek, receive, transmit, produce, and distribute information in any fashion permitted by law and, consequently, would contradict Article 29 (Para. 4 and Para. 5) of the Constitution of the Russian Federation.

Subclause "f", Clause 2, Article 48 qualifies activity promoting formation of a pos-

itive or negative attitude of voters towards a candidate, an electoral association, an electoral bloc of which the candidate is a member, toward an electoral association, an electoral bloc which nominated the candidate, candidates, list of candidates, as election campaigning. In the event of illegal campaigning, this activity also implies such a necessary feature (component) of campaigning as its deliberate election campaigning character. Otherwise, it would be possible to illegally apply this norm to an arbitrarily broad spectrum of activities associated with informing that may objectively promote positive or negative attitude of electors towards a candidate, but in view of the absence of intent it is not considered election campaigning. Otherwise it would disproportionately restrict the rights of electors to receive reliable information and the freedom of mass communication.

Thus, Subclauses "b", "c", "d", "e", "f", Clause 2, Article 48 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" in their interconnection with provisions of Subclause "a", Clause 2, Article 45 and Subclause "g", Clause 7, Article 48, proceeding from their constitutional-legal designation and implication, do not provide for expansive interpretation of election campaigning as applied to its ban for members of the press when they are engaged in their professional activities, i.e., without consideration of the fact that illegal election campaigning activities (violating the injunction of Subclause "g", Clause 7, Article 48) may only entail commission of actions accounted for by Clause 2, Article 48 that pursue a specific campaigning purpose, – as opposed to informing of voters, including in the form of implementation of professional activities that are outwardly similar to campaigning, accounted for by Clause 5, Article 45.

The provision of Clause 5, Article 45, pursuant to which news items must not give preference to any candidate, electoral association, electoral bloc, which is one of the norms that regulate the order of informing (not campaigning), in its interconnection with Clause 2 of the said Article, Article 48, and Clauses 1 and 2, Article 52, may not be interpreted as a prohibition for members of the press to express their own opinion and provide comments outside of a separate news block, because it is such a news block that must not contain comments and give preference to any of the candidates, electoral associations, electoral blocs with regard to the time devoted to cover their election activities, the amount of space allocated in the print media, and the ratio of free to paid space. Otherwise it would unjustifiably restrict the rights guaranteed by Article 29 (Para. 4) of the Constitution of the Russian Federation.

The constitutional-legal implication of the said provisions of Clause 5, Article 45; Subclauses "b", "c", "d", "e", "f", Clause 2, Article 48, in their interconnection with Subclause "g", Clause 7, Article 48 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum," identified in this Decision, by virtue of Article 6, Para. 2, Article 74, and Para. 2, Article 79 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," shall apply universally and shall not be interpreted otherwise in the law-enforcement practice.

5. Pursuant to Subclause "g", Clause 2, Article 48 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum," election campaigning may also entail other actions (in addition to those specified in Subclauses "a" - "f") designed to encourage or encourag-

ing electors to vote for candidates, lists of candidates, or against them, against all candidates, against all lists of candidates.

The use of the "other actions" formula with prohibitive purposes indefinitely extends the list of varieties of illegal election campaigning and provides for expansive interpretation of the notion and varieties of forbidden campaigning and thereby does not rule out arbitrary application of this norm. Such expansive interpretation associated with the foundations of disciplinary and administrative liability of members of the press when they are engaged in professional activities is incompatible with juridical equality, as well as the principle of proportionality of established restrictions with respect to constitutionally authorized purposes, and leads to violation of the freedom of mass communication.

Actions undertaken without intent to encourage electors to vote for candidates or against them, i.e., that are not accounted for by objectively proven intent to achieve a certain result in elections, may not be qualified as election campaigning. Meanwhile, by virtue of Subclause "g", Clause 2, Article 48, in its interconnection with Clause 4, Article 2 that defines the notion of campaigning, as well as Subclause "g", Clause 7, Article 48 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum", other actions that fall within the category of illegal campaigning entail such actions committed by members of the press as they provide support to elections that may not necessarily be accounted for by a proven intent, deliberate activities undertaken to achieve a certain result in elections, because the notion "actions encouraging to vote" (in addition to the notion "actions which aim at encouraging") implies – instead of identifying the purpose of inclining electors to vote in a certain fashion – evaluation of the stimulating effect of campaigning.

This enables the law enforcer to exercise unacceptably broad discretion in qualifying informational activities of members of the press as violating the ban to engage in election campaigning accounted for by Subclause "g", Clause 7, Article 48 of this Federal Law. It is also incompatible with juridical equality, restricts the freedom of mass communication and the right of citizens to receive information required for free expression of their will in elections.

Thus, the provision of Subclause "g", Clause 2, Article 48 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum," in its interconnection with the provision of Clause 4 of its Article 2, is not consistent with the Constitution of the Russian Federation, its Articles 3 (Para. 3), 19 (Para. 1 and Para. 2), 29 (Para. 4 and Para. 5), 32 (Para. 1 and Para. 2), and 55 (Para. 3).

Proceeding from the above and following Articles 6 and 68; Para. 1 and Para. 2, Article 71; Articles 72, 75, 79, 87, and 100 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," the Constitutional Court of the Russian Federation

Decided as follows:

1. It shall be recognized that provisions of Subclauses "b", "c", "d", "e", "f", Clause 2, Article 48 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" be consistent with the Constitution of the Russian Federation, because by their constitutional-legal

implication in their interconnection with Subclause "a", Clause 2, Article 48, Article 45, and Subclause "g", Clause 7, Article 48 of the same Federal Law, they do not allow expansive interpretation of the notion of election campaigning as applied to its prohibition for members of the press when they are engaged in their professional activities, and provide that only deliberate commission of actions accounted for by Clause 2, Article 48 of the said Federal Law that are directly aimed at such campaigning, as opposed to informing of voters, including in the form of professional activities that may be outwardly similar to campaigning accounted for by Clause 5 of its Article 45, may be qualified as illegal election campaigning.

2. It shall be recognized that Clause 5, Article 45 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" be consistent with the Constitution of the Russian Federation because provisions contained therein – by their constitutional-legal implication within the system of norms – may not serve as grounds for prohibition of expression of opinions by members of the press as they are engaged in their professional activities, as well as provide comments outside of separate news blocks, and imply that it is only such news blocks that may not contain comments or give preference to a candidate, electoral association, electoral bloc with regard to the time devoted to cover their election activities, the amount of space allocated in the print media, and the ratio of free to paid space.

3. It shall be recognized that the provision of Subclause "g", Clause 2, Article 48 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" be inconsistent with the Constitution of the Russian Federation, its Articles 3 (Para. 3), 19 (Para. 1 and Para. 2), 29 (Para. 4 and Para. 5), 32 (Para. 1 and Para. 2), and 55 (Para. 3), because pursuant to this provision, in its interconnection with the provision of Clause 4, Article 2 of the same Federal Law, any actions other than those specified in Subclauses "a", "b", "c", "d", "e", "f", Clause 2, Article 48, that are aimed at encouraging or encourage electors to vote for candidates, lists of candidates, or against them, against all candidates, against all lists of candidates, are qualified as election campaigning.

4. The constitutional-legal implication of interconnected provisions of Clause 5, Article 45, Subclauses "b", "c", "d", "e", "f", Clause 2, and Subclause "g", Clause 7, Article 48 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" identified in this Decision shall apply universally, shall not be interpreted otherwise in the law-enforcement practice, and it shall exclude any other interpretation of analogous provisions of other normative acts.

5. Provisions of normative acts containing the same provision as Clause 3 of this Decision shall be recognized inconsistent with the Constitution of the Russian Federation; they shall not be applied by courts, other bodies and officials, and they shall be subject to abolition in the established order.

6. Proceedings on the case in the part concerning verification of constitutionality

¹ *Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii* (Bulletin of the Constitutional Court of the Russian Federation), 2004. No. 2. P. 47.

of Clause 2, Article 45; Clause 2, Article 46; Clause 5, Article 48; Clause 2, Article 49; Clause 11, Article 50; Clause 5, Article 52, and Clause 6, Article 56 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" shall be terminated.

7. Cases of citizens S.A. Buntman, K.A. Katanyan, and K.S. Rozhkov shall be subject to review in the regular order in consideration of this Decision provided there are no impediments thereto.

8. Pursuant to Para. 1 and Para. 2, Article 79 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," this Decision shall be final, shall not be subject of appeal, shall be effective immediately following its proclamation, shall be applied directly, and shall not require approval of other bodies and officials.

9. Pursuant to Article 78 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," this Decision shall be immediately published in the "*Sobraniye zakonodatelstva Rossiiskoi Federatsii*" (Collection of Legislation of the Russian Federation), and the "*Rossiyskaya Gazeta*." This Decision shall also be published in the "*Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii*" (Bulletin of the Constitutional Court of the Russian Federation).

3.13 (11.21). DECISION NO. 4-P OF FEBRUARY 25, 2004 IN THE CASE ON VERIFICATION OF CONSTITUTIONALITY OF CLAUSE 10 OF ARTICLE 75 OF THE OF THE FEDERAL LAW "ON BASIC GUARANTEES OF ELECTORAL RIGHTS AND THE RIGHT OF CITIZENS OF THE RUSSIAN FEDERATION TO PARTICIPATE IN A REFERENDUM" AND PARAGRAPH 1 OF ARTICLE 259 OF THE CIVIL PROCEDURAL CODE OF THE RUSSIAN FEDERATION IN CONNECTION WITH AN PETITION OF THE SUPREME COURT OF THE RUSSIAN FEDERATION¹

The Constitutional Court of the Russian Federation presided by Chairman M.I. Kleandrov and composed of judges M.V. Baglay, Yu.M. Danilov, L.M. Zharkova, G.A. Zhilin, V.D. Zorkin, S.M. Kazantsev, N.V. Seleznyov, O.S. Khokhryakova,

With participation of a representative of the State Duma – deputy V.V. Grebennikov, and a representative of the Federation Council – Doctor of Law E.V. Vinogradova,

Following Articles 125 (Clause "a", Para. 2) of the Constitution of the Russian Federation, Subclause "a", Clause 1, Para. 1, Article 3; Articles 36, 74, 84, and 85 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation,"

Reviewed in an open session the case on verification of constitutionality of Clause 10, Article 75 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" and Para. 1, Article 259 of the Civil Procedural Code of the Russian Federation.

The case has been reviewed in response to a petition submitted by the Supreme Court of the Russian Federation requesting verification of constitutionality of Clause 10, Article 75 of the Federal Law of June 12, 2002 "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in

a Referendum" and Para. 1, Article 259 of the Civil Procedural Code of the Russian Federation. The case has been reviewed on the grounds of an uncertainty identified in the issue of whether or not the normative provision contained therein is consistent with the Constitution of the Russian Federation.

Upon examination of the report of judge-rapporteur G.A. Zhilin, explanations of representatives of the parties, messages of attendees representing: the Central Election Commission of the Russian Federation – V.I. Lysenko, the Office of Prosecutor General of the Russian Federation – E.I. Korobkova, as well as documents and other materials, the Constitutional Court of the Russian Federation

Established as follows:

1. Pursuant to interconnected provisions of Clauses 1, 2, and 10 of Article 75 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" and Para. 1, Article 259 of the Civil Procedural Code of the Russian Federation, voters, referendum participants, candidates, their authorized representatives, electoral associations, electoral blocs and their authorized representatives, other public associations, referendum initiative groups, observers, the prosecutor, as well as commissions are entitled to submit an appeal (appeals) or petition against decisions (omissions) that violate electoral rights of citizens and the right of citizens to participate in a referendum to a court of appropriate jurisdiction accounted for by Articles 24, 26 and 27 of the Civil Procedural Code of the Russian Federation and other federal laws: if violations referred to in such appeal (appeals) affect a significant number of citizens or due to other circumstances acquired particular public significance, the Central Election Commission of the Russian Federation is entitled to apply to the Supreme Court of the Russian Federation which must consider the appeal on the merits.

The petition submitted by the Supreme Court of the Russian Federation contests constitutionality of provisions of Clause 10, Article 75 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" and Para. 1, Article 259 of the Civil Procedural Code of the Russian Federation. According to the petitioner, these provisions that authorize the Central Election Commission of the Russian Federation to appeal to the Supreme Court of the Russian Federation and thus determine its cognizance as a court of the first instance in cases on protection of electoral rights and the right of citizens to participate in a referendum are inconsistent with Articles 46 (Para. 1), 47 (Para. 1), and 123 (Para. 3) of the Constitution of the Russian Federation because they contain indefinite criteria for determination of cognizance of the Supreme Court of the Russian Federation with respect to cases on protection of electoral rights and the right of citizens to participate in a referendum, and enable the Central Election Commission of the Russian Federation to arbitrarily and at its own discretion determine the (substantive) cognizance of such cases which places it into a special position as compared to other entities participating in case proceedings.

Thus, the matter at issue in this case is the normative provision of Clause 10, Article 75 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" and Para. 1, Article 259 of the Civil Procedural Code of the Russian Federation, pursuant to which, if violations referred to in such appeal (appeals) affect a significant number of citizens

or due to other circumstances acquired particular public significance, the Central Election Commission of the Russian Federation has the right to apply to the Supreme Court of the Russian Federation which must consider the appeal on the merits.

2. Pursuant to the Constitution of the Russian Federation, free elections and referenda are the supreme direct expression of the power of the people (Para. 2, Article 3), citizens of the Russian Federation have the right to elect and be elected to bodies of state power and local self-government, as well as participate in a referendum (Para. 2, Article 32). These constitutional provisions are consistent with Article 3, Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms and Clause "b", Article 25 of the International Covenant on Civil and Political Rights pursuant to which every citizen must have the right and opportunity, without discrimination or any unreasonable restrictions, to vote and be elected in genuine periodic elections held on the basis of the universal and equal suffrage by secret ballot and ensuring free expression of voters' will.

The most important guarantee of implementation of the said provisions is protection of electoral rights and the right of citizens to participate in a referendum in the court of law the order of which is accounted for, in particular, by Article 75 off the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" and Article 259 of the Civil Procedural Code of the Russian Federation. The rules provided therein particularize provisions of Articles 45 (Para. 1 and Para. 2) and 46 (Para. 1 and Para. 2) of the Constitution Of the Russian Federation, pursuant to which state protection of rights and freedoms of a human being and citizen is guaranteed, everyone is entitled to protect his rights and freedoms by all means not prohibited by law, everyone is guaranteed judicial protection of his rights and freedoms; decisions and actions (or inaction) of bodies of state authority and local self-government, public associations and officials may be appealed in court.

The right to elect and be elected to bodies of state power and local self-government, as well as the right to participate in a referendum are qualified as the main political rights that determine the legal status of a citizen of the Russian Federation, the most important form of his participation in management of state affairs. By their nature, appeals to the court to have these rights protected are demands that are originated from public legal relationships; as a rule, they affect interests of a considerable number of citizens, have great public significance, and due to strict temporal framework of the election process require operative resolution.

Legal regulation of the judicial procedure of review and resolution of cases of this category cannot but take into account the peculiarities of implementation of the said rights. In particular, the procedural legislation accounts for reduced terms within which the courts may review petitions on such cases submitted in the course of an election campaign or preparation of a referendum, reduced terms within which decisions made on these cases may be appealed and reviewed in order of cassation (Para. 3, Article 260, Para. 3, Article 261, Para. 3, Article 348 of the Civil Procedural Code of the Russian Federation; Clause 4 and Clause 5, Article 78 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum").

Considering peculiarities of cases on protection of electoral rights, the federal legislator has the right, following the Constitution of the Russian Federation, to account for special rules on the cognizance of respective cases as compared to other categories

of cases that are subject to review by courts of the general jurisdiction, including cases that originate from public legal relationships.

3. By virtue of injunctions of the Constitution of the Russian Federation, including its Articles 46 (Para. 1 and Para. 2) and 47 (Para. 1), cognizance of cases is determined by the federal law. This applies to substantive cognizance of cases on protection of electoral rights and the right of citizens to participate in a referendum, pursuant to the rules of which they are distributed among courts of different levels that are authorized to review in the first instance one case or another in consideration of its qualities and attributes accounted for by the law.

The Supreme Court of the Russian Federation, pursuant to Article 126 of the Constitution of the Russian Federation, is the supreme judicial body for civil, criminal, administrative and other cases under the jurisdiction of common courts; it carries out judicial supervision over their activities according to federal law-envisaged procedural forms and provides explanations on issues of court proceedings. In compliance with Article 128 (Para. 3) of the Constitution of the Russian Federation, authorities, the order of formation and activities of the Supreme Court of the Russian Federation, and all other federal courts of the general jurisdiction, are determined by a federal constitutional law; within its cognizance, under circumstances accounted for by a federal law, the Supreme Court of the Russian Federation also reviews cases in the capacity of a court of the first instance (Para. 3, Article 19 of the Federal Constitutional Law "On the Judicial System of the Russian Federation"). In particular, pursuant to Clause 5, Para. 1, Article 27 of the Civil Procedural Code of the Russian Federation and Clause 2, Article 75 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum," the Supreme Court of the Russian Federation, in the capacity of a court of the first instance, reviews cases appealing decisions and actions (omissions) of the Central Election Commission of the Russian Federation, which, consequently, acts as one of the parties in legal disputes in the area of electoral rights.

Pursuant to the normative provision considered herein and contained in Clause 10, Article 75 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" and Para. 1, Article 259 of the Civil Procedural Code of the Russian Federation, a case on protection of electoral rights, which by virtue of general rules of Articles 24, 26, and 27 of the Civil Procedural Code of the Russian Federation, falls within the cognizance of a district court or the supreme court of a republic, territorial court of a krai, a regional court, court of a city of federal subordination, court of an autonomous oblast (region) and court of an autonomous okrug (district), may, at the initiative of the Central Election Commission of the Russian Federation, be forwarded for review to the Supreme Court of the Russian Federation if violations referred to in such appeal (appeals) affect a significant number of citizens or due to other circumstances acquired particular public significance. Additionally, the law implies that the decision on whether or not there are grounds to change the regular rules of cognizance falls within the exclusive authority of the Central Election Commission of the Russian Federation, because the Supreme Court of the Russian Federation must review the appeal on the merits as a court of the first instance. Not only is such a decision made extrajudicially, but it also is made without consideration of positions of parties of this public-legal dispute, as well as other entities participating in

the case, because changing the cognizance of the case does not require their opinion.

4. The right to judicial protection secured by Article 46 (Para. 1 and Para. 2) of the Constitution of the Russian Federation implies particular guarantees that would enable one to effectively reinstate his or her rights by means of administration of justice that meets the requirements of fairness.

Pursuant to Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 14 of the International Covenant on Civil and Political Rights all people are equal before the law and the court; in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The said provisions being the universally recognized principles and norms of the international law, pursuant to Article 15 (Para. 4) of the Constitution of the Russian Federation, are integral part of the legal system of the Russian Federation. By virtue of these provisions, the right of everyone to judicial protection ensured by consideration of his or her case by a competent, independent and impartial tribunal established by law implies, in particular, that cases must be reviewed by a particular court accounted for by law, not an arbitrarily chosen court; recognition of a court as established by law requires that its cognizance with respect to a particular case is determined by law. Therefore, Article 47 (Para. 1) of the Constitution of the Russian Federation guarantees that no one may be deprived of the right to the consideration of his or her case in that court and by that judge in whose cognizance the given case is according to law.

Formulated as a subjective right of everyone, the requirement of the Constitution of the Russian Federation on determination of cognizance of cases by law means that such a law must secure criteria that in the normative form (in the form of a general rule) would predetermine beforehand, i.e., before a dispute or any other legal conflict arises, which court must review each particular case. Otherwise, the court, the parties, and other participants of proceedings would be unable to avoid uncertainty in this issue, which would result in the necessity to eliminate it by means of a law-enforcement solution, i.e., by a discretionary authority of a law-enforcement body or official, and thus determine the cognizance of the case not on the basis of law.

The said legal position is formulated in the Decision of the Constitutional Court of the Russian Federation of March 16, 1998 in the case on verification of constitutionality of Article 44 of the Criminal Procedural Code of the RSFSR and Article 123 of the Civil Procedural Code of the RSFSR. The Constitutional Court of the Russian Federation found the norms contained in those articles inconsistent with Articles 46 and 47 (Para. 1) of the Constitution of the Russian Federation to the extent to which they allow one to transfer a case from one court, within whose cognizance the case is, to another under an extrajudicial procedure while the procedural law itself does not provide for the grounds (circumstances) upon which a case may not be considered by that court and by that judge within whose cognizance it is by law.

The said legal position corresponds with the legal position repeatedly expressed by the Constitutional Court of the Russian Federation pursuant to which the general legal criterion of definiteness, clarity, unambiguousness of a legal norm proceeds from the constitutional principle of equality of all before the law and the court (Article 19, Para. 1 of the Constitution of the Russian Federation), because such equality may be

secured only in the conditions of uniform understanding and interpretation of the legal norm by all law enforcers. Indefiniteness of a legal norm, on the contrary, provides for the possibility of unlimited discretion in the law-enforcement process and leads to arbitrariness, and consequently, to violation of the principles of equality and the rule of law (decisions of the Constitutional Court of the Russian Federation of April 25, 1995 in the case on verification of constitutionality of Para. 1 and Para. 2, Article 54 of the Housing Code of the RSFSR, of July 15, 1999 in the case on verification of constitutionality of certain provisions of the Law of the RSFSR "On the State Tax Authority of the RSFSR" and the laws of the Russian Federation "On the Foundations of the Tax System of the Russian Federation" and "On the Federal Bodies of Tax Police," and of November 11, 2003 in the case on verification of constitutionality of provisions of Clause 2, Article 81 of the Law of the Cheliabinsk oblast "On Organization of the Budget and the Budget Process in the Cheliabinsk Oblast").

In the meantime, the grounds for changing the cognizance accounted for by the normative provision of Clause 10, Article 75 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" and Para. 1, Article 259 of the Civil Procedural Code of the Russian Federation, that allow one to transfer a case that by law falls within the cognizance of other courts of general jurisdiction, for review to the Supreme Court of the Russian Federation, are formulated indefinitely. For example, it is not clear which criteria one should use to determine a "significant" number of citizens whose electoral rights or the right to participate in a referendum have been violated; what falls within the category of "other circumstances" due to which violation of the said constitutional rights has acquired "particular public significance"; which public significance may be qualified as "particular", – while due to the peculiar nature of public legal relationships cases on protection of electoral rights as a rule affect interests of a great number of people and cause a broad public-political resonance.

Consequently, granting the Central Election Commission of the Russian Federation the authority to change the established cognizance of cases on protection of electoral rights and the right of citizens to participate in a referendum, the normative provision under discussion de facto makes the solution of this issue contingent on its discretion, not on the will of the legislator expressed in the law, because it does not contain any concrete injunctions that precisely and clearly identify the grounds on which a case that by virtue of general rules falls within the cognizance of a different court may be transferred to the Supreme Court of the Russian Federation. This leads to expansive interpretation and, consequently, to arbitrary application of this provision which contradicts Articles 10, 19 (Para. 1), 46 (Para. 1 and Para. 2), 47 (Para. 1), and 118 (Para. 1) of the Constitution of the Russian Federation.

5. Pursuant to the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum," the Central Election Commission of the Russian Federation, together with other election commissions, ensures implementation and protection of electoral rights and the right of citizens of the Russian Federation to participate in a referendum, prepares and administers elections and referenda (Clause 3, Article 20, Clause 1 and Clause 8, Article 21). Being a federal state body that organizes and administers elections and referenda, it exercises control over observation of electoral rights and the right of citizens of the Russian

Federation to participate in a referendum, consider grievances on violations of law that they receive in the course of an election campaign or a referendum campaign; within the scope of its competence it is independent of bodies of state power and decisions and other acts adopted within its competence are binding upon federal executive bodies of state power, executive bodies of state power of the subjects of the Russian Federation, state institutions, bodies of local self-government, candidates, electoral associations, electoral blocs, public associations, organizations, officials, voters and referendum participants (Clauses 4, 12, and 13, Article 20, Clause 1 and Clause 9, Article 21). Within the scope of its competence the Central Election Commission of the Russian Federation considers grievances (petitions) against actions (omissions) of lower election commissions, their officials, and adopts decisions thereupon (Clause 10 and Clause 11, Article 20, Clause 9, Article 21, Clause 6 and Clause 7, Article 75).

At the same time, exercising its authorities in the course of preparation and administration of elections and referenda the Central Election Commission of the Russian Federation is controlled by the court whose decisions are binding upon the Commission (Clause 11, Article 20, Clause 2 and Clause 3, Article 75 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum"), which corresponds with provisions of the Constitution of the Russian Federation on the role, designation, and functions of the court in the system of distribution of state power in the Russian Federation.

6. In the Russian Federation, rights and freedoms of the human being and citizen are ensured by justice which is administered only by the court as the bearer of the judicial power; in administration of justice by means of appropriate proceedings the court acts independently, does not submit to anybody's will, and is governed only by the Constitution of the Russian Federation and the federal law (Articles 10, 18, and 118, Article 120, Section 1 of the Constitution of the Russian Federation; Para. 1, Article 5 of the Federal Constitutional Law "On the Judicial System of the Russian Federation").

These constitutional injunctions apply not only to the stage of resolution of a case on the merits by the court, but also to all other stages of court proceedings. In particular, under civil proceedings that are currently used to review cases on protection of electoral rights and the right of citizens to participate in a referendum, the initiative to submit a petition to court belongs to the interested party, whereas identification of grounds required by the law to initiate proceedings on the case in compliance with Articles 4 and 133 of the Civil Procedural Code of the Russian Federation falls within the exclusive competence of the court itself as the primary and decisive subject of the process and is documented by an appropriate judicial act – the decision of a judge to accept the petition for review. Noncompliance with the rules of cognizance, being a violation of conditions required to initiate proceedings on the case in a particular court, requires the judge to reject the submitted petition (Clause 2, Para. 1, Article 135 of the Civil Procedural Code of the Russian Federation).

The normative provision of Clause 10, Article 75 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" and Para. 1, Article 259 of the Civil Procedural Code of the Russian Federation, as an exception from the said rules of civil legal proceedings, requires the Supreme Court of the Russian Federation to accept a case, which by virtue of general requirements of the law falls within the cognizance of a different

court of general jurisdiction, for review in all cases when the Central Election Commission of the Russian Federation, relying on criteria that are not clearly and precisely defined in the law, exercises its right to change cognizance. This is not consistent with requirements of Articles 10, 118, and 120 (Para. 1) of the Constitution of the Russian Federation because it implies that the Central Election Commission of the Russian Federation, essentially, is granted with the authority to pass decisions on justice-related issues that are mandatory for the court of law.

7. Taking into account the tasks handled by the Central Election Commission of the Russian Federation, the federal legislator is entitled to revise the possibility of its participation in legal proceedings, in particular, by means of petitioning to the court to protect electoral rights and the right to participate in a referendum of persons listed in the law. However, the Central Election Commission of the Russian Federation may not be vested with the authority to pass decisions on justice-related issues that are mandatory for the court of law, and it also may not be placed in a special position as compared to other participants of the process because otherwise it would contradict Article 123 (Para. 3) of the Constitution of the Russian Federation pursuant to which legal proceedings must be held on the basis of competition and equality of the parties.

Meanwhile, the normative provision under review, despite the general rules established by law, allows one to qualify cases on protection of electoral rights and the right to participate in a referendum as falling within the cognizance of the Supreme Court of the Russian Federation. This gives it, as a participant of proceedings, additional rights which is not consistent with the general procedural status of entities legally authorized to petition to court to protect rights, freedoms, and lawful interests of other persons, including cases originated from public legal relationships (Articles 4, 34, 35, 46, and 246 of the Civil Procedural Code of the Russian Federation).

8. Thus, the order of changing cognizance of cases on protection of electoral rights and the right of citizens to participate in a referendum accounted for by Clause 10, Article 75 off the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" and Para. 1, Article 259 of the Civil Procedural Code of the Russian Federation, allows one to transfer a case to the Supreme Court of the Russian Federation arbitrarily, at the discretion of the Central Election Commission of the Russian Federation. The cognizance of a particular case is determined not on the basis of law, but on the basis of a decision made by the Central Election Commission of the Russian Federation as a body that under such circumstances acts as an entity implementing executive-administrative functions in connection with a case related to violation of electoral rights. Additionally, the authority of the Central Election Commission of the Russian Federation to change cognizance, unaccounted for by norms of the constitutional level, predetermines respective responsibility of law-enforcement bodies, which by virtue of the constitutional principle of separation of the state power must administer justice independently. This provides for a possibility to violate justice-related principles and provisions accounted for by the Constitution of the Russian Federation – the right of everyone to judicial protection (Para. 1 and Para. 2, Article 46), including the right to consideration of his or her case in that court and by that judge in whose cognizance the

¹ *Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii* (Bulletin of the Constitutional Court of the Russian Federation). 2005. No. 1. P. 17.

given case is according to law (Para. 1, Article 47), equality of all before the law and the court (Para. 1, Article 19), administration of justice by court alone (Article 118), independence of the court (Articles 10 and 120, Section 1), administration of justice on the basis of competition and equality of the parties (Para. 3, Article 123).

Proceeding from the above and following Para. 1, Article 71, Articles 72, 74, 79, and 87 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," the Constitutional Court of the Russian Federation

Decided as follows:

1. It shall be recognized that the normative provision of Clause 10, Article 75 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" and Para. 1, Article 259 of the Civil Procedural Code of the Russian Federation, pursuant to which if violations referred to in appeals against decisions and actions (omissions) violating electoral rights and the right of citizens to participate in a referendum affect a significant number of citizens or due to other circumstances acquired particular public significance, the Central Election Commission of the Russian Federation may apply to the Supreme Court of the Russian Federation which must consider the appeal on the merits, be inconsistent with the Constitution of the Russian Federation, its Articles 19 (Para. 1), 46 (Para. 1 and Para. 2), 47 (Para. 1), 118, 120 (Para. 1), and 123 (Para. 3).

2. This Decision shall be final, shall not be subject of appeal, shall be effective immediately following its proclamation, shall be applied directly, and shall not require approval of other bodies and officials.

3. Pursuant to Article 78 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," this Decision shall be immediately published in the "*Sobraniye zakonodatelstva Rossiiskoi Federatsii*" (Collection of Legislation of the Russian Federation), and the "*Rossiyskaya Gazeta*." This Decision shall also be published in the "*Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii*" (Bulletin of the Constitutional Court of the Russian Federation).

**3.14 (11.22). DECISION NO. 17-P OF NOVEMBER 29, 2004
IN THE CASE ON VERIFICATION OF CONSTITUTIONALITY OF
PARAGRAPH 1, CLAUSE 4, ARTICLE 64 OF THE LAW OF THE
LENINGRAD OBLAST "ON THE ELECTION OF DEPUTIES OF
REPRESENTATIVE BODIES OF LOCAL SELF-GOVERNMENT AND
OFFICIALS OF LOCAL SELF-GOVERNMENT IN THE LENINGRAD
OBLAST" IN CONNECTION WITH A GRIEVANCE SUBMITTED BY
CITIZENS V.I. GNEZDILOV AND S.V. PASHIGOROV¹**

On behalf of the Russian Federation

City of Moscow

November 29, 2004

The Constitutional Court of the Russian Federation presided by Chairman Yu.D. Rudkin and composed of judges N.S. Bondar, G.A. Gadzhiev, A.L. Kononov, L.O. Krasavchikova, A.Ya. Sliva, V.G. Strekozov, B.S. Ebzeyev, V.G. Yaroslavtsev,

With participation of representatives of citizens V.I. Gnezdilov and S.V. Pashigorov –

attorneys-at-law V.G. Saakadze and G.V. Saakadze, representatives of the legislative Assembly of the Leningrad Oblast and the Governor of the Leningrad Oblast Doctor of Law S.L. Sergevnin,

Following Article 125 (Para. 4) of the Constitution of the Russian Federation, Clause 3, Para. 1, Para. 3 and Para. 4, Article 3, Clause 3, Para. 2, Article 22; Articles 36, 74, 86, 96, 97, and 99 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation,"

Reviewed in an open session the case on verification of constitutionality of Paragraph 1, Clause 4, Article 64 of the Law of the Leningrad Oblast "On the Election of Deputies of Representative Bodies of Local Self-Government and Officials of Local Self-Government in the Leningrad Oblast."

The case was reviewed in response to a grievance submitted by citizens V.I. Gnezdilov and S.V. Pashigorov claiming their constitutional rights had been violated by Paragraph 1, Clause 4, Article 64 of the Law of the Leningrad Oblast "On the Election of Deputies of Representative Bodies of Local Self-Government and Officials of Local Self-Government in the Leningrad Oblast." The case has been reviewed on the grounds of an uncertainty identified in the issue of whether or not the contested provision is consistent with the Constitution of the Russian Federation.

Upon examination of the report of judge-rapporteur V.G. Strekozov, explanations of representatives of the parties, opinion of an expert, Doctor of Law A.E. Postnikov, messages of attendees representing: the Central Election Commission of the Russian Federation – K.Yu. Borodulina, the Human Rights Ombudsman of the Russian Federation – V.I. Seliverstova, as well as documents and other materials, the Constitutional Court of the Russian Federation

Established as follows:

1. By resolution of the election commission of the "Kingisepp District" municipality (Leningrad Oblast) No. 49 of February 18, 2003 elections of the head of the said municipality were proclaimed to have taken place and to be valid. According to the resolution, 29,449 voters took part in the voting which constituted 50.3% of all voters included in voters lists; A.I. Nevsky who received 13,758 votes or 50.8% of the total number of ballots cast for all candidates was acknowledged to have been elected the head of the municipality; at the same time, in compliance with Clause 4, Article 64 of the Law of the Leningrad Oblast "On the Election of Deputies of Representative Bodies of Local Self-Government and Officials of Local Self-Government in the Leningrad Oblast," the procedure of determination of election results excluded the ballots cast "against all candidates," namely 1,896 or 7% of all ballots cast by the voters for all candidates.

Citizens S.V. Pashigorov and V.I. Gnezdilov who participated in the elections (as a candidate and voter, respectively), whose lawsuits demanding invalidation of election results were not satisfied by a court of general jurisdiction, in their grievance submitted to the Constitutional Court of the Russian Federation contest constitutionality of Paragraph 1, Clause 4, Article 64 of the Law of the Leningrad Oblast "On the Election of Deputies of Representative Bodies of Local Self-Government and Officials of Local Self-Government in the Leningrad Oblast," pursuant to which the candidate who has received more than half of the total number of votes cast for all candidates in elections of officials of local self-government is acknowledged elected; if

neither candidate has received more than half of the total number of votes cast for all candidates, repeat voting must be held under the said Law on the two candidates who have received the largest numbers of votes.

According to the petitioners, regulating the procedure of determination of election results the said norm that requires comparison of the number of votes received by the winner in general elections with the number of votes cast for all candidates, not with the number of votes cast by all voters who took part in the voting, is essentially discriminative and violates requirements of Articles 1 (Para. 1), 2, 3 (Para. 3), 17 (Para. 1), and 32 (Para. 1 and Para. 2) of the Constitution Russian Federation, because it allows one to ignore the opinion of voters who voted "against all candidates," equating them thereby with the voters who did not participate in the voting. The petitioners presume that if the votes cast "against all candidates" had been taken into account in determination of election results, the candidate who received the largest number of votes might have not received more than a half of the total number of votes which would have resulted in the necessity to hold repeat voting.

It follows from the above that the subject of the petition and the matter at issue in this case is Paragraph 1, Clause 4, Article 64 of the Law of the Leningrad Oblast "On the Election of Deputies of Representative Bodies of Local Self-Government and Officials of Local Self-Government in the Leningrad Oblast" as not requiring to consider electors' votes cast "against all candidates" in determination of results of elections of officials of local self-government in the Leningrad Oblast.

2. Pursuant to Article 32 of the Constitution of the Russian Federation, citizens of the Russian Federation have the right to participate in management of state affairs directly and through their representatives (Para. 1); citizens of the Russian Federation have the right to elect and be elected to bodies of state power and local self-government (Para. 2).

Securing electoral rights of citizens the Constitution of the Russian Federation proceeds from the foundations of the constitutional system of the Russian Federation, including the fact that the people – are the bearer of sovereignty and the sole source of power in the Russian Federation and they exercise their power directly and through bodies of state power and local self-government; referenda and free elections are the supreme direct expression of the power of the people (Article 3); local self-government is recognized and guaranteed in the Russian Federation (Article 12), local self-government is exercised by citizens through a referendum, election, other forms of direct expression of the will of the people, through elected and other bodies of local self-government (Article 130, Para. 2).

Formation of local self-government bodies by means of free elections – one of the attributes of a democratic and law-bound state which the Russian Federation is (Article 1, the Constitution of the Russian Federation). Genuinely free democratic elections held on the basis of the universal, equal and direct suffrage by secret ballot, predetermine, in particular, the right of any individuals who meet the requirements established by the election legislation to participate in elections as candidates, as well as the right of other individuals to freely express their attitude towards them by voting "pro" or "contra" (Decision of the Constitutional Court of the Russian Federation No. 1-P of January 15, 2002 in the case on verification of constitutionality of certain provisions of Article 64 of the Federal Law "On Basic Guarantees of Electoral Rights

and the Right of Citizens of the Russian Federation to Participate in a Referendum" and Article 92 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation").

3. By virtue of interconnected provisions of Articles 1 (Para. 1), 3 (Para. 3), and 32 (Para. 1 and Para. 2) of the Constitution of the Russian Federation, electoral rights and subjective rights act as an element of the constitutional status of the voter; at the same time they are an element of the public-legal institute of elections, embodying the personal interest of each particular voter and the public interest realized in objective results of elections and formation on their basis of bodies of public power.

According to the legal position formulated by the Constitutional Court of the Russian Federation with respect to the problem of recognition of elections as not having taken place expressed in the Decision No. 17-P of June 10, 1998 in the case on verification of constitutionality of a number of provisions of the Federal Law of September 19, 1997 "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" and confirmed in Resolution No. 169-O of November 5, 1998 passed in response to a petition submitted by the Supreme Court of the Russian Federation, every voter is entitled to express his will in any form of voting permitted by law in compliance with established procedures excluding the possibility of distortion of the essence of the will expressed by the voters; the will of the voters may be expressed by voting not only for or against certain candidates, but also by voting against all candidates included in the ballot.

From the said constitutional provisions and legal positions of the Constitutional Court of the Russian Federation it follows that voting against all candidates included in electoral ballots is consistent with the right of citizens of the Russian Federation to elect or to not elect certain individuals as representatives of the people in representative bodies of state power and local self-government following their personal convictions, as well as the very institute of free elections. In view of the above, regulating the order of determination of election results, the Federal Law of June 12, 2002 "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" provides for a position "against all candidates" in the ballot (Clause 8, Article 63) and, thereby, for public-legal consequences of voters' refusal to support the candidates participating in the elections (Subclause "b", Clause 2, Article 70).

Pursuant to Articles 1 (Para. 1), 3 (Para. 3), 17 (Para. 3), and 32 (Para. 1 and Para. 2) of the Constitution of the Russian Federation in their interconnection, constitutional values associated with realization of electoral rights may contradict each other because interests of certain voters which predetermine how they express their will in the process of elections, including by means of voting "against all candidates," not always coincide with the public interest of formation of bodies of public power. At the level of the constitutional-legal status of the person it is on the one hand – the right of every citizen to participate in elections of people's representatives to elective bodies of public power and be elected as such a representative, and on the other hand – the right of every citizen to refuse at his own discretion to trust some or all candidates participating in elections; at the level of the institute of elections upon the whole it is formation of bodies of public power, their representative and lawful nature.

The Decision of the Constitutional Court of the Russian Federation No. 17-P of

June 10, 1998 states that the fact of negative attitude of the majority of voters towards all candidates confirmed by the fact that more voters voted "against all candidates" than for the candidate who received most of the votes means that this candidate too failed to receive voters' support that is required and sufficient to ensure genuine representation of the people which pursuant to Article 3 (Para. 2 and Para. 3) of the Constitution of the Russian Federation must result from free elections. Consequently, under the current legal regulation such a candidate may not be recognized as elected.

4. Peculiarities of legislative regulation with regard to the order of determination of results of elections to local self-government bodies are predetermined by delineation of jurisdictions between bodies of state power of the Russian Federation and bodies of state power of its subjects accounted for by the Constitution of the Russian Federation, and are stipulated by the requirement to observe constitutional guarantees of electoral rights of citizens of the Russian Federation.

4.1. The responsibility to undertake legislative and other measures to ensure democratic, free, and periodic elections in compliance with the Constitution of the Russian Federation and international legal commitments of the Russian Federation is vested with the Russian Federation and its subjects proceeding from delineation of jurisdictions and authorities between them that is secured by the Constitution of the Russian Federation (Articles 71, 72, and 73) and particularized by federal laws.

The Constitution of the Russian Federation qualifies regulation and protection of rights and freedoms of a human being and citizen as falling within the jurisdiction of the Russian Federation (Clause, "c", Article 71), and protection of rights and freedoms of a human being and citizen – as falling within the joint jurisdiction of the Russian Federation and its subjects (Clause "b", Para. 1, Article 72). Establishment of general principles of organization of the system of bodies of state power and local self-government also falls within the joint jurisdiction of the Russian Federation and its subjects (Clause "m", Para. 1, Article 72, the Constitution of the Russian Federation). Hence, the guarantees of electoral rights of citizens in municipal elections, by virtue of Article 76 (Para. 2) of the Constitution of the Russian Federation, are established by federal laws and laws and other normative acts of subjects of the Russian Federation adopted in compliance therewith.

Given that voters' refusal to trust all candidates included in the ballot is an element of the subjective electoral right, and the institute of voting against all candidates accounted for by the federal legislation has a legal implication in recognition of elections as having taken place, subjects of the Russian Federation, by virtue of interconnected provisions of Articles 71 (Clause "c") and 72 (Clause "b", Para. 1) of the Constitution of the Russian Federation, are not authorized to make legislative decisions designed to diminish federal guarantees of the right of citizens of the Russian Federation to freely express their will by voting in elections, including the right to vote against all candidates.

4.2. Normative provisions on grounds required to acknowledge elections as not having taken place – since such an acknowledgement acts as a legal fact causing invalidation of acts of expression of the will of a large number of voters – fall within the category of general principles of organization of the system of bodies of state power and local self-government that are directly predetermined by provisions of the

Constitution of the Russian Federation, and, in compliance with Article 71 (Clause "a") of the Constitution of the Russian Federation, as it follows from the legal position expressed by the Constitutional Court of the Russian Federation in its Decision No. 5-P of March 21, 1997 in the case on verification of constitutionality of certain provisions of Articles 18 and 20 of the Law of the Russian Federation "On the Foundations of the Tax System in the Russian Federation," fall within the jurisdiction of the Russian Federation. This is why the subjects of the Russian Federation may not introduce supplementary grounds required to acknowledge elections to bodies of local self-government as not having taking place in addition to those that are specified in an exhaustive list provided in the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" (Clause 2, Article 70).

In addition, pursuant to Subclause "b", Clause 2, Article 70 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum," elections are acknowledged as not having taken place if the number of votes cast for a candidate who received the largest number of votes as compared to other candidate(s) is smaller than the number of votes cast against all candidates. This requirement is imperative for all kinds of elections held on the basis of the majority system which excludes the possibility of its particularization by laws of subjects of the Russian Federation.

4.3. Unlike normative provisions on grounds required to acknowledge elections as not having taken place whose adoption falls within the jurisdiction of the Russian Federation, normative regulation of the procedure of determination of results of elections that have been acknowledged to have taken place, as concerning protection of rights of voters who voted for or against particular candidates, falls within the joint jurisdiction of the Russian Federation and its subjects.

The Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" does not provide for the rules of acknowledgement of a candidate as elected to an elective post in the local self-government body because such rules do not fall within the category of basic guarantees of electoral rights, i.e., this issue is not the subject of the said Federal Law and may be addressed by a subject of the Russian Federation. Such approach reflects the federative foundations of the election system in the Russian Federation and does not contradict the constitutional principle of equality in citizens' implementation of their electoral rights.

Decision of the Constitutional Court of the Russian Federation No. 26-P of November 17, 1998 in the case on verification of constitutionality of certain provisions of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation" states that deputies are representatives of the people, and therefore citizens who did not vote at all or who voted but not for the candidates who were elected may not be regarded as deprived of their representation in a respective elective body.

By virtue of this legal position, an elective official of a local self-government body also represents those voters who voted against all candidates in the elections, and must act in their interests as well, whereas these voters are entitled to participate in local self-government through this official. In addition, such voters are entitled to

protection of their rights and freedoms exercised at the level of local self-government, including by means of controlling activities of elective local self-government officials using forms and methods permitted by law (Decision of the Constitutional Court of the Russian Federation No. 7-P of April 2, 2002 in the case on verification of constitutionality of certain provisions of the Law of the Krasnoyarsk Territory "On the Order of Recalling of Deputies of Representative Bodies of Local Self-Government" and the Law of the Koryak Autonomous District "On the Procedure of Recalling of Deputies of Representative Bodies of Local Self-Government, Elective Officials of Local Self-Government in the Koryak Autonomous Okrug").

Given that Subclause "b", Clause 2, Article 64 of the Law of the Leningrad Oblast "On the Election of Deputies of Representative Bodies of Local Self-Government and Officials of Local Self-Government in the Leningrad Oblast" provides that the municipal election commission recognizes elections as not having taken place in the event when the number of votes cast for a candidate who received the largest number of votes as compared to other candidate(s) is smaller than the number of votes cast against all candidates, there are no grounds to claim that the legislature of the Leningrad Oblast ignores the opinion of voters voting against all candidates and violates their electoral rights. On the contrary, their position is taken into consideration in compliance with requirements of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" pertaining to recognition of elections as having taken place.

Consequently, the legislature of the Leningrad Oblast had the right in compliance with the Constitution of the Russian Federation and Federal Laws "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" and "On the General Principles of Organization of Local Self-Government in the Russian Federation" to establish – provided that elections are recognized as having taken place – the order of determination of election results and the number of votes required for election of local self-government officials, taking or not taking into consideration the number of votes cast against all candidates.

4.4. Thus, Paragraph 1, Clause 4, Article 64 of the Law of the Leningrad Oblast "On the Election of Deputies of Representative Bodies of Local Self-Government and Officials of Local Self-Government in the Leningrad Oblast" does not contradict the Constitution of the Russian Federation because the norm contained therein does not violate delineation of jurisdictions and authorities between bodies of state power of the Russian Federation and bodies of state power of its subjects accounted for by the Constitution of the Russian Federation, as well as electoral rights of citizens of the Russian Federation secured thereby.

Proceeding from the above and following Para. 1 and Para. 2, Article 71, as well as Articles 72, 74, 75, 79, and 100 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," the Constitutional Court of the Russian Federation

Decided as follows:

1. It shall be recognized that Paragraph 1, Clause 4, Article 64 of the Law of the Leningrad Oblast "On the Election of Deputies of Representative Bodies of Local

¹ Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii (Bulletin of the Constitutional Court of the Russian Federation). 2005. No. 1. P. 28.

Self-Government and Officials of Local Self-Government in the Leningrad Oblast" be consistent with the Constitution of the Russian Federation.

2. This Decision shall be final, shall not be subject of appeal, shall be effective immediately following its proclamation, shall be applied directly, and shall not require approval of other bodies and officials.

3. Pursuant to Article 78 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," this Decision shall be immediately published in the "*Sobraniye zakonodatelstva Rossiiskoi Federatsii*" (Collection of Legislation of the Russian Federation), the "*Rossiyskaya Gazeta*," and official outlets of bodies of state power of the Leningrad Oblast. This Decision shall also be published in the "*Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii*" (Bulletin of the Constitutional Court of the Russian Federation).

3.15 (11.23). DECISION NO. 18-P OF DECEMBER 15, 2004 IN THE CASE ON VERIFICATION OF CONSTITUTIONALITY OF CLAUSE 3, ARTICLE 9 OF THE FEDERAL LAW "ON POLITICAL PARTIES" IN CONNECTION WITH A PETITION SUBMITTED BY THE KOPTEVSKY DISTRICT COURT OF MOSCOW, GRIEVANCES SUBMITTED BY THE ALL-RUSSIAN PUBLIC POLITICAL ORGANIZATION "ORTHODOX PARTY OF RUSSIA," AND CITIZENS I.V. ARTYOMOV AND D.A. SAVIN¹

On behalf of the Russian Federation

The Constitutional Court of the Russian Federation presided by Chairman G.A. Zhilin and composed of judges M.V. Baglay, Yu.M. Danilov, L.M. Zharkova, V.D. Zorkina, S.M. Kazantseva, M.I. Kleandrov, V.O. Luchin, N.V. Seleznyov, and O.S. Khokhryakova,

With participation of a representative of the all-Russian political organization, the "Orthodox Party of Russia," V.V. Sipachov, and citizens I.V. Artyomov and D.A. Savin, as well as the permanent representative of the State Duma at the Constitutional Court of the Russian Federation, E.B. Mizulina, representative of the Federation Council, Doctor of Law E.V. Vinogradova, and the Plenipotentiary Representative of the President of the Russian Federation at the Constitutional Court of the Russian Federation, M.A. Mityukov,

Following Article 125 (Para. 4) of the Constitution of the Russian Federation, Clause 3, Para. 1, Para. 3, and Para. 4, Article 3; Clause 3, Para. 2, Article 22; Articles 36, 74, 86, 96, 97, 99, 101, 102, and 104 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation,"

Reviewed in an open session the case on verification of constitutionality of Clause 3, Article 9, of the Federal Law "On Political Parties."

The case has been reviewed in response to a petition received from the Koptevsky district court of Moscow, as well as a grievance submitted by the all-Russian public political organization, the "Orthodox Party of Russia," and citizens I.V. Artyomov

and D.A. Savin. The case has been reviewed on the grounds of an uncertainty identified in the issue of whether or not the provisions of Clause 3, Article 9 of the Federal Law "On Political Parties" contested by the petitioners are consistent with the Constitution of the Russian Federation.

Given that both the petition and the grievances pertain to the same subject matter the Constitutional Court of the Russian Federation, following Article 48 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," has combined proceedings on these petitions in one case.

Upon examination of the report of judge-rapporteur N.V. Seleznyov, explanations of the parties and their representatives, the message of the Plenipotentiary Representative of the Government of the Russian Federation at the Constitutional Court of the Russian Federation, M.Yu. Barshevsky, as well as documents and other materials, the Constitutional Court of the Russian Federation

Established as follows:

1. Pursuant to Clause 3, Article 9 of the Federal Law of July 11, 2001 "On Political Parties," establishment of political parties on a professional, racial, national, or religious basis is not allowed; in this Federal Law "professional, racial, national or religious basis" means the proclamation in the statutes and the program of a political party of such objectives as the advocacy of professional, racial, national or religious interests and also the reflection of these objectives in the name of a political party.

In their petitions to the Constitutional Court of the Russian Federation the petitioners claim that the said provisions contradict Article 19 (Para. 2) and 30 (Para. 1) of the Constitution of the Russian Federation because they violate the freedom of association and the principle of equality in its implementation and are not consistent with Article 13 (Para. 5) of the Constitution of the Russian Federation securing the grounds upon which the creation and activities of public associations are prohibited in the Russian Federation.

1.1. Following the enactment of the Federal Law "On Political Parties" the congress of the all-Russian public political organization, "Orthodox Party of Russia," passed a decision to reorganize the organization into a political party, "Orthodox Party of Russia." Citizen N.E. Ilyukhina, a member of this organization, assuming that the congress decision in the part concerning preservation of the name, "Orthodox Party of Russia" contradicts the injunctions of Clause 3, Article 9 of the said Federal Law and thereby impedes registration of this organization in the capacity of a political party, petitioned to the Koptevsky district court of Moscow requesting that this decision be overruled. Having concluded that there is an uncertainty in the issue of whether or not the provisions of Clause 3, Article 9 of the Federal Law "On Political Parties" are consistent with the Constitution of the Russian Federation, the Koptevsky district court of Moscow passed a decision on July 11, 2002 suspending the case proceedings, and forwarded a petition to the Constitutional Court of the Russian Federation requesting verification of constitutionality of the said provisions. At the same time, the all-Russian public political organization, "Orthodox Party of Russia," petitioned to the Constitutional Court of the Russian Federation complaining that the same provisions that were applicable under N.E. Ilyukhina's case violated the constitutional right of citizens to association.

Constitutionality of Clause 3, Article 9 of the Federal Law "On Political Parties" is

also contested by citizen D.A. Savin, member of the political party "Russian Christian-Democratic Party," and citizen I.V. Artemyev, member of the political party "Russian National Alliance." Referring to the contested provisions the Ministry of Justice of the Russian Federation denied state registration to the Russian Christian-Democratic Party having decided that the first part of the word "Christian-Democratic" is fundamental in its name and points to creation of a party on the religious basis, and the political party "Russian National Alliance" – on the grounds that the word "Russian" in its name points to creation of a party on the national basis. The petition of citizen I.V. Artyomov demanding that the corresponding decision of the Ministry of Justice of the Russian Federation be overruled was rejected by the Tagansky district court of Moscow.

1.2. Pursuant to Para. 3, Article 74 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," the Constitutional Court of the Russian Federation passes decisions and makes conclusions only on subject matter specified in the petition and only with respect to that part of the statute constitutionality of which is contested by petitioners.

Consequently, the matter at issue in this case is Clause 3, Article 9 of the Federal Law "On Political Parties" in the part that prohibits creation of political parties on a national or religious basis.

2. The right of everyone to association, pursuant to Article 30 (Para. 1) of the Constitution of the Russian Federation in its interconnection with Articles 1 (Para. 1), 2, 13, and 14 is one of the fundamental values of the society and the state based on the principle of the rule of law and democracy and entails the right to freely create associations to advocate one's interests and the freedom of activities of public associations. This corresponds with provisions of the International Covenant on Civil and Political Rights (Clause 1, Article 22) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (Clause 1, Article 11) securing the right of everyone to freedom of association with others.

Article 30 of the Constitution of the Russian Federation does not directly secure the right of citizens to association in political parties by virtue of the said Article, however, in its interconnection with Articles 1, 13, 15 (Para. 4), 17, and 32 of the Constitution of the Russian Federation, in the Russian Federation, the said right that entails the right to create a political party and the right to participate in its activities is an integral part of the right of everyone to association, and the freedom of activities of political parties as public associations is guaranteed. The possibility of the citizens to freely create a political party and have it registered as a legal entity so that to act collectively in the area of implementation and protection of their political interests is one of the required and most important elements of the right to association without which this right would be deprived of any substance. Therefore, the Constitution of the Russian Federation protects not only the freedom of activity of political parties, but it also protects the freedom of their creation.

The freedom of creation and activity of political parties that are required for proper operation of representative democracy is guaranteed in the Russian Federation by recognition of a multi-partisan system, ideological and political diversity, unacceptability of establishment of any ideology, including religious or nationalist, as a state one, by the secular nature of the state, equality of political parties before the law, as

well as equality of rights and freedoms of the human being and citizen regardless of his membership in public associations, including political parties (Para. 1, Para. 2, Para. 3, Para. 4, Article 13; Article 14; Para. 2, Article 19 of the Constitution of the Russian Federation).

At the same time, the Constitution of the Russian Federation forbids creation and activity of political parties whose aims and actions are aimed at a forced change of the fundamental principles of the constitutional system and at violating the integrity of the Russian Federation, at undermining its security, at setting up armed units, and incitement of social, racial, national and religious strife (Para. 5, Article 13) and accounts for limitation of the right to form political parties by federal law to an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defense of the country and security of the state (Para. 3, Article 55). The said constitutional provisions correspond with the provisions of the International Covenant on Civil and Political Rights (Clause 2, Article 22) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (Clause 2, Article 11) pursuant to which implementation of the said right is not subject to any limitations except for those that are accounted for by the law and are required in a democratic society to ensure observation of the interests of national security and public order, to prevent disorder and crime, to protect health and morality or rights and freedoms of other persons.

Thus, the legislature has the right to regulate – on the basis of the Constitution of the Russian Federation in consideration of the provisions of international legal instruments to which the Russian Federation is a member state – the legal status of political parties, including the conditions and order of their creation, the principles of their activities, and their rights and obligations, to establish necessary restrictions concerning implementation of the right to association in political parties, as well as the grounds and order of state registration of a political party as a legal entity. At the same time, regulation exercised by the legislature, by virtue of Article 17 (Para. 1) of the Constitution of the Russian Federation, pursuant to which rights and freedoms of a human being and citizen in the Russian Federation are guaranteed in compliance with the universally recognized norms and principles of the international law and the Constitution of the Russian Federation, must not distort the very essence of the right to association in political parties and limitations introduced thereby must not create unjustified impediments for implementation of the constitutional right of everyone to association and the freedom of creation and activity of political parties as public associations because such limitations must be accounted for by and proportionate to constitutional purposes.

3. The Federal Law "On Political Parties" that establishes the legal status of political parties on the basis of the Constitution of the Russian Federation, particularizing provisions of its Articles 1 (Para. 1), 3 (Para. 2), 13 (Para. 3), and 30 (Para. 1), identifies a political party as a public association created for enabling citizens of the Russian Federation to participate in the political life of society by shaping and expressing their political will, to participate in public and political events, in elections, referenda and for representing the interests of citizens in the bodies of state power and bodies of local self-government (Clause 1, Article 3); at the same time, a

political party is the only kind of public association entitled independently to nominate candidates (lists of candidates) for deputies and for other elective offices in the bodies of state power (Clause 1, Article 36).

By virtue of Article 30 (Para. 2) of the Constitution of the Russian Federation, pursuant to which no one may be forced to join or remain in a political party, the said Federal Law provides that the right of citizens of the Russian Federation to association in political parties entails the right to create, on a voluntary basis, political parties in conformity with the citizens' convictions; the right to join or refrain from joining political parties; the right to participate in the activity of political parties in conformity with their statutes; the right to freely withdraw from political parties (Article 2); a political party is created freely (Clause 1, Article 11); membership in a political party must be voluntary and individual and it may not be restricted on professional, social, racial, national or religious grounds or depending on sex, origin, property status, place of residence (Clause 1 and Clause 10, Article 23). Consequently, representatives of any nationality and any religion may, without any limitations, join a party whose goals and objectives they share, and exercise thereby their right to association, including association in political parties.

Political parties, as a required institute of representative democracy that ensures participation of citizens in the political life of the society, political interaction between the civil society and the state, in an open and legal competition on the basis of equality and political pluralism aspire to decisively influence the state power, participate in the formation of bodies of power and exercise control over their activities. Unlike other associations acting on the political arena (trade and business unions, so called advocacy groups, etc.), parties, pursuing their own political goals, openly compete for seats in the parliament and the government which give them an opportunity to govern the state and the society. Consolidating political interests of citizens they facilitate the formation of the political will of the people. Competition among political parties for political power creates the necessary democratic environment that enables the multinational people of Russia, as the bearer of sovereignty and the sole source of power in the Russian Federation, to consciously choose optimal directions for the development of the society and the state, and achieve civil consent.

Unlike political parties, religious associations, as it follows from Articles 28 and 30 of the Constitution of the Russian Federation, are created with the purpose of implementation of the freedom of religion, the right of everyone to associate with others to profess a certain religion, which implies the possibility to engage in religious rites and ceremonies according to one's chosen religious convictions, to disseminate their religious convictions, engage in religious education and upbringing, charitable, missionary, and other activities accounted for by each particular religion. The constitutional-legal foundation accounting for creation and activities of religious associations, in addition to Article 13 of the Constitution of the Russian Federation that secures ideological and organizational pluralism, is also provided in its Article 14, pursuant to which the Russian Federation is a secular state; no religion may be established as a state or obligatory one (Para. 1); religious associations are separated from the state and are equal before the law (Para. 2).

By virtue of Article 14 of the Constitution of the Russian Federation in its interconnection with its Article 11, 12, and 13 and in compliance with particularizing pro-

visions of Article 4 of the Federal Law "On the Freedom of Conscience and Religious Associations," the constitutional principle of a secular state and separation of religious associations from the state implies that the state, its bodies and officials, as well as bodies and officials of local self-government, i.e., bodies of public (political) power, may not interfere with legal activities of religious associations, vest them with functions of bodies of state power and local self-government; in turn, religious associations may not interfere with state affairs, participate in formation of and function as bodies of state power and local self-government, participate in activities of political parties and political movements, provide financial and other assistance thereto, as well as participate in elections, including by means of campaigning for and providing public support to any political parties or candidates. This does not prevent followers of a certain religion, including the clergy, from participation in expression of people's will by means of voting, on an equal basis with the others. Followers of one religion or other have the freedom to choose and express their political convictions and political interests, make decisions and conduct relevant activities, but not as members of religious organizations, but directly as citizens or members of political parties.

Thus, in the Russian Federation, as a democratic and secular state, a religious association may not substitute a political party; it is beyond all parties and is non-political; a party, by virtue of its political nature, may not be a religious organization; it is beyond any confession and is non-confessional. At any rate, a party, proceeding from its political designation, is not formed to express certain religious interests – appropriate public associations may be established with such purposes in other organizational-legal forms accounted for by the law.

4. As applied to legislative regulation of creation and activity (including registration conditions) of political parties, pluralist democracy, multi-partisanship, and secular state, which are among the fundamental principles of the constitutional system of the Russian Federation, may not be interpreted and exercised without taking into account peculiarities of the historical development of Russia, outside the context of the ethnic and confessional composition of the Russian society, as well as peculiarities of interaction of the state, the political power, ethnic groups, and religious confessions.

4.1. The Constitution of the Russian Federation provides that the bearer of sovereignty and the sole source of power in the Russian Federation is its multinational people (Para. 1, Article 3). It was by the multinational people of Russia – citizens of different nationalities and religions united by a common fate in their land and preserving the historically established state unity – that the Constitution of the Russian Federation was adopted (Preamble).

Therefore, the principle of a secular state in its interpretation accepted in mono-confessional and mono-national countries with developed traditions of religious tolerance and pluralism (which allowed, in particular, for creation of political parties in some countries that are based on the ideology of Christian democracy, since the notion of "Christian" in this case goes far beyond the confessional framework and implies one's association with the European system of values and culture) cannot be automatically applied in the Russian Federation.

In multinational and multi-confessional Russia – due to peculiarities of the leading confessions (on the one hand, Orthodoxy as the dominant Christian doctrine, and the Muslim religion, on the other hand), their influence on the social life, including

utilization in political ideology, historically closely connected with the national-ethnic factor, such notions as "Christian", "Orthodox", "Muslim", "Russian", "Tatar", etc., are associated in the public mind rather with particular confessions and certain nations, than the common system of values of the Russian people upon the whole.

In addition, at the current stage the Russian society, including political parties and religious associations, have not yet acquired a solid experience of democratic existence. In these conditions, parties created on the national or religious basis would inevitably advocate preferential rights of respective national (ethnic) or religious groups. Competition among parties formed on the national or religious basis, which is especially manifested during election campaigns for voters' ballots, is capable of leading to stratification instead of consolidation of the multinational people of Russia, to juxtaposition of ethnic and religious values, elevation of ones and derogation of the others and ultimately – to attribution of dominance not to national values, but some ethnic ideology or religion, which would violate the Constitution of the Russian Federation, its Articles 13 and 14.

Formation of parties on a religious basis would open a venue for politicizing of religion and religious associations, political fundamentalism and clericalization of parties, which, in turn, would result in rejection of religion as a form of social identity and its expulsion from the system of factors that consolidate the society. Formation of parties on a national basis could lead to domination of representatives of parties reflecting interests of large ethnic groups in elective bodies of power to the detriment of small ethnic groups, and thereby – to violation of the principle of legal equality regardless of nationality established by the Constitution of the Russian Federation (Para. 2, Article 6; Para. 4, Article 13; Para. 2, Article 19).

Thus, the constitutional principle of a democratic and secular state as applied to particular historical realities of the Russian Federation as a multinational and multi-confessional country, does not allow creation of political parties on the national or religious basis.

Therefore, in the conditions of lingering inter-ethnic and inter-confessional tensions, as well as growing political claims from the contemporary religious fundamentalism when introduction into the realm of politics (and consequently, into the realm of competition for power) of religious differentiation which may also acquire a nationalist shade, poses a threat of society's disintegration into national-religious elements (in particular, into Slavic-Orthodox and Turk-Muslim ones), the ban on creation of political parties on a national or religious basis introduced by the Federal Law "On Political Parties" corresponds with the authentic implication of Articles 13 and 14 of the Constitution of the Russian Federation in their interconnection with Articles 19 (Para. 1 and Para. 2), 28, and 29, and is proper particularization of provisions contained therein.

4.2. The Constitution of the Russian Federation, by virtue of its Articles 13, 14, and 30, requires clarity from creation of political parties, certainty of their pursuits as political parties so that to ensure compliance with the principles of pluralist democracy, secular state, and separation of the church from the state, as well as the requirement of secular politics and political activities accounted for thereby.

Special attention paid by the legislature to the name of the party which, accord-

ing to a general rule, reflects party's ideological messages and program goals, is accounted for by the fact that it is by the party's name that citizens, including potential party members and voters, evaluate party's primary political goals. The presence of words in a party's name that are usually used to denote a nationality or religion as such does not indicate a respective ethnic or religious vector which must be identified on the basis of a systemic connection between the party's name and its charter and program, but nevertheless quite naturally results in certain associations, attracts citizens who are inclined to support ethnic or religious agendas, helps the party to acquire a confessional or ethnic-political coloring that strengthens its status in the eyes of followers of a certain religious trend or individuals of a certain nationality for whom the name of the party means particular priorities of its activities.

At any rate, words and expressions used by a political party in its name that are directly related to a religion or nationality is directly associated with respective ideological messages and program principles and agendas. For example, such notions as "Christian", "Muslim", "Orthodox", "Catholic", etc., are apparently associated with religion, have a religious meaning, reflect religious sentiments, interests, and values. Therefore, the presence of respective terms in parties' names – despite all the attempts to justify their non-religious character – will still be associated in the public mind with dogmas of one religion or other, i.e., they will be perceived of as party's adherence to one of confessions and applied to the sphere of political competition, including that on the nationality issue. The same applies to the parties whose names contain "ethnically oriented" notions: for example, the creation of all sorts of "Russian" parties facilitates analogous political activity among representatives of other nationalities which in itself is dangerous as it may lead to incitement of ethnic hatred.

The ban on using words and expressions in parties' names that are directly related to a religion, church, or nationality is derived from the ban on creation and activity of parties on national and religious basis and in the conditions of a multi-confessional and multinational society is designed to ensure "transparency" of their participation in the political life, as well as the freedom of conscience and observation of the principle of a democratic and secular state and separation of the church from the state. In particular, the word "Orthodox" in a party's name may confuse voters by virtue of its clear association with religion. Meanwhile, orthodoxy as a religious doctrine may not be appropriated by any political party.

Simultaneously, the fact that a certain political party does not honor the ban on references to national or religious interests in its name may not serve as sufficient grounds for its prohibition although it is one of the conditions required for registration of the party as a legal entity. By virtue of the general principle of the law, pursuant to which a legal norm must be formally definite, precise, and unambiguous to exclude the possibility of its arbitrary interpretation and, consequently, arbitrary application (especially, when it comes to a banning norm), the law enforcer has no right to expansively interpret the requirement banning references to advocacy of national and religious interests in a party's name.

If the charter and program of a political party do not prove that the party is created on a religious or national basis the words referring to its ethnic or religious character must not be used in the party's name either, because otherwise they would be artificially associated with true ideological messages of the party, its charter and agen-

da. By virtue of Clause 3, Article 9 of the Federal Law "On Political Parties," the registering body is entitled to require that party's name be brought into compliance with its true goals and objectives reflected in its charter and program, which does not constitute violation of the right to association in political parties that follows from Article 30 of the Constitution of the Russian Federation because the party as such is not banned (nor its creation or activity); the political party must be registered and allowed to undertake its activities unless there are other legal reasons to deny registration thereto.

Consequently, the requirement of Clause 3, Article 9 of the Federal Law "On Political Parties" with respect to the name of a political party serves only as one of the conditions of implementation of the constitutional right of citizens to association established by the legislature to protect constitutional values, rights, and lawful interests of citizens regardless of their nationality or religion.

4.3. Thus, Clause 3, Article 9 of the Federal Law "On Political Parties" in the part banning the creation of a political party on the national or religious basis (i.e., if among other purposes its charter and program refer to advocacy of ethnic or religious interests and these purposes are reflected in political party's name) does not violate the principles of a democratic and secular state, equality, the right to association, as well as criteria of acceptable restriction of the rights and freedoms of the human being and citizen accounted for by Articles 13, 14, 19, 28, 30, and 55 (Para. 3) of the Constitution of the Russian Federation.

Verification of whether or not a certain political party has been legally denied registration due to its noncompliance with the requirements of Clause 3, Article 9 of the Federal Law "On Political Parties," including examination of whether or not the said party is formed on the national or religious basis, whether or not its charter and program goals are designed to advocate national or religious interests, and whether or not the terms used in the party's name reflect these goals, does not fall within the jurisdiction of the Constitutional Court of the Russian Federation as accounted for by Article 125 of the Constitution of the Russian Federation and Article 3 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation."

Proceeding from the above and following Para. 1 and Para. 2, Article 71; Articles 72, 74, 75, 79, 100, and 104 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," the Constitutional Court of the Russian Federation

Decided as follows:

1. It shall be recognized that Clause 3, Article 9 of the Federal Law "On Political Parties" in the part banning creation of political parties on the national or religious basis be consistent with the Constitution of the Russian Federation.

2. Pursuant to Para. 1 and Para. 2, Article 79 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," this Decision shall be final, shall not be subject of appeal, shall be effective immediately following its proclamation, shall be applied directly, and shall not require approval of other bodies and officials.

3. Pursuant to Article 78 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," this Decision shall be immediately published in the "*Sobraniye zakonodatelstva Rossiiskoi Federatsii*" (Collection of

¹ *Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii* (Bulletin of the Constitutional Court of the Russian Federation). 2005. No. 1. P. 48.

Legislation of the Russian Federation), and the "*Rossiyskaya Gazeta*." Decision shall also be published in the "*Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii*" (Bulletin of the Constitutional Court of the Russian Federation).

**3.16 (11.24). DECISION NO. 1-P OF FEBRUARY 1, 2005
IN THE CASE ON VERIFICATION OF CONSTITUTIONALITY
OF PARAGRAPH 2 AND PARAGRAPH 3, CLAUSE 2, ARTICLE 3
AND CLAUSE 6, ARTICLE 47 OF THE FEDERAL LAW
"ON POLITICAL PARTIES" IN CONNECTION WITH A GRIEVANCE
SUBMITTED BY THE PUBLIC-POLITICAL ORGANIZATION
"THE BALTIC REPUBLICAN PARTY"¹**

On Behalf of the Russian Federation

The Constitutional Court of the Russian Federation presided by Chairman M.I. Kleandrov and composed of judges M.V. Baglay, Yu.M. Danilov, L.M. Zharkova, G.A. Zhilin, V.D. Zorkin, S.M. Kazantsev, V.O. Luchin, N.V. Seleznyov, O.S. Khokhryakova,

With participation of the Chairman of the public-political organization "The Baltic Republican Party," S.A. Pasko, permanent representative of the State Duma at the Constitutional Court of the Russian Federation, E.B. Mizulina, representative of the Federation Council, Doctor of Law E.V. Vinogradova, Plenipotentiary Representative of the President of the Russian Federation at the Constitutional Court of the Russian Federation, M.A. Mityukov,

Following Article 125 (Para. 4) of the Constitution of the Russian Federation; Clause 3, Para. 1, Para. 3, and Para. 4, Article 3; Clause 3, Para. 2, Article 22; Articles 36, 74, 86, 96, 97, and 99 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation,"

Reviewed in an open session the case on verification of constitutionality of Para. 2 and Para. 3, Clause 2, Article 3 and Clause 6, Article 47 of the Federal Law "On Political Parties," on December 15, 2004.

The case was reviewed in response to a grievance submitted by the public-political organization "The Baltic Republican Party." The case was reviewed on the grounds of an uncertainty identified in the issue of whether or not the provisions of the Federal Law of July 11, 2001 "On Political Parties" (as amended on March 21, 2002) contested in the grievance are consistent with the Constitution of the Russian Federation.

Upon examination of the report of judge-rapporteur M.V. Baglay, explanations of the parties and their representatives, messages of attending representatives: from the Office of the Prosecutor General of the Russian Federation – Deputy Prosecutor General of the Russian Federation, S.N. Fridinsky, from the Central Election Commission of the Russian Federation – members of the Central Election Commission of the Russian Federation, E.P. Dubrovina and V.I. Lysenko, as well as documents and other materials, the Constitutional Court of the Russian Federation

Established as follows:

1. Clause 2, Article 3 of the Federal Law of July 11, 2001 "On Political Parties"

(as amended on March 21, 2002), securing the requirements that a political party must meet, provides, in particular, that a political party must have regional branches in more than a half of the subjects of the Russian Federation (Para. 2) and that a political party must have not less than ten thousand party members and regional branches, each with not less than one hundred party members, in more than a half of the subjects of the Russian Federation (Para. 3). Pursuant to Clause 6, Article 47 of the said Federal Law, upon expiration of two years following the enactment of this Federal Law, the interregional, regional and local political public associations shall lose the status of a political public association and shall act as interregional, regional or local public associations, respectively, on the basis of their statutes which shall be applicable in so far as they do not contradict this Federal Law.

In its complaint submitted to the Constitutional Court of the Russian Federation the public-political organization "The Baltic Republican Party" argues that the requirements that a political party must meet, contained in Paras. 2 and 3, Clause 2, Article 3 of the Federal Law "On Political Parties," and the consequences for political public associations that do not meet these requirements, accounted for by Clause 6 of its Article 47, infringe upon the right of everyone to association and the freedom of activity of public associations established by Article 30 (Para. 1) of the Constitution of the Russian Federation, as well as violate its Article 1 (Para. 1) securing the federative nature of the Russian state, Article 13 (Para. 3) recognizing political diversity, Article 17 (Para. 1) recognizing and guaranteeing the rights and freedoms of a human being and citizen in the Russian Federation in compliance with the universally recognized principles and norms of the international law and the Constitution of the Russian Federation, as well as Article 55 (Para. 3) from which it follows that restriction of citizens' rights and freedoms must be proportionate to constitutional interests and purposes.

As it follows from the said law-enforcement decisions, the public-political organization "The Baltic Republican Party," registered on September 24, 1998 as a public-political organization of the Kaliningrad oblast, was liquidated by the decision of the regional court of the Kaliningrad oblast of June 26, 2003 which was sustained by the Civil Judicial Board of the Supreme Court of the Russian Federation of October 21, 2003 for having failed to comply on a timely basis with the injunction to eliminate a violation of the federal legislation identified by a registration authority, namely, for using the word "party" in the name of a public association that does not meet the requirements established for political parties by the Federal Law of July 11, 2001 "On Political Parties" (as amended on March 21, 2002).

Given that the public-political organization "The Baltic Republican Party" did not meet the requirements established for political parties accounted for by Para. 2 and Para. 3, Clause 2, Article 3 of the Federal Law "On Political Parties," it was to lose the status of a political public association upon expiration of two years following the enactment of the said Federal Law in compliance with Clause 6 of its Article 47. The said provisions in their normative unity are under review of the Constitutional Court of the Russian Federation in this case. Additionally, by virtue of the Constitution of the Russian Federation and the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," the Constitutional Court of the Russian Federation addresses law issues exclusively and is not authorized to verify if court

decisions adopted with respect to the public-political organization "The Baltic Republican Party," including those on the basis of which it was liquidated, were legal and justified.

As far as Article 1 of the Federal Law "On Political Parties" that identifies the subject of regulation of this Federal Law is concerned, as well as its Article 5, pursuant to which a political party has the right to carry out its activities throughout the entire territory of the Russian Federation, constitutionality of which was also contested in the complaint, in the course of the session of the Constitutional Court of the Russian Federation the plaintiff, having specified the subject of their grievance, excluded the demand to verify these articles from their petition.

2. The Constitution of the Russian Federation admits ideological and political diversity, multi-partisanship (Para. 1 and Para. 3, Article 13), proclaims equality of public associations before the law (Para. 4, Article 13), recognizes the right of everyone to association and guarantees the freedom of activity of public associations (Para. 1, Article 30).

The Constitution of the Russian Federation does not directly secure the right of citizens to association in political parties by virtue of the said Article, however, in its interconnection with Articles 1, 13, 15 (Para. 4), 17, and 32 of the Constitution of the Russian Federation, in the Russian Federation, the said right that entails the right to create a political party and the right to participate in its activities is an integral part of the right of everyone to association, and the freedom of activities of political parties as public associations is guaranteed. The possibility of the citizens to freely create a political party and have it registered as a legal entity so that to act collectively in the area of implementation and advocacy of their political interests is one of the required and most important elements of the right to association without which this right would be deprived of any substance. Therefore, the Constitution of the Russian Federation protects not only the freedom of activity of political parties, but it also protects the freedom of their creation (Decision of the Constitutional Court of the Russian Federation No. 18-P of December 15, 2004 in the case on verification of constitutionality of Clause 3, Article 9 of the Federal Law "On Political Parties").

Constitutional provisions guaranteeing the right to association, including association in political parties, correspond with the provisions of the International Covenant on Civil and Political Rights (Clause 1, Article 22) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (Clause 1, Article 11), pursuant to which every person has the right to freely associate with others. Although these international legal instruments do not directly mention the right to association in political parties, the European Court on Human Rights has repeatedly stated that political parties fall within their regulation (e.g., the ruling of January 30, 1998 in the case of "The United Communist Party of Turkey et al. vs. Turkey").

The right of citizens to association in political parties is also ensured by the provisions of the Constitution of the Russian Federation pursuant to which the state guarantees equality of the rights and freedoms of a human being and citizen regardless of his membership in public associations (Para. 2, Article 19), and that no one may be compelled to join any association and remain in it (Para. 2, Article 30). At the same time, the Constitution of the Russian Federation, requiring the citizens and their associations to comply with the Constitution of the Russian Federation and laws

(Para. 2, Article 15), forbids the creation and activities of public associations whose goals and actions are aimed at a forced change of the fundamental principles of the constitutional system and at violating the integrity of the Russian Federation, at undermining its security, at setting up armed units, and at instigating social, racial, national and religious strife (Para. 5, Article 13) and admits that the rights and freedoms of a human being and citizen may be limited by the federal law only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defense of the country and security of the state (Para. 3, Article 55).

The said constitutional provisions correspond with Clause 2, Article 22 of the International Covenant on Civil and Political Rights and Clause 2, Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms pursuant to which implementation of the right to association is not subject to any limitations except for those that are accounted for by the law and are required in a democratic society to ensure observation of the interests of national security and public order, to prevent disorder and crime, to protect health and morality or rights and freedoms of other persons.

Since in compliance with the Constitution of the Russian Federation the regulation and protection of the rights and freedoms of a human being and citizen fall within the jurisdiction of the Russian Federation (Clause "c", Article 71) and are carried out by means of adoption of federal laws (Para. 1, Article 76), the federal legislature has the right and is required, on the basis of the Constitution of the Russian Federation and in consideration of provisions of international legal instruments to which the Russian Federation is a member state, to determine legislative foundations for implementation of the right of citizens of the Russian Federation to association in political parties, creation and activity of political parties, and their status, including the conditions under which a public association may be recognized to be a political party. At the same time, regulation implemented thereby, pursuant to the legal position of the Constitutional Court of the Russian Federation expressed in its Decision No. 18-P of December 15, 2004, by virtue of Article 17 (Para. 1) of the Constitution of the Russian Federation, must not distort the very essence of this right, and introduction of any limitations – create unjustified impediments for implementation of the constitutional right of everyone to association and the freedom of creation and activity of political parties as public associations, i.e., such limitations must be necessary and proportionate to constitutional purposes.

3. The Constitution of the Russian Federation, securing the principle of multi-partisanship (Para. 3, Article 13), as well as the right to association and freedom of activity of public associations (Para. 1, Article 30) as a foundation of creation and activity of political parties in the Russian Federation, does not determine the level upon which political parties are formed – national, interregional, regional, or local, nor does it contain a direct ban on creation of regional parties. Consequently, the injunction introduced by Clause 2, Article 3 of the Federal Law "On Political Parties" on the possibility of creation and activity of political parties only on the federal (national) level – since it is a limitation of the constitutional right to association in a political party – is only justified when it is required for the protection of fundamental principles secured by the Constitution (Para. 3, Article 55 of the Constitution of

the Russian Federation).

3.1. Political parties are a special type of public associations. Activity of political parties is directly connected with organization and operation of the public (political) power; they are included in the process of power relations, and at the same time, being voluntary associations within the framework of the civil society, they act as a required institute of representative democracy ensuring participation of citizens in the political life of the society, political interaction of the civil society and the state, integrity and stability of the political system. This circumstance allows the federal legislature to establish – for the purpose of development of constitutional provisions on the right to association – additional requirements with respect to formation of political parties, their organization and implementation of their chartered activities.

The Federal Law "On Political Parties," guaranteeing the right to association in political parties (Article 2), provides that a political party is formed to enable citizens of the Russian Federation to participate in the political life of society by shaping and expressing their political will, to participate in public and political events, in elections, referenda and also for representing the interests of citizens in the bodies of state power and bodies of local self-government (Clause 1, Article 3). By virtue of the said Federal Law, political parties are created to ensure participation of citizens in the political life of the entire Russian Federation, rather than a part thereof; they are there to shape the political will of the multinational Russian people as a whole, to express, first and foremost, the national interests, and goals of their activities must not be associated exclusively with interests of certain regions. At the same time, implementing their activities directly in the regions, political parties must ensure a combination of national and regional interests.

Pursuant to the Federal Law "On Political Parties," a political party may be created at the constituent congress of the political party or by way of transformation of an all-Russian public organization or an all-Russian public movement into a political party at the congress of the all-Russian public organization or the all-Russian public movement (Clause 1, Article 11; Clause 1 Article 47); additionally, an all-Russian political public association which has not transformed into a political party upon expiration of two years of the enactment of this Federal Law, loses the status of a political public association and acts as an all-Russian public organization or an all-Russian public movement on the basis of the statutes which are applicable in so far as they do not contradict this Federal Law (Clause 5, Article 47).

As far as interregional, regional, and local political public associations are concerned, they, as public associations that are not political parties, must not use the word "party" in their names (Clause 6, Article 6); they do, however, retain the status of a political public association during the two years following the enactment of this Federal Law, and act afterwards as public associations on the basis of their statutes that are applicable in so far as they do not contradict this Federal Law (Clause 6, Article 47).

Thus, the federal legislature, adopting the Federal Law "On Political Parties," associated acquisition (preservation) of the status of a political party with those public associations which expressed interests of a significant part of citizens regardless of their region of residence and operated throughout the entire or most of the territory of the Russian Federation. Such organization of the political environment is designed

to prevent political forces from fragmentation and appearance of a multitude of artificially created (especially during election campaigns) small-membership parties which are expected to operate for only a limited period of time and which therefore are unable to fulfill their mission as a public association within the political system of the society.

3.2. Pursuant to the Constitution of the Russian Federation, the federative organization of the Russian Federation is based on its state unity, the unity of the system of state power, delineation of jurisdictions and authorities among bodies of state power of the Russian Federation and bodies of state power of the subjects of the Russian Federation, equality and self-determination of peoples in the Russian Federation (Para. 3, Article 5).

Meanwhile, under the current conditions, when the Russian society has not yet acquired a solid experience of democratic existence, in view of the serious challenges posed by separatist, nationalist, and terrorist forces, creation of regional political parties – since they would strive to advocate primarily their own regional and local interests – could lead to violation of the state integrity and the unity of the state power as foundations of the federative organization of Russia.

Additionally, the legal boundary between regional political parties and parties that would de facto be formed on the national or religious basis would become less distinct. Such parties, pursuant to Decision of the Constitutional Court of the Russian Federation No. 18-P of December 15, 2004, would inevitably orient themselves towards preferential advocacy of the rights of respective national (ethnic) and religious groups which at the current stage of the historical development would distort the process of shaping and expression of the will of the multinational people as the bearer of the sovereignty and the sole source of power in the Russian Federation.

In addition, formation of regional and local political parties in each subject of the Russian Federation could lead – taking into account the complex structural character of the Russian Federation – to formation of a multitude of regional party systems which may threaten to turn the forming party system as part of the political system into a factor that may weaken the developing Russian democracy, federalism, the unity of the country and by doing so – weaken the constitutional rights and freedoms, including the very right to association in political parties, the equality of citizens in the formation of political parties and participation in their activities throughout the entire territory of the Russian Federation.

3.3. Thus, the regulation accounted for by the Federal Law "On Political Parties," pursuant to which the status of a political party may only be granted to national (all-Russian) political public associations, is designed not only to achieve such a constitutional goal as formation of a real multi-party system in the country, to institutionalize political parties as an important factor of the development of the civil society, and stimulate formation of large national parties, but also to protect constitutional values, first and foremost, to ensure the unity of the country in the current particular historical conditions of the development of democracy and the law-bound state in the Russian Federation. The said restriction is temporary and must be lifted upon disappearance of the circumstances that caused it.

4. Recognizing the multi-partisan system and guaranteeing the right to association in political parties and the freedom of their activity, the Constitution of the

Russian Federation does not predetermine the number of parties, or their membership, nor does it provide for the possibility to establish a minimum membership requirement for political parties. In any event, the federal legislature is expected to regulate these issues in such a fashion so that, on the one hand, the membership and territorial scale of activities of political parties were not excessive and would not infringe upon the very essence (the core substance) of the right of citizens to association, and on the other hand – they were capable of carrying out their functions and achieve their objectives as national (all-Russian) political parties, i.e., ultimately, it must meet the criterion of reasonable sufficiency that is accounted for by the principle of proportionality.

Addressing the issue of membership of political parties and the territorial scale of their activities, the legislature has a certain amount of discretion, considering that this issue is largely associated with political expediency. This is supported by the fact that regulation of this issue in legislation of foreign countries varies significantly (requirements established with respect to the membership of political parties are noticeably either more stringent or lenient than those accounted for by Article 3 of the Federal Law "On Political Parties"), which is accounted for by the problems that in the sphere of development of the political system are solved by legislative measures, as well as by the population of a particular state.

Determining quantitative criteria for the creation of a political party in the Federal Law "On Political Parties," the federal legislature, apparently, proceeded from the idea that in order for a political party to be able to fulfill its primary function in a democratic state, namely, to shape and express the political will of the people, it must be supported by a significant segment of the society. Establishment of the criteria accounted for by Para. 2 and Para. 3, Clause 2, Article 3 of the said Federal Law (as amended on March 21, 2002) in itself does not contradict the Constitution of the Russian Federation. These quantitative criteria may become unconstitutional if their application prevents citizens from real implementation of their constitutional right to association in political parties, including the situation when in violation of the constitutional principle of multi-partisanship only one political party is formed on their basis.

5. The principle of political diversity secured by Article 13 (Para. 3) of the Constitution of the Russian Federation is implemented not only through multi-partisanship, creation and activities of parties adhering to different ideologies. Therefore, the loss of the status of a political public association by interregional, regional, and local political public associations in compliance with Clause 6, Article 47, of the Federal Law "On Political Parties" does not imply that these associations are deprived of the right to participate in the political life of the society at the regional and local levels, and their members – of the constitutional right to association.

From the provisions of the Federal Law "On Public Associations" (Article 27) in their interconnection with provisions of election, referendum, and other laws it follows that in the order and within the limits established thereby, as well as in the absence of the status of a political party as it is determined by the Federal Law "On Political Parties," they have most of the rights as political parties have: the right to participate in preparation of elections and referenda, to submit propositions to bodies of state power and local self-government, participate in their decision-making process, represent and advocate their rights, lawful interests of their members and

participants, as well as other citizens in the bodies of state power, local self-government, and public associations, to hold meetings, demonstrations, marches, and pickets. To achieve their chartered goals these public associations have the right to establish mass media outlets and conduct publishing activities, freely disseminate information about their activities, and fully exercise their authorities accounted for by the federal legislation on public associations.

The provision of the Federal Law "On Political Parties," pursuant to which a political party is the only kind of public association entitled independently to nominate candidates (lists of candidates) for deputies and for other elective offices in the bodies of state power (Clause 1, Article 36), does not imply that other public associations, including regional and local ones, whose statutes account for their participation in elections and (or) referenda, are deprived of the right to nominate candidates (lists of candidates) for deputies and other elective offices in the bodies of local self-government, or the right to initiate a referendum of an appropriate level – regional or local. In the order accounted for by the election law, regional public associations have the right to exercise control over organization and conduct of elections, assign their representatives in the capacity of election monitors, and in forms permitted by law to support political parties participating in elections, as well as their regional chapters and candidates nominated thereby.

Accounting for the right of political parties to form associations and alliances with other political parties and other public associations without formation of a legal entity (Clause "h", Para. 1, Article 26), the Federal Law "On Political Parties" together with provisions of the Federal Law "On Public Associations" on alliances (associations) of public associations (Article 13) determines a legal basis for the development of cooperation between regional and local public associations with political parties and their regional chapters, including such cooperation during elections to federal and regional bodies of state power and local self-government. Particularizing the rights of the said public associations, the federal legislature may provide for other forms of their participation in elections, including forms of their interaction with political parties in elections to bodies of state power of the subjects of the Russian Federation.

6. Thus, the provisions of Para. 2 and Para. 3, Clause 2, Article 3 and Clause 6, Article 47 of the Federal Law "On Political Parties," securing the requirements that a political party must meet, and accounting for the loss of the status of a political public association by interregional, regional, and local political public associations, proceeding from the position of these provisions within the legal system of the Russian Federation, including their interconnection with Articles 13, 15 (Para. 4), 17, 30, and 32 (Para. 1 and Para. 2) of the Constitution of the Russian Federation, as well as the provisions of laws governing public associations, elections, and referenda, in consideration of particular historical conditions of the development of the Russian Federation as a democratic, federative, and law-bound state, may not be recognized as an excessive restriction of the right to association in political parties. This regulation does not prevent citizens of the Russian Federation from exercising their constitutional right to association by creating all-Russian political parties or joining them,

¹ *Sobranie zakonodatelstva Rossiiskoi Federatsii* (Collection of the legislation of the Russian Federation). November 21. 2005. No. 47. St. 4968.

and to advocate their interests and achieve general goals in the political sphere at the interregional, regional, and local level – by creating and joining public associations of an appropriate level.

Proceeding from the above and following Para. 1 and Para. 2, Article 71; Articleми 72, 74, 75, 79, and 100 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," the Constitutional Court of the Russian Federation

Decided as follows:

1. It shall be recognized that the provisions of Para. 2 and Para. 3, Clause 2, Article 3 of the Federal Law of July 11, 2001 "On Political Parties" (as amended on March 21, 2002), pursuant to which a political party must have not less than ten thousand party members and regional branches in more than a half of the subjects of the Russian Federation, and normatively interconnected with the said provisions Clause 6, Article 47 of this Federal Law regulating the consequences of change of status of interregional, regional, and local political public associations that do not meet the requirements established with respect to political parties, be consistent with the Constitution of the Russian Federation.

2. Pursuant to Para. 1 and Para. 2, Article 79 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," this Decision shall be final, shall not be subject of appeal, shall be effective immediately following its proclamation, shall be applied directly, and shall not require approval of other bodies and officials.

3. Pursuant to Article 78 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," this Decision shall be immediately published in the "*Sobraniye zakonodatelstva Rossiiskoi Federatsii*" (Collection of Legislation of the Russian Federation), and the "*Rossiyskaya Gazeta*." Decision shall also be published in the "*Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii*" (Bulletin of the Constitutional Court of the Russian Federation).

3.17 (11.25). DECISION NO.10-P OF NOVEMBER 14, 2005 IN THE CASE ON VERIFICATION OF CONSTITUTIONALITY OF PROVISIONS OF PARAGRAPH 5, ARTICLE 48 AND ARTICLE 58 OF THE FEDERAL LAW "ON BASIC GUARANTEES OF ELECTORAL RIGHTS AND THE RIGHT OF CITIZENS OF THE RUSSIAN FEDERATION TO PARTICIPATE IN A REFERENDUM," AND PARAGRAPH 7, ARTICLE 63 AND ARTICLE 66 OF THE FEDERAL LAW "ON THE ELECTION OF DEPUTIES OF THE STATE DUMA OF THE FEDERAL ASSEMBLY OF THE RUSSIAN FEDERATION" IN CONNECTION WITH A GRIEVANCE SUBMITTED BY THE HUMAN RIGHTS OMBUDSMAN OF THE RUSSIAN FEDERATION OF THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION¹

On Behalf of the Russian Federation

The Constitutional Court of the Russian Federation presided by V.G. Yaroslavtsev and composed of judges N.S. Bondar, G.A. Gadzhiyev, A.L. Kononov, L.O. Krasavchikova,

S.P. Mavrin, Yu.D. Rudkin, A.Ya. Sliva, and B.S. Ebzeyev,

With participation of a representative of the Human Rights Ombudsman of the Russian Federation, Candidate of Law, N.V. Vasilyev, the permanent representative of the State Duma at the Constitutional Court of the Russian Federation, E.B. Mizulina, the plenipotentiary representative of the Federation Council at the Constitutional Court of the Russian Federation, Yu.A. Sharandin, and the plenipotentiary representative of the President of the Russian Federation at the Constitutional Court of the Russian Federation, M.A. Mityukov,

Following Article 125 (Para. 4) of the Constitution of the Russian Federation, Clause 3, Para. 1; Para. 3 and Para. 4, Article 3; Clause 3, Para. 2, Article 22, and Articles 36, 74, 86, 96, 97, and 99 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation,"

Reviewed in an open session the case on verification of constitutionality of provisions of Para. 5, Article 48 and Article 58 of the Federal Law "On basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum," and Para. 7, Article 63 and Article 66 of the Federal Law "On the election of deputies of the State Duma of the Federal Assembly of the Russian Federation."

The case has been reviewed in response to a grievance submitted by the Human Rights Ombudsman of the Russian Federation who claimed that the said provisions had violated constitutional rights of citizen V.B. Bochkov.

Upon examination of the report of judge-rapporteur N.S. Bondar, explanations of the parties and their representatives, opinion of a specialist – Candidate of Law A.E. Lyubarev, message of a representative of the Central Election Commission of the Russian Federation, V.P. Volkov, the Constitutional Court of the Russian Federation

Established as follows:

1. By the decision of the justice of the peace of judicial precinct No. 1 of the Central District of the city of Kursk of December 23, 2003 sustained by superior court instances, in compliance with Article 5.12 of the Administrative Code of the Russian Federation, citizen V.B. Bochkov was subjected to a cash penalty in the amount of 1,000 rubles. Judges identified properties of corpus delicti accounted for by the said article in the fact that in the course of the election campaign on the election of deputies of the State Duma in October – November of 2003, V.B. Bochkov put together and prepared for publication a campaigning material encouraging voters to vote against all candidates, namely, a flyer "Against all – is the right choice!", handed it over to a private entrepreneur for publication in the amount of 500 copies, and subsequently distributed the material without supplying one copy or a photograph of the flyer to the election commission. At the same time, V.B. Bochkov, not being a registered candidate and in violation of Para. 7, Article 63 of the Federal Law "On the election of deputies of the State Duma of the Federal Assembly of the Russian Federation," paid for the production of the said campaigning material using his own financial resources.

Deputy Chairman of the Supreme Court of the Russian Federation who overruled a supervisory complaint against the court decisions previously passed in this case, identifying the actions of V.B. Bochkov as illegal, also referred to Para. 5, Article 48 of the Federal Law "On basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum" that provides that expenses associated with the conduct of an election campaign must be paid exclusively from

relevant electoral funds in the order established by law.

The complaint submitted by the Human Rights Ombudsman of the Russian Federation to the Constitutional Court of the Russian Federation to protect constitutional rights of citizen V.B. Bochkov contests constitutionality of the said legal provisions as banning election campaigning against all candidates by a citizen without prior payment of applicable expenses using relevant electoral funds, as well as constitutionality of systemically interrelated provisions of Article 58 of the Federal Law "On basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum" and Article 66 of the Federal Law "On the election of deputies of the State Duma of the Federal Assembly of the Russian Federation" that provide for an exhaustive list of subjects authorized to establish electoral funds as failing to name citizens among such subjects.

According to the petitioner, the contested regulation, in fact, deprives citizens of the possibility to exercise their constitutional right to freely produce and disseminate information in any fashion permitted by law in manner of election campaigning designed to encourage voters to vote against all candidates, and thus contradicts Articles 29 (Para. 1 and Para. 4) and 55 (Para. 3) of the Constitution of the Russian Federation.

Thus, in this case, the issue in question is interrelated provisions of Para. 5, Article 48 and Article 58 of the Federal Law of June 12, 2002 "On basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum" (as amended on July 4, 2003), as well as Para. 7, Article 63 and Article 66 of the Federal Law of December 20, 2002 "On the election of deputies of the State Duma of the Federal Assembly of the Russian Federation" (as amended on June 23, 2003) as restricting the right of citizens to conduct personal election campaigning against all candidates included in the voting ballot at their own expense.

2. The Constitution of the Russian Federation, asserting, in compliance with the will of the multinational people of Russia, the firmness of its democratic foundation and sovereign statehood and recognizing the Russian Federation to be a democratic law-bound state proclaims free elections to be the supreme direct expression of the will of the people (Para. 7 of the Preamble, Para. 1, Article 1, Para. 3, Article 3).

The principle of free elections, as accounted for by the Decision of the Constitutional Court of the Russian Federation No.17-P of June 10, 1998 adopted in the case on verification of constitutionality of certain provisions of Articles 4, 13, 19, and 58 of the Federal Law "On basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum," implies, in particular, the right of voters to express their will in any form of voting permitted by law in compliance with procedures established by law in order to exclude the possibility of distortion of the essence of expression of voters' will; voters' will may be expressed by voting not only for or against certain candidates, but also in the form of voting against all candidates included in the voting ballot.

In order to guarantee free elections the federal legislature, by virtue of Articles 3, 29, and 32 of the Constitution of the Russian Federation in their interrelation with its Articles 71 (Clause "c"), 72 (Clause "b", Para. 1), and 76 (Para. 1 and Para. 2) is entitled to establish the order and conditions of their provision with information support. At the same time, given that elections may only be considered to be free when

the right of citizens to receive and disseminate information and their freedom to hold opinions are truly guaranteed, ensuring the said rights the legislature must observe the balance of constitutionally protected values – the right to free elections and the freedom of expression and information – and exclude inequality and disproportionate restrictions (Articles 19 and 55, the Constitution of the Russian Federation, Para. 2, Article 10 of the Convention for the protection of human rights and fundamental freedoms, Para. 3, Article 19, the International Covenant on Civil and Political Rights).

This goes in line with legal positions of the European Court of Human Rights formulated thereby in a number of decisions related to dissemination of information during election campaigns. In particular, the Decision of February 19, 1998 passed in the case of "Bowman vs. the United Kingdom" states as follows: the freedom of expression guaranteed by Article 10 of the Convention for the protection of human rights and fundamental freedoms must be interpreted within the context of the right to free elections; free elections and the freedom of expression, especially the freedom of political debates, form the foundation of any democratic system; both rights are interconnected and enforce one another, it is especially important therefore that during the period preceding elections any information and opinions should circulate freely; under certain circumstances, however, these two rights, whose goal is to ensure the freedom of expression of people's opinion in the selection of legislature, may come to conflict each other and in that event introduction of certain restrictions of the freedom of expression, which are unacceptable under regular conditions, immediately before or during elections may be deemed necessary; ensuring the balance between these two rights the states signatory to the Convention are sufficiently free in their discretion, as well as in everything else that relates to the organization of an election system.

Exercising normative regulation targeted at the solution of possible collisions between the right to free elections on one hand and the freedom of expression and the right to hold opinions on the other hand, the federal legislature is bound by the necessity to ensure constitutional rights of citizens as voters. By virtue of Articles 29 (Para. 4) and 32 (Para. 2) of the Constitution of the Russian Federation, citizens of the Russian Federation, being vested with the active electoral right and at the same time with the right to freely search, receive, transfer, produce, and disseminate information in any fashion permitted by law, citizens of the Russian Federation may not be considered solely as an object of information support of elections – in the course of elections they are entitled to undertake activities designed to actively advocate their election positions and encourage other voters to vote for or against particular candidates in line therewith or express their negative attitude with respect to all candidates participating in the elections. Deprivation of citizens of the right to conduct election campaigning or absence of appropriate legal guarantees of its implementation would essentially mean a denial of their right to influence the election process and the latter would be reduced only to voting.

The normative implication of the right to conduct election campaigning in which voters' interests targeted at the formation of an elective body of public power are realized, includes the right of participants of the election process, including voters, to conduct election campaigning designed to encourage voters to vote in a certain manner. Therefore, if, implementing its discretionary authorities, the federal legislature has

recognized the possibility to vote in elections by completing the field "Against all candidates" in the voting ballot it must also provide for the conduct of respective campaigning.

3. The Federal Law "On basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum" (Clause 4, Article 2 and Para. 2, Article 48) recognizes activities undertaken during an election campaign that are aimed at encouraging or are encouraging voters to vote for or against a candidate, certain candidates, a list of candidates or against all candidates (against all lists of candidates) to be election campaigning. Thus, activities undertaken to encourage voters to express distrust with respect to all candidates included in the voting ballot were definitely and unambiguously qualified by the federal legislature as election campaigning.

Hence, the right to campaign against all candidates participating in the elections, as a component of the right to participate in election campaigning, by virtue of Clause 28, Article 2 of the Federal Law "On basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum," is one of the electoral rights of citizens recognized by the legislature. This conclusion is supported by the interrelated provisions of Para. 1, Article 4, and Para. 1, Article 48 of the said Federal Law, that provide that a citizen of the Russian Federation who will reach the age of 18 by the voting day has the right to participate in election activities accounted for by law and conducted in compliance with legal methods, and, therefore, to conduct election campaigning using forms and methods permitted by law.

However, legal possibilities of citizens to conduct election campaigning, including campaigning against all candidates, are characterized by essential peculiarities, which fact is also supported by the analysis of other norms of the same Federal Law, that regulate the order of provision of information support to elections and funding of election campaigns. For example, participants of the election process – candidates and electoral associations – may select the contents, form and methods of their election campaigning at their own discretion, conduct election campaigning and involve other persons therein in compliance with procedures established by law (Para. 4, Article 48); election campaigning expenditures must be paid exclusively from relevant electoral funds in accordance with the procedure established by law (Para. 5, Article 48); the responsibility to establish electoral funds to finance election campaigns is granted exclusively to candidates and electoral associations (Para. 1, Article 58); the right to freely disseminate printed, audio-visual, and other propaganda materials in the order established by law is granted exclusively to candidates and electoral associations (Para. 1, Article 54). Analogous norms are contained in the Federal Law "On the election of deputies of the State Duma of the Federal Assembly of the Russian Federation" (Para. 4 and Para. 9, Article 57, Para. 1, Article 63).

The fact that the federal legislature provides for different terms of implementation of the right to election campaigning for citizens as participants of the election process, on one hand, and candidates (electoral associations) – on the other hand, as designed to achieve constitutional goals and ensure transparency of elections, equality of candidates before the law regardless of their material status, and prevent abuse, as such may not be considered as incompatible with the constitutional norms and principles.

Meanwhile, the conduct of election campaigning encouraging voters to express

their will by completing the field "Against all candidates" in the voting ballot using electoral funds that are established specifically to ensure that candidates are able to exercise their passive electoral right, is objectively impeded within the framework of a democratic election process. Independent election campaigning of citizens against all candidates using their own funds is not regulated by the federal legislation which may be considered by law-enforcers (and this fact is supported by materials of the case in question) as an absolute ban for citizens to conduct such campaigning.

4. Regulating public, including electoral, relations the federal legislature is bound by the constitutional principle of proportionality and requirements of adequacy and proportionality of applicable legal means accounted thereby. The Constitutional Court of the Russian Federation has repeatedly stated in its decisions that in the events when constitutional norms enable the legislator to establish restrictions of rights provided thereby, it may not exercise such regulation that would infringe upon the very essence of one right or another and lead to the loss of its real substance; even attempting to preclude one's abuse of somebody's right it must not use extreme but only necessary measures that are strictly substantiated by constitutional purposes.

Proceeding from the above the federal legislature has no right to adopt normative decisions that lead to deprivation of citizens of the Russian Federation of the right to conduct election campaigning against all candidates if the voting ballot contains the field "Against all candidates." The order of implementation of this right accounted for thereby must comply with formal definiteness requirements and enable citizens to bring their behavior into correlation therewith and reasonably foresee the consequences that may be caused by their particular actions.

This approach correlates with the legal position repeatedly expressed by the Constitutional Court of the Russian Federation pursuant to which the general legal criterion of definiteness, clarity, and uncertainty of a legal norm proceeds from the constitutional principle of equality of all before the law and the court because such equality may only be ensured under the condition of uniform understanding and interpretation of the legal norm by all law enforcers; legal norms lacking definiteness, on the contrary, allow for a possibility to exercise unlimited discretion in the law-enforcement process and lead to arbitrariness and, consequently, to violation of the principles of equality and the rule of law.

In the meantime, the federal legislature, having recognized the right of citizens to campaign against all candidates, has failed to account for a special normative provision supporting this right, first and foremost, in the part concerning the possibility to finance such campaigning using funds other than electoral, and as a result has positioned the citizens in a situation of unacceptable indefiniteness with respect to the rules of legal participation in the election process.

Federal Laws "On basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum" (Para. 5, Article 59) and "On the election of deputies of the State Duma of the Federal Assembly of the Russian Federation" (Para. 6, Article 69) directly account only for activities undertaken by citizens personally, voluntarily, and free of charge, as well as for their provision of services associated with preparation and conduct of elections without attraction of third parties.

The said norms containing criteria of legality of citizen's activities, which are not

associated with election campaigning but which may have an election-related purpose, are unable to distinguish clearly enough between legal and illegal election campaigning.

Further, even activities that comply with these criteria may be considered as a violation of conditions of legal election campaigning. For example, Para. 4, Article 54 of the Federal Law "On basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum" does not require citizens to supply relevant election commissions with copies of printed, audio-visual, and photographs of other propaganda materials produced thereby prior to their dissemination (this responsibility has only been vested with candidates and electoral associations). However, dissemination of propaganda materials in violation of this requirement is forbidden by Para. 6 of the same article and, as demonstrated by the law-enforcement practice, serves as grounds to impose administrative penalties upon citizens for illegal election campaigning in compliance with Article 5.12 of the Administrative Code of the Russian Federation.

5. Thus, in view of the fact that the election legislation does not formally provide for a distinct order of implementation of the right of citizens to campaign against all candidates at their own expense (not using electoral funds), the norm contained in the interrelated provisions of Para. 5, Article 48 and Article 58 of the Federal Law "On basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum" and Para. 7, Article 63 and Article 66 of the Federal Law "On the election of deputies of the State Duma of the Federal Assembly of the Russian Federation," that implies a ban on election campaigning against all candidates by citizens at their own expense is an excessive, unsubstantiated by constitutional purposes limitation of the freedom of expression and the right to disseminate information in the form of election campaigning, does not comply with the requirement of definiteness and certainty, and therefore, is not consistent with the Constitution of the Russian Federation, its Articles 19, 29 (Para. 1 and Para. 4), and 55 (Article 3).

The federal legislature shall immediately take measures to regulate all issues associated with the order of election campaigning of citizens against all candidates.

Proceeding from the above and following Para. 1 and Para. 2, Article 71; Articles 72, 75, 79, and 100 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," the Constitutional Court of the Russian Federation

Decided as follows:

1. It shall be recognized that the norm contained in the interrelated provisions of Para. 5, Article 48 and Article 58 of the Federal Law "On basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum" and Para. 7, Article 63 and Article 66 of the Federal Law "On the election of deputies of the State Duma of the Federal Assembly of the Russian Federation," as implying a ban on election campaigning against all candidates by citizens at their own expense, be inconsistent with the Constitution of the Russian Federation, its Articles 19, 29 (Para. 1 and Para. 4), and 55 (Article 3).

The federal legislature shall immediately take measures to regulate all issues asso-

¹ *Rossiiskaya Gazeta* (Newspaper of the Russian Federation). December 29, 2005. No. 294(3963). P. 38–39.

ciated with the order of election campaigning of citizens against all candidates.

2. Pursuant to Para. 4, Article 79 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," until the federal legislature provides for appropriate regulation, the courts and other law-enforcement bodies shall directly apply the Constitution of the Russian Federation and follow this Decision in order to preclude disproportionate restriction of the right of citizens to conduct personal election campaigning against all candidates at their own expense.

3. The case of citizen V.B. Bochkov shall be subject to review in the established order in consideration of this Decision, provided there are not obstacles thereto.

4. This Decision shall be final, shall not be subject of appeal, shall be effective immediately following its proclamation, shall be applied directly, and shall not require approval of other bodies and officials.

5. Pursuant to Article 78 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," this Decision shall be immediately published in the "*Sobraniye zakonodatelstva Rossiiskoi Federatsii*" (Collection of Legislation of the Russian Federation), and the "*Rossiyskaya Gazeta*." This Decision shall also be published in the "*Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii*" (Bulletin of the Constitutional Court of the Russian Federation).

3.18 (11.26). DECISION NO.13-P OF DECEMBER 21, 2005 IN THE CASE ON VERIFICATION OF CONSTITUTIONALITY OF CERTAIN PROVISIONS OF THE FEDERAL LAW "ON THE GENERAL PRINCIPLES OF ORGANIZATION OF LEGISLATIVE (REPRESENTATIVE) AND EXECUTIVE BODIES OF STATE POWER OF THE SUBJECTS OF THE RUSSIAN FEDERATION" IN CONNECTION WITH COMPLAINTS SUBMITTED BY A NUMBER OF CITIZENS¹

On Behalf of the Russian Federation

The Constitutional Court of the Russian Federation presided by V.D. Zorkin and composed of judges N.S. Bondar, G.A. Gadzhiyev, Yu.M. Danilov, L.M. Zharkova, G.A. Zhilin, S.M. Kazantsev, M.I. Kleandrov, A.L. Kononov, L.O. Krasavchikova, S.P. Mavrin, N.V. Melnikov, Yu.D. Rudkin, N.V. Seleznyov, V.G. Strekozov, O.S. Khokhryakova, B.S. Ebzeyev, and V.G. Yaroslavtsev,

With participation of citizens V.F. Grishkevich, A.V. Loparyov, and B.B. Nadezhdin, attorney-at-law V.Yu. Prokhorov – representative of the citizens who have petitioned to the Constitutional Court of the Russian Federation, as well as permanent representative of the State Duma at the Constitutional Court of the Russian Federation, E. B. Mizulina, plenipotentiary representative of the Federation Council at the Constitutional Court of the Russian Federation, Yu.A. Sharandin, plenipotentiary representative of the President of the Russian Federation at the Constitutional Court of the Russian Federation, M.V. Krotov,

Following Article 125 (Para. 4) of the Constitution of the Russian Federation,

Clause 3, Para. 1, Para. 3 and Para. 4, Article 3, Para. 1, Article 21; Articles 36, 74, 86, 96, 97, and 99 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation."

Reviewed in an open session the case on verification of constitutionality of certain provisions of the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation."

The case has been reviewed in response to the complaint submitted by citizen V.F. Grishkevich, as well as citizens N.S. Manzhikova, E.S. Morgasova and Zh.A. Sanzhapova, N.A. Anfilatova, V.I. Gurov, M.V. Polezhayev and A.N. Popov, A.N. Varakina, A.V. Moiseyenko, M.E. Osovsky, N.B. Smolyanov and S.N. Tremasova, O.V. Babinsky, M.Yu. Vdovenko, V.P. Kolotov, E.V. Klyushnikova, V.P. Nebalzin, P.T. Timofeyev, E.A. Fedotov and A.S. Yakusheva, Yu.V. Bogush, I.A. Zharskaya and O.G. Mayerov, Yu.E. Gogolev, V.L. Lunev, G.G. Novikov, O.S. Nosov and I.E. Pankratov, S.S. Bukin, V.A. Gudeyev and K.Yu. Kuldakov, A.N. Milostnykh and V.M. Skriplin, O.D. Dyachkin, V.I. Kachanov, V.A. Krysanov, S.A. Nefedov and V.F. Schedrin, A.V. Loparyov, N.P. Lykhin, B.B. Nadezhdin, S.V. Rudakov, V.V. Sidnev, G.E. Sokolova and K.P. Fokin, V.I. Ivanov, I.A. Lebedeva and V.V. Ulyanov, E.A. Dvilyanskaya, Yu.A. Skvortsov and S.A. Tarasov, A.B. Zaitsev and V.V. Popov, Yu.V. Bukhanets, S.A. Zhirkov, M.Yu. Maksimov, and V.A. Orekhov. The case has been reviewed on the grounds of an uncertainty identified in the issue concerning whether the provisions of the Federal Law of October 6, 1999 "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation" (as amended on December 11, 2004 by the Federal Law "On amendments of the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation" and the Federal Law "On basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum") contested by the petitioners were consistent with the Constitution of the Russian Federation.

Given that all the complaints pertain to the same subject matter, the Constitutional Court of the Russian Federation, following Article 48 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," has combined proceedings on these petitions in one case.

Upon examination of messages of judge-rapporteurs, N.S. Bondar and B.S. Ebzeyev, explanations of the parties and their representatives, messages of specialists – Doctor of Political Sciences V.N. Lysenko and deputy of the State Duma S.A. Popov, as well as other documents and materials, the Constitutional Court of the Russian Federation

Established as follows:

1. On February 28, 2005, the Tyumen regional court declined the petition of citizen V.F. Grishkevich demanding invalidation and abolition of the decision of the Tyumen regional Duma of February 17, 2005, "On vesting Sergey Semyonovich Sobyenin with the authorities of the Governor of the Tyumen Region," as illegal. The court justified its decision by claiming that the order of granting authorities of the supreme official of a subject of the Russian Federation (head of the supreme executive

body of state power of a subject of the Russian Federation) to a citizen of the Russian Federation in compliance with which the above decision had been adopted, was directly accounted for by Article 18 of the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation," whereas whether or not the said Federal Law had violated the constitutional rights of citizen V.F. Grishkevich could only be established by means of constitutional proceedings.

In his complaint submitted to the Constitutional Court of the Russian Federation V.F. Grishkevich contests constitutionality of Article 18 of the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation" (as amended on December 11, 2004) in the part providing that a citizen of the Russian Federation is vested with authorities of the supreme official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation) at the suggestion of the President of the Russian Federation by the legislative (representative) body of state power of a subject of the Russian Federation in the order accounted for by this Federal Law and the Constitution (Charter) of the subject of the Russian Federation, as well as constitutionality of corresponding provisions of the Federal Law of December 11, 2004 "On amendments of the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation" and the Federal Law "On basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum."

According to the petitioner, the contested provisions pursuant to which a citizen of the Russian Federation is vested with authorities of the supreme official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation) at the suggestion of the President of the Russian Federation by the legislative (representative) body of state power of the subject of the Russian Federation and not as a result of direct elections by the population of the respective subject of the Russian Federation as it was provided for by the initial version of the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation," illegally restrict the constitutional right of citizens to elect and be elected to bodies of state power and therefore contradict Articles 17, 18, 32, and 55 (Para. 2) of the Constitution of the Russian Federation.

At the session of the Constitutional Court of the Russian Federation dedicated to review of this case citizen V.F. Grishkevich put forward an additional requirement demanding that constitutionality of provisions of the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation" that regulate authorities of the President of the Russian Federation in cases when the legislative body of a subject of the Russian Federation fails to adopt a respective decision, be verified.

Meanwhile, a citizen – by virtue of Article 125 (Para. 4) of the Constitution of the Russian Federation, Clause 3, Para 1, Article 3, Articles 96 and 97 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" – may petition to the Constitutional Court of the Russian Federation and complain about

violation of his constitutional rights and freedoms by a law and his petition may be accepted for review by the Constitutional Court of the Russian Federation provided that the law affects constitutional rights and freedoms and has been applied or is subject to application in a particular case whose review in a court of law or another body authorized to apply the law has been completed or initiated.

Only provisions of Clause 1 and Clause 2 of Article 18 of the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation" (as amended on December 11, 2004) pursuant to which a citizen of the Russian Federation is granted authorities of the supreme official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation) at the suggestion of the President of the Russian Federation by the legislative (representative) body of state power of a subject of the Russian Federation had been applied in the case in connection with which V.F. Grishkevich petitioned to the Constitutional Court of the Russian Federation.

Other provisions of the said Federal Law, verification of constitutionality of which was insisted upon by V.F. Grishkevich at the session of the Constitutional Court of the Russian Federation, had not been applied in the aforementioned case, nor had they been subject to application. Consequently, pursuant to Clause 2, Para. 1, Article 43 and Article 68 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," his complaint in this part shall not be acceptable and proceedings thereupon shall be terminated.

Constitutionality of the same provisions contained in Clause 1 and Clause 2, Article 18 of the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation" is also contested in the petitions submitted by citizens who had been denied by election commissions of the Republic of Kalmykia, the Komi Republic, the Republic of Mordovia, the Altai and Khabarovsk territories, the Bryansk, Kamchatka, Kursk, Lipetsk, Moscow, Novgorod, Oryol, Tambov and Tver regions registration of their referendum initiative groups put together to conduct referenda to identify citizens' attitude with respect to how a citizen of the Russian Federation should obtain authorities of the supreme official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation) – by means of direct elections with participation of citizens residing on the territory of a particular subject of the Russian Federation, or in the order established by Article 18 of the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation." Legislative (representative) bodies of state power of the Republic of Kalmykia, the Komi Republic, the Republic of Mordovia, the Altai and Khabarovsk territories, the Bryansk, Kamchatka, Kursk, Lipetsk, Moscow, Novgorod, Oryol, Tambov and Tver regions had found the issue suggested for referenda to be noncompliant with respective requirements of the federal legislation. Courts of the general jurisdiction of the Republic of Kalmykia, the Komi Republic, the Republic of Mordovia, the Altai and Khabarovsk territories, the Bryansk, Kamchatka, Kursk, Lipetsk, Moscow, Novgorod, Oryol, Tambov and Tver regions had refused to satisfy the petitions of citizens demanding that relevant election commissions should regis-

ter their referendum initiative groups.

Law enforcers justified their refusals by referring to Clause 2, Article 12 of the Federal Law "On basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum" pursuant to which only those issues may be included in a referendum of a subject of the Russian Federation that fall within the jurisdiction of the subject of the Russian Federation or in the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation provided that these issues are not regulated by the Constitution of the Russian Federation or a federal law; given that the said issue had been regulated by the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation" it may not be included in referenda in the subjects of the Russian Federation.

In addition, the complaints contest constitutionality of provisions of the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation" pursuant to which the President of the Russian Federation is vested with the authority to appoint acting supreme official of a subject of the Russian Federation (acting head of the supreme executive body of state power of a subject of the Russian Federation), the right to dismiss the supreme official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation), and the right to disband the legislative (representative) body of state power of a subject of the Russian Federation (Clause 4 and Clause 4¹, Article 9, Subclause "b" and Subclause "d", Clause 1, Clauses 5, 6, 9, and 11, Article 19, Clauses 3, 3¹, 4, and 6, Article 29¹).

According to the petitioners, the provisions they contest excessively restrict the right of the citizens to participate in administration of state affairs, as well as their electoral rights, violate the constitutional principles of separation of powers, delineation of jurisdictions and authorities between the Russian Federation and its subjects, and are inconsistent with the constitutional provisions regulating the authorities of the President of the Russian Federation, and therefore contradict Articles 10, 11 (Para. 2), 32 (Para. 1 and Para. 2), 55 (Para. 2), 71 (Clause "d"), 72 (Clause "l" and Clause "n", Para. 1), 73, 78, 83, 84, 85, 96 (Para. 2), 117 (Para. 5), and 125 (Para. 2) of the Constitution of the Russian Federation.

In the meantime, in the particular cases in connection with which the plaintiffs have petitioned to the Constitutional Court of the Russian Federation, the provisions of Clause 4 and Clause 4², Article 9, Subclause "b" and Subclause "d", Clause 1, Clauses 5, 6, 9, and 11, Article 19, Clauses 3, 3¹, 4, and 6, Article 29¹ of the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation" had not been applied, nor had they been subject to application and therefore they may not be considered to affect the constitutional rights of petitioners as provided for by Clause 1, Article 97 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation." In this part their demands addressed to the Constitutional Court of the Russian Federation are essentially confined to a requirement to verify constitutionality of the said provisions in the order of abstract legal control. Such verification, however, may only be conducted at requests of authorized subjects listed in Article 125 (Para. 2) of

the Constitution of the Russian Federation, which list does not include citizens. Consequently, in this part these complains shall not be acceptable and proceedings thereupon shall be terminated.

Thus, in this case, the issue in question encompasses the provisions contained in Clause 1 and Clause 2, Article 18 of the Federal Law of October 6, 1999 "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation" (as amended on December 11, 2004 by the Federal Law "On amendments of the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation" and the Federal Law "On basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum"), pursuant to which a citizen of the Russian Federation is vested with authorities of the supreme official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation) at the suggestion of the President of the Russian Federation by the legislative (representative) body of state power of a subject of the Russian Federation.

2. Pursuant to the Constitution of the Russian Federation, the Russian Federation is a democratic federative law-bound state (Para. 1, Article 1); the bearer of sovereignty and the only source of power in the Russian Federation is its multinational people which exercises its power directly, as well as through bodies of state power and local self-government; referenda and free elections are the supreme direct expression of the power of the people (Paras. 1, 2, 3, Article 3); the sovereignty of the Russian Federation covers its entire territory (Para. 1, Article 4); the Constitution of the Russian Federation and federal laws have supremacy in the entire territory of the Russian Federation and the Constitution of the Russian Federation has the supreme juridical force and direct action (Para. 2, Article 4; Para. 1, Article 15); the federal structure of the Russian Federation is based on its state integrity, the unity of the system of state authority, the division of subjects of authority and powers between the bodies of state power of the Russian Federation and bodies of state power of the subjects of the Russian Federation (Para. 3, Article 5).

The said constitutional provisions that secure the constitutional and legal status of the Russian Federation as a sovereign state based on the principles of democracy, rule of law, and federalism predetermine the necessity of a relevant organizational and legal mechanism of achievement of the fundamental goals proclaimed by the multinational people of the Russian Federation at the adoption of the Constitution of the Russian Federation, such as affirmation of the human rights and freedoms, the firmness of the democratic foundation of Russia, the revival of its sovereign statehood, and preservation of the historically established state unity (Preamble of the Constitution of the Russian Federation).

Proceeding from these goals and considering the requirement to ensure an adequate balance between the constitutionally protected values and the national interests accounted for by the Constitution of the Russian Federation, the Russian Federation, at each particular stage of the development of its statehood, independently modifies its own state-legal mechanism, including its particular part that serves to ensure the unity of the system of the state power and division of authorities and delimitation of jurisdictions between the bodies of state power of the Russian Federation

and the bodies of state power of the subjects of the Russian Federation. This authority, and an inseparable element of the constitutional-legal status of the Russian Federation, is accounted for by its state sovereignty the fullness of which originally belongs to the Russian Federation in its entirety, and not to its subjects, which also accounts for the federative organization of the Russian Federation (Decision of the Constitutional Court of the Russian Federation No.10-P in the case on verification of constitutionality of certain provisions of the Constitution of the Altai Republic and the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation").

The said constitutional foundations are particularized in other provisions of the Constitution of the Russian Federation that regulate the establishment of the system of bodies of legislative, executive, and judicial power in the Russian Federation, the order of their organization and activities, their formation, as well as the electoral rights of citizens and their right to participate in a referendum. At the same time, the Constitution of the Russian Federation does not directly regulate the order of formation of bodies of state power of the subjects of the Russian Federation. In addition, proclaiming free elections and referenda to be the supreme expression of the power of the multinational people of the Russian Federation, and securing the electoral rights of citizens and their right to participate in a referendum (Para. 3, Article 3; Para. 1 and Para. 2, Article 32), it does not consider elections as the only acceptable mechanism used to form all bodies of public power at every level of its organization.

For example, the State Duma is elected (Para. 1, Article 96), as is the President of the Russian Federation (Para. 1, Article 81). As far as the Federation Council is concerned, only the Federation Council of the first convocation was elected (Clause 7, Concluding and Transitional Provisions). By virtue of Articles 95 (Para. 2) and 96 (Para. 2), it is put together of two representatives from each subject of the Russian Federation – one from the representative and one from the executive body of state power, i.e., the issue of vesting a citizen of the Russian Federation with authorities of a member of the Federation Council is left to the discretion of the federal legislature. The Chairman of the Government of the Russian Federation is appointed by the President of the Russian Federation with approval of the State Duma (Clause "a", Article 83; Para. 1, Article 111). Deputy Chairpersons of the Government of the Russian Federation and federal ministers are appointed by the President of the Russian Federation at the suggestion of the Chairman of the Government of the Russian Federation (Clause "d", Article 83; Para. 2, Article 112).

By doing so, the Constitution of the Russian Federation – in order to balance such foundations of the Russian statehood as democracy, sovereignty, state integrity, and federalism – accounts for a variety of methods used to grant appropriate authorities to officials and bodies of public power that are not directly listed in the Constitution of the Russian Federation as subject to election, as well as for a possibility to change a previously established order of granting authorities to relevant bodies and officials, provided that constitutional rights and freedoms and other universally recognized human rights and freedoms, including the right to free elections, are observed.

The Universal Declaration of Human Rights, proclaiming that everyone shall have the right to participate in the government of their country directly or through

freely chosen representatives, and providing that the will of the people shall be the basis of the authority of government and that this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures (Article 21) does not specify, however, which particular bodies of public power and of which level are subject to formation exclusively through elections, nor does it obligate signatory states to organize only direct elections to bodies of public power. An analogous approach is reflected in the International Covenant on Civil and Political Rights (Article 25).

Article 3 of Protocol No.1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms provides that the High Contracting Parties should undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature. In its practice, the European Court of Human Rights, recognizing a significant range of legislative discretion in the regulation of electoral rights (the decision of July 1, 1997 in the case of "Gitonas et al. vs. Greece), proceeds from the fact that the provision of Article 3 on free elections only applies to elections to a body of legislative power or, should such a body consist of two or more chambers, even to elections to only one of them; at the same time, the "body of legislative power" – taking into account the constitutional system of a particular state – may be interpreted not only as country's parliament, but also, if, for example, the state is federative, as representative bodies authorized to pass legislation in subjects of the federation (decision of March 2, 1987 in the case of Mathieu-Mohin & Clerfayt vs. Belgium). For example, in the decision of January 25, 2000 on the issue of acceptability of a grievance submitted by Viktor Cherepkov against the Russian Federation, the European Court of Human Rights specified that legislative power in the Russian Federation is exercised by the parliament of the Russian Federation (Article 94 of the Constitution of the Russian Federation); the Constitution of the Russian Federation grants the same authorities to the parliaments of the subjects of the Russian Federation (Articles 11, 73, and 76 of the Constitution of the Russian Federation).

Thus, by virtue of the said provisions of the Constitution of the Russian Federation and international legal acts that are an integral component of the legal system of the Russian Federation, the federal legislature has the right to choose most effective and proportionate-to-constitutional-goals mechanisms of organization of state power including vestment of authorities with officials and bodies of state power with respect to which no relevant order is accounted for by the Constitution of the Russian Federation, provided that constitutional norms and principles are observed and authorities and interests of the Russian Federation and its subjects are adequately balanced.

3. In determination and delineation of authorities of the Russian Federation and its subjects in the sphere of organization of state power of the subjects of the Russian Federation one should proceed from interrelated provisions of Article 5 (Para. 3), 11 (Para. 2), 72 (Clause "n", Para. 1), 76 (Para. 2), and 77 (Para. 1) of the Constitution of the Russian Federation.

Pursuant to the Constitution of the Russian Federation, the establishment of common principles of organization of bodies of state power of the subjects of the Russian Federation, as well as common principles of organization of the system of

bodies of state power of the subjects of the Russian Federation, including, consequently, those principles that concern the status and the foundations of the order of formation of these bodies, falls within the area of joint jurisdiction of the Russian Federation and its subjects (Clause "n", Para. 1, Article 72). Issues that fall within the joint jurisdiction are regulated by federal laws, as well as applicable laws and other normative acts of the subjects of the Russian Federation (Para. 2, Article 76 of the Constitution of the Russian Federation).

Establishing common principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation and specifying them in a federal law, the federal legislature is limited in its discretion by the constitutional provisions regulating organization of power in the Russian Federation as a democratic, federative, and law-bound state. The subjects of the Russian Federation, in turn, establishing their systems of bodies of state power independently, act in compliance with the foundations of the constitutional system of the Russian Federation and the common principles of organization of representative and executive bodies of state power secured by the federal law (Para. 1, Article 77 of the Constitution of the Russian Federation). This authority may not be exercised by the subjects of the Russian Federation to undermine the integrity of the system of state power in the Russian Federation (Para. 3, Article 5; Para. 2, Article 77; Para. 2, Article 78) and must be exercised within those legal boundaries that are determined by the Constitution of the Russian Federation and the federal laws adopted on its basis.

By virtue of Articles 5 (Para. 3); 10, 11 (Para. 1 and Para. 2), and 72 (Clause "n", Para. 1), 77, and 78 (Para. 2) of the Constitution of the Russian Federation, the federal legislature, exercising its right to establish common principles of organization of representative and executive bodies of state power of the subjects of the Russian Federation, may account for a legal basis to underpin relations among the bodies of legislative and executive power within the framework of separation of powers at the level of a subject of the Russian Federation, the order of formation of these bodies, in particular, the order of vestment of authorities with the supreme official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation).

This conclusion is supported by decisions of the Constitutional Court of the Russian Federation. As it has been pointed out by the Constitutional Court of the Russian Federation, from Articles 72 (Clause "n", Para. 1), 76 (Para. 2), and 77 of the Constitution of the Russian Federation it follows that in order to construct a unified system of executive power in the Russian Federation the federal legislature – the Federal Assembly (and first and foremost, the State Duma) and legislative (representative) bodies of the subjects of the Russian Federation must adopt respective laws within their jurisdictions; at the same time, the federal legislature must, following the same principle in compliance with which each citizen of the Russian Federation has on its territory all the rights and freedoms, as well as equal responsibilities accounted for by the Constitution of the Russian Federation, and in consideration of the unity of the constitutional-legal status of the citizen of the Russian Federation that follows from Articles 6 (Para. 2), 15 (Para. 4), and 19 (Para. 1 and Para. 2), establish a unified (common) order of granting authorities of the supreme official of a subject of the

Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation) for all subjects of the Russian Federation, ensuring that organization of power in a subject of the Russian Federation in its principle corresponds with organization of power at the federal level (Decision of April 30, 1996 No.11-P in the case on verification of constitutionality of Clause 2 of the Directive of the President of the Russian Federation "On measures to strengthen the unified system of executive power in the Russian Federation" and Clause 2.3 of the Provision on the head of administration of a territory, a federal city, an autonomous region, autonomous district of the Russian Federation; the Decision of June 8, 2000 No.91-O adopted in response to the inquiry of the Republic of Ingushetia on verification of constitutionality of provisions of a number of articles of the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation").

4. The foundations of the legal status, functions, and authorities of the supreme official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation) are determined in Chapter III "Bodies of executive power of a subject of the Russian Federation" of the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation." Consequently, the federal legislature regards the supreme official of a subject of the Russian Federation as an element of the system of executive power.

Being part of the system of bodies of state power of a subject of the Russian Federation and essentially head of executive power of a subject of the Russian Federation, this official at the same time is a constituent of the unified system of executive power of the Russian Federation and as such is responsible for ensuring that the supreme body of executive power of a subject of the Russian Federation implements on the territory of this subject of the Russian Federation not only its constitution (charter), laws, and other normative acts, but also the Constitution of the Russian Federation, federal laws, and other normative acts of the Russian Federation (Clause 1 and Clause 2, Article 20 of the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation"). By status, this official – by virtue of the principle of the unity of the system of state power – is directly subordinate to the President of the Russian Federation who, as head of the state elected at direct national elections, ensures coordinated operation of all bodies of state power on the basis of interrelated provisions of Articles 19 (Para. 1 and Para. 2), 77 (Para. 1), 78 (Para. 4), and 80 (Para. 1 and Para. 2) of the Constitution of the Russian Federation.

In this capacity the supreme official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation) participates not only in relations at the level of a respective subject of the Russian Federation, exercising authorities within the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation, as well as within the exclusive jurisdiction of the subjects of the Russian Federation, but also in relations of the federal level, inasmuch as such participation is accounted for and allowed by the federal laws and other normative acts of federal bodies of state power (Decision of the Constitutional Court of the Russian Federation of May 13, 2004 No.10-P in the case

on verification of constitutionality of Para. 2, Article 16 of the Law of the Pskov region "On protection of the population and territories from emergency situations of natural and technogenic character"). Respectively, the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation," as compared to the previous legal regulation, provides in Clause 3, Article 26¹ that authorities exercised by bodies of state power of a subject of the Russian Federation within the jurisdiction of the Russian Federation are determined not only by the federal laws, but also by normative legal acts of the President of the Russian Federation and the Government of the Russian Federation, as well as agreements, issued in compliance therewith.

5. The order of vestment of the supreme official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation) with authorities introduced into the Federal Law of December 11, 2004 "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation" and the Federal Law "On basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum" provides that this procedure requires participation of both the Russian Federation and a subject of the Russian Federation represented, respectively, by the President of the Russian Federation who proposes a candidate for the position, and the legislative (representative) body of state power of the subject of the Russian Federation that adopts a decision to grant (or not to grant) authorities to the candidate suggested by the President of the Russian Federation.

Issues related to the formation of supreme executive bodies of state power of the subjects of the Russian Federation, including those concerning participation in appointment of their heads of the legislative (representative) body of state power of a subject of the Russian Federation, have already been analyzed by the Constitutional Court of the Russian Federation (Decision of January 18, 1996 No.2-P in the case on verification of constitutionality of a number of provisions of the Charter (Main Law) of the Altai Territory, Decision of February 1, 1996 No.3-P in the case on verification of constitutionality of a number of provisions of the Charter (Main Law) of the Chita Region, Decision of December 10, 1997 No.19-P in the case on verification of constitutionality of a number of provisions of the Charter (Main Law) of the Tambov Region, Decision of June 7, 2000 No.10-P in the case of verification of certain provisions of the Constitution of the Altai Republic and the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation," Decision of December 16, 2004 No.386-O adopted in response to a request of the Governor of the Nizhniy Novgorod Region to verify constitutionality of the Laws of the Nizhniy Novgorod region "On amendments of Article 28 of the Charter of the Nizhniy Novgorod Region" and "On amendments of Article 8 of the Law of the Nizhniy Novgorod Region "On the Government of the Nizhniy Novgorod Region").

Assessing, in compliance with Article 125 of the Constitution of the Russian Federation, Article 3 and Para. 2, Article 74 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," constitutionality of a certain normative legal act proceeding from its literal meaning, the meaning that has been

attributed thereto by the official interpretation or the established law-enforcement practice, as well as proceeding from the place of the given act within the system of legal acts, the Constitutional Court of the Russian Federation has resorted to the analysis of provisions of the Constitution of the Russian Federation as a criterion of such appraisal.

In particular, the Constitutional Court of the Russian Federation has concluded that, as such, the right of a legislative (representative) body of a subject of the Russian Federation to participate in the formation of the executive body of power of the given subject of the Russian Federation does not contradict the foundations of the constitutional system of the Russian Federation; such participation, however, must not paralyze operations of bodies of executive power of the subject of the Russian Federation that are part of the unified system of executive power of the Russian Federation, and deprive them of independence as they exercise their authorities within the constitutional-legal system of separation of powers.

Therefore, recognizing certain provisions of the Charter (Main Law) of the Altai Territory unconstitutional, the Constitutional Court of the Russian Federation proceeded from unacceptability of election of head of the administration of the Altai Territory by its legislative body of state power – the Legislative Assembly of the Altai Territory – which, in compliance with the legislation of the Altai Territory that was effective at that moment, in absence of a special federal law regulating the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation, was authorized to approve (at the proposal of head of the territorial administration) the structure of the administration and the Administration Council that adopts decisions on the most important territorial issues, to support suggestions of head of the territorial administration on appointment/dismissal of his first deputy, heads of territorial ministries – the ministry of internal affairs, the ministry of justice, the ministry of finance, the ministry of social protection of the population, the ministry of territorial property management, etc., because in such a case the executive power would be entirely withdrawn from under people's control and would be held completely unaccountable thereby, whereas the head of administration elected in such a fashion could not be considered a legitimate and independent representative of executive power (Decision No.2-P of January 18, 1996).

The legal positions formulated in the said decisions are important for the appraisal of the constitutional status of the supreme official of a subject of the Russian Federation within the mechanism of separation of state power in the subjects of the Russian Federation. At the same time, they may not be fully utilized to assess the new order of granting authorities to the supreme official of a subject of the Russian Federation that entails participation in this procedure of the legislative (representative) body of state power of the subject of the Russian Federation and the President of the Russian Federation.

Given that provisions of the Constitution of the Russian Federation produce their regulatory effect both directly and through respective particularizing laws within a certain system of legal regulation and an evolving socio-historical context at that, the legal positions formulated by the Constitutional Court of the Russian Federation as a result of interpretation of certain provisions of the Constitution of the Russian Federation as

applied to the normative act under review within the system of the previous legal regulation and the constitutional practice that existed at that time, may be particularized or modified in order to adequately determine the meaning of certain constitutional norms, their letter and spirit, taking into account concrete socio-legal conditions of their application, including changes within the system of legal regulation.

For example, the conclusion of Decision No.2-P of January 18, 1996 to the effect that by virtue of Articles 3 (Para. 2) and 32 of the Constitution of the Russian Federation, the supreme official that puts together a body of executive power receives their mandate directly from the people and is accountable thereby, was made in consideration of the legal regulation that was effective at that time: pursuant to the Federal Law of December 6, 1994 "On basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum," head of the executive body of state power of a subject of the Russian Federation was to be elected by citizens. Back then, the order of formation of bodies of executive power of the subjects of the Russian Federation on the basis of direct election of heads of administrations was accounted for by charters of most of the subjects of the Russian Federation.

Consequently, the argument about direct elections of head of the executive body of state power of a subject of the Russian Federation as an order that is adequate to Articles 3 and 32 of the Constitution of the Russian Federation, taking into account the fact that the Constitutional Court of the Russian Federation has never considered if other constitutionally acceptable forms of legal regulation are possible that do not contradict the constitutional principle of free elections and comply with requirements of balancing the principles of democracy and the unity of the system of executive bodies of state power, as well as authorities of the Russian Federation and authorities of its subjects, may not be interpreted as the impossibility to establish a different order that meets the requirements of the right to free elections and the requirement to ensure sufficient balance between the said constitutional values.

The identified constitutional-legal nature of the institute of the supreme official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation), considering that pursuant to the Constitution of the Russian Federation bodies of state power in the subjects of the Russian Federation are primarily formed on the basis of the same principles as the federal bodies of state power, provides for the possibility to vest a citizen of the Russian Federation with authorities of the supreme official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation) not exclusively through direct elections by the population of a subject of the Russian Federation.

6. The Constitution of the Russian Federation does not directly provide for the authority of the President of the Russian Federation to propose to the legislative (representative) body of state power of a subject of the Russian Federation a candidate for the position of the supreme official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation). However, this circumstance as such does not prevent the federal legislature – as it establishes the general principles of organization of executive bodies of state power in compliance with Articles 5 (Para. 3), 72 (Clause "n", Para. 1), 77, 78 (Para. 2), 80 (Para.

1 and Para. 2), and 85 of the Constitution of the Russian Federation – from vesting the President of the Russian Federation as head of the state who, by virtue of Article 81 (Para. 1) of the Constitution of the Russian Federation, is the direct representative of the entire people of the Russian Federation, with certain functions associated with participation in vestment of a citizen of the Russian Federation with authorities of the supreme official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation), provided it ensures an adequate balance in the combination of the constitutional principles of the unity of the system of executive power in the Russian Federation and independence of the subjects of the Russian Federation in the establishment of a system of their bodies of state power and their formation.

The said right of the President of the Russian Federation as such may not be considered to violate the principles of federalism and separation of powers because, by virtue of the contested provisions of Clauses 1 and 2, Article 18 of the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation," the final decision on vesting a citizen of the Russian Federation with authorities of the supreme official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation) is made by the legislative (representative) body of state power of the subject of the Russian Federation.

Additionally, to account for the interests of the subjects of the Russian Federation, the said Federal Law, as it follows from the same provisions of Article 18 in their interrelation with the provisions of Clause 4¹, Article 9, provides for the requirement of coordination of the position of the President of the Russian Federation and the legislative (representative) body of state power of a subject of the Russian Federation on account of the candidate nominated for the position of the supreme official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation), which is ensured, *inter alia*, by relevant consultations the right to participate in which is granted to the legislative (representative) body of state power of a subject of the Russian Federation, as well as political parties, their regional chapters, and public organizations.

By virtue of Clauses 1 and 2, Article 18 of the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation," in order to fully ensure the right of the subjects of the Russian Federation to independently form their bodies of state power, the possibility for the President of the Russian Federation to propose to the legislative (representative) body of state power of a subject of the Russian Federation several candidates for the position of the supreme official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation) is not excluded, nor is the possibility of the legislative (representative) body of a subject of the Russian Federation to propose to the President of the Russian Federation a candidate (candidates) for the said position.

This is supported by the current legislative process undertaken to supplement the

said Federal Law, as well as the Federal Law "On political parties," with provisions on the right of the legislative (representative) body of a subject of the Russian Federation to submit to the President of the Russian Federation respective proposals initiated by political parties (their regional chapters) that have received the largest number of deputy mandates within the legislative (representative) body of the given subject of the Russian Federation.

7. The right to participate in direct elections of the supreme official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation) and be elected to this position is not secured as a constitutional right of the citizen of the Russian Federation. This right is also not found among the universally recognized rights and freedoms of the human being and citizen that are not specifically mentioned in the Constitution of the Russian Federation.

Such a possibility for the citizens of the Russian Federation and, consequently, electiveness of supreme officials of the subjects of the Russian Federation, has been previously accounted for by the Federal Law of December 5, 1995 "On the order of formation of the Federation Council of the Federal Assembly of the Russian Federation" (that had been effective before the Federal Law "On the order of formation of the Federation Council of the Federal Assembly of the Russian Federation" of August 5, 2000 took effect) and the Federal Law of October 6, 1999 "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation" (its edition that had been effective before the Federal Law of December 11, 2004 took effect).

Unsecured constitutionally, this possibility by its normative substance is not a required element either of the constitutional right of citizens to elect and be elected to bodies of state power, or of their other constitutional rights, such as the right of citizens of the Russian Federation to participate in administration of state affairs and the right to access state service secured by Article 32 of the Constitution of the Russian Federation. It was introduced by legislative acts regulating the order of formation of bodies of state power in the capacity of an integral part of the constitutional-legal institute of organization of bodies of state power in the subjects of the Russian Federation and, consequently, was derived from organization of state power in a subject of the Russian Federation and predetermined by the order that has been established by the federal law in compliance with the Constitution of the Russian Federation to fill this position.

Amending the order of vestment of a citizen of the Russian Federation with authorities of the supreme official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation) established by the original version of the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation" the federal legislature has excluded from citizen's authorities related to this procedure the right to elect and be elected to this position by means of direct elections. Nevertheless, since it does not follow from the Constitution of the Russian Federation that direct elections are the only legitimate method for a citizen of the Russian Federation to receive authorities of the supreme official of a subject of the Russian Federation (head of the supreme executive body of

state power of a subject of the Russian Federation), the new order may not be considered to restrict a constitutional right and thus violate Articles 32 and 55 of the Constitution of the Russian Federation.

The provisions of the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation" contested by the petitioners provide for the possibility for the President of the Russian Federation to propose a candidate for the position of the supreme official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation) to the legislative (representative) body of state power of a subject of the Russian Federation. This provides for the possibility for the President of the Russian Federation to select an adequate candidate from among the citizens of the Russian Federation who meet the requirements with respect to the supreme official of a subject of the Russian Federation (head of the supreme executive body of power of a subject of the Russian Federation), inter alia, on the basis of such criteria as professionalism, competence, and experience. This is also supported by Directive of the President of the Russian Federation No.1603 of December 27, 2004 "On the order of consideration of candidates for the position of the supreme official (head of the supreme executive body of state power) of a subject of the Russian Federation" (as amended on June 29, 2005).

As far as the legislative (representative) body of state power of a subject of the Russian Federation formed by means of elections held on the basis of the universal direct suffrage by secret ballot is concerned, in compliance with Articles 1 (Para. 1), 3 (Paras. 1, 2, 3), 5 (Para. 3), 10, 11, 66, 72, 73, 77 (Para. 1), 134, and 136 of the Constitution of the Russian Federation and provisions of Clause 2, Article 1, Article 4, and Clause 3, Article 10 of the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation," it is, as it has been confirmed by Decision of the Constitutional Court of the Russian Federation No.9-p of April 12, 2002 in the case on verification of constitutionality of provisions of Articles 13 and 14 of the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation," a fully authorized body of popular representation and therefore it adopts all the state decisions that fall within its scope of authority, including, consequently, the decision to grant authorities of the supreme official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation), expressing the will of the population of a subject of the Russian Federation and advocating its interests.

8. Thus, the provisions on granting authorities of the supreme official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation) to a citizen of the Russian Federation accounted for by Clauses 1 and 2, Article 18 of the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation" as amended by the Federal Law of December 11, 2004 "On amendments of the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian

Federation" and the Federal Law "On basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum" may not be considered to violate the constitutional principles of federalism, separation of powers, and organization of executive bodies of state power in the Russian Federation required to ensure the rights and freedoms of the human being and citizen, as well as the balance between the authorities and legal interests of the Russian Federation and its subjects; nor do they violate the rights of citizens secured by the Constitution of the Russian Federation to participate in administration of state affairs, to elect and be elected to bodies of state power, and as such they do not contradict the Constitution of the Russian Federation.

Proceeding from the above and following Article 6, Para. 1 and Para. 2, Article 71; Articles 72, 74, 75, 79, and 100 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," the Constitutional Court of the Russian Federation

Decided as follows:

1. It shall be recognized that provisions contained in Clause 1 and Clause 2 of Article 18 of the Federal Law of October 6, 1999 "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation" as amended by the Federal Law of December 11, 2004 "On amendments of the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation" and the Federal Law "On basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum," pursuant to which a citizen of the Russian Federation is granted authorities of the supreme official of a subject of the Russian Federation (head of the supreme executive body of state power of a subject of the Russian Federation) at the suggestion of the President of the Russian Federation by the legislative (representative) body of state power of a subject of the Russian Federation be consistent with the Constitution of the Russian Federation.

2. Proceedings on the grievance submitted by citizen V.F. Grishkevich in the part concerning the provisions of the Federal Law "On the general principles of organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation" verification of whose constitutionality he demanded at the session of the Constitutional Court of the Russian Federation, and on the grievances of other citizens – in the part concerning verification of constitutionality of Clauses 4 and 4¹, Article 9, Subclause "b" and Subclause "d", Clause 1, Clauses 5, 6, 9, and 11, Article 19, Clauses 3, 3¹, 4, and 6, Article 29¹ of the said Federal Law – shall be terminated.

3. This Decision shall be final, shall not be subject of appeal, shall be effective immediately following its proclamation, shall be applied directly, and shall not require approval of other bodies and officials.

4. Pursuant to Article 78 of the Federal Constitutional Law "On the Constitutional

¹ The Section does not include some documents that were included in the Russian-language printed and electronic versions of the Collection.

² *Bulleten Verkhovnogo Suda Rossiiskoi Federatsii* (Bulletin of the Supreme Court of the Russian Federation). 1996. No. 1. P. 3–6.

Court of the Russian Federation," this Decision shall be immediately published in the "*Sobraniye zakonodatelstva Rossiiskoi Federatsii*" (Collection of Legislation of the Russian Federation) and the "*Rossiyskaya Gazeta*." This Decision shall also be published in the "*Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii*" (Bulletin of the Constitutional Court of the Russian Federation).

DECISIONS OF THE SUPREME COURT OF THE RUSSIAN FEDERATION¹

3.19 (11.27). DECISION OF THE PLENUM OF THE SUPREME COURT OF THE RUSSIAN FEDERATION NO. 8 OF OCTOBER 31, 1995 "ON CERTAIN ISSUES OF APPLICATION OF THE CONSTITUTION OF THE RUSSIAN FEDERATION BY COURTS IN ADMINISTRATION OF JUSTICE"²

The provision on the supreme legal force and direct application of the Constitution secured by the Constitution of the Russian Federation implies that all constitutional norms supersede the laws and normative acts by virtue of which the courts must follow the Constitution of the Russian Federation in adjudication of particular cases.

To ensure uniform application of constitutional norms in administration of justice the Plenum of the Supreme Court of the Russian Federation has deemed it appropriate to provide the following clarifications:

1. Pursuant to Article 18 of the Constitution of the Russian Federation, the rights and freedoms of the human being and citizen are directly operative. They determine the essence, meaning and implementation of laws, the activities of the legislative and executive authorities, local self-government and are ensured by the administration of justice.

Taking into account this constitutional provision, as well as the provision of Para. 1, Article 46 of the Constitution of the Russian Federation, that guarantees everyone the right to judicial protection of his rights and freedoms, the courts must ensure proper protection of rights and freedoms of a human being and citizen by timely and adequate adjudication of cases.

2. Pursuant to Para. 1, Article 15 of the Constitution of the Russian Federation, the Constitution of the Russian Federation has the supreme juridical force, direct action and is used on the whole territory of the Russian Federation. In compliance with this constitutional provision, when the courts adjudicate cases they must appraise the contents of applicable law or normative act that regulates the legal relations under the court's review, and in all applicable cases apply the Constitution of the Russian Federation as a directly operative act.

Adjudicating a case the court must apply the Constitution, in particular, when:

a) provisions secured by a constitutional norm, proceeding from its implication, do not require additional regulation or refer to a possibility of its application under the condition of adoption of a federal law that regulates the rights, freedoms, and

responsibilities of a human being and citizen, and other provisions;

b) the court concludes that the federal law that had been in force on the territory of the Russian Federation prior to the enactment of the Constitution of the Russian Federation contradicts thereto;

c) the court concludes that a federal law adopted after the enactment of the Constitution of the Russian Federation contradicts corresponding provisions of the Constitution;

d) a law or a normative act adopted by a subject of the Russian Federation within the common jurisdiction of the Russian Federation and subjects of the Russian Federation contradicts the Constitution of the Russian Federation while the federal law that must regulate the legal relations under the court's review is nonexistent.

Whenever an article of the Constitution of the Russian Federation is referential, the courts must apply the law that regulates the legal relations under their review. A decision of the Constitutional Court of the Russian Federation recognizing a certain norm of the law as unconstitutional does not prevent application of other provisions of this law.

Normative decrees of the President of the Russian Federation as head of the state are subject to application by courts in adjudication of particular cases if they do not contradict the Constitution of the Russian Federation and the federal laws (Para. 3, Article 90 of the Constitution of the Russian Federation).

3. If uncertain whether or not the applied law or the law that is subject to application in a particular case is consistent with the Constitution of the Russian Federation, the court, proceeding from the provisions of Para. 4, Article 125 of the Constitution of the Russian Federation, petitions to the Constitutional Court of the Russian Federation requesting verification of constitutionality of the law in question. Such a petition, pursuant to Article 101 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," may be submitted by courts of the first, cassation, or supervisory instance at any stage of case proceedings.

The court must document the necessity to petition to the Constitutional Court of the Russian Federation in the form of a motivated decision. The petition itself must be issued in writing as a separate document.

In the petition requesting verification of constitutionality of the applied law or the law that is subject to application in a particular case the court, in compliance with the requirements of Article 37 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation," must specify the exact title, number, adoption date, publication source, and other data on the legislative act whose constitutionality is subject to verification, as well as an explanation of why the court has decided to submit the petition. Pursuant to Article 38 of the said Federal Constitutional Law, the petition must be accompanied with the text of the law whose constitutionality is subject to verification, and Russian translations of all documents and other materials that originally are not in Russian.

In connection with submission of a petition to the Constitutional Court of the Russian Federation requesting verification of constitutionality of the applied law or the law that is subject to application, case proceedings or execution of the adopted decision, pursuant to the requirements of Article 103 of the Federal Constitutional Law "On the Constitutional Court Russian Federation," must be suspended until the issue is resolved by the Constitutional Court of the Russian Federation, which must

be specified in the aforementioned court decision.

If the defendant is in custody the court may consider modification of the restraining measure.

4. In adjudication of cases the courts must take into consideration that if a law or a normative act of a subject of the Russian Federation that is subject to application contradicts the federal law that falls within the jurisdiction of the Russian Federation or the common jurisdiction of the Russian Federation and a subject of the Russian Federation, then, pursuant to the provisions of Para. 5, Article 76 of the Constitution of the Russian Federation, the court must pass a decision in compliance with the federal law.

If there are contradictions between a normative act of a subject of the Russian Federation that falls within the jurisdiction of a subject of the Russian Federation, and a federal law, then, pursuant to Para. 6, Article 76 of the Constitution of the Russian Federation, the normative act of the subject of the Russian Federation must apply.

5. In administration of justice the courts must proceed from the premise that pursuant to Para. 4, Article 15 of the Constitution of the Russian Federation, the universally recognized principles and norms of the international law secured by international covenants, conventions, and other instruments (in particular, by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights), as well as international treaties of the Russian Federation are an integral part of its legal system. The same constitutional norm provides that if an international treaty of the Russian Federation establishes rules that differ from those accounted for by law, the rules of the international treaty must apply.

In consideration of the above, the court must not apply norms of the law that regulates legal relations under the court's review if the international treaty, mandatory compliance with which has been adopted in the form of a federal law of the Russian Federation, establishes rules that differ from those accounted for by the law. In such cases rules of the international treaty of the Russian Federation must apply.

At the same time, the courts must bear in mind that by virtue of Para. 3, Article 5 of the Federal Law of the Russian Federation "On International Treaties of the Russian Federation" provisions of officially published international treaties of the Russian Federation application of which does not require adoption of national laws are directly operative in the Russian Federation. Otherwise, a corresponding national legal act adopted for implementation of provisions of the said international treaty must be applied together with the international treaty.

6. The courts must pay attention to the fact that, pursuant to Para. 3, Article 15 of the Constitution of the Russian Federation, laws and other normative acts concerning rights, freedoms, and responsibilities of a human being and citizen may not be used if they have not been officially published for general knowledge. In compliance with the said constitutional provision the court may not base its decision on unpublished normative acts concerning rights, freedoms, and responsibilities of a human being and citizen.

The order of official publication of federal normative acts is determined by the Federal Law of the Russian Federation "On the Order of Publication and Enactment of Federal Constitutional Laws, Federal Laws, and Acts of the Chambers of the Federal Assembly" and the Order of the President of the Russian Federation of January 21, 1993 "On Normative Acts of the Central Bodies of State Government of

the Russian Federation."

7. If, in adjudication of a particular case, the court establishes that an act of a state or other body that is subject to application is not consistent with the law it must, by virtue of Para. 2, Article 120 of the Constitution of the Russian Federation, pass a decision in compliance with the law that regulates the legal relations under the court's review.

Normative acts of any state or other body (normative decrees of the President of the Russian Federation, resolutions of the chambers of the Federal Assembly of the Russian Federation, resolutions and instructions of the Government of the Russian Federation, acts of bodies of local self-government, orders and instructions of ministries and departments, heads of institutions, enterprises, organizations, etc.) must be evaluated on account of their compliance with the law.

In application of a law in place of a noncompliant therewith act of a state or other body the court has the right to adopt a particular decision and require that the body or official who has issued this act should bring it into compliance with the law or annul it.

8. The Constitution of the Russian Federation guarantees everyone the right to adjudication of his case in that court and by that judge in whose cognizance the given case is according to law (Para. 1, Article 47). In compliance with the said constitutional provision a court of a higher instance may not initiate proceedings as a court of first instance on a case that falls within cognizance of a lower-instance court without a petition or consent of the parties to the same effect.

If adjudication of a case in that court and by that judge in whose cognizance the given case is according to law is impossible (e.g., due to impossibility of repeat participation of the judge in adjudication of the case, or due to circumstances that make it impossible for the judge in question to participate in adjudication of the case or due to circumstances under which adjudication of the case in a certain court is impossible), the chairman of a higher-instance court has the right to forward the case for adjudication to the nearest court of the same cognizance provided that the parties are notified of the fact and reasons of the case transfer.

9. Para. 2, Article 26 of the Constitution of the Russian Federation secures the right of everyone to use his native language. Pursuant to the said constitutional norm, if requested by parties participating in the proceedings, the court must provide them with a possibility to testify, make statements, and provide explanations in the court in their native language.

10. Pursuant to the constitutional provision on administration of justice on the basis of competition and equality of parties (Para. 3, Article 123 of the Constitution of the Russian Federation) the court must ensure equality of rights of participants of legal proceedings in presentation and analysis of evidence and submission of petitions.

In adjudication of civil cases the courts must proceed from the evidence presented by the plaintiff and the defendant. At the same time, the court may suggest to the parties that they present additional evidence. If necessary, considering health condition, age, and other circumstances complicating presentation of parties' evidence without which adequate adjudication is impossible, the court, in response to parties' petitions, must undertake measures to require that such evidence be presented.

11. In adjudication of grievances contesting denial of registration of public associations of citizens or petitions of interested individuals requesting liquidation of public associations the courts must bear in mind that Para. 5, Article 13 of the

Constitution of the Russian Federation prohibits the creation and activities of public associations whose aims and actions are aimed at a forced change of the fundamental principles of the constitutional system and at violating the integrity of the Russian Federation, at undermining its security, at setting up armed units, and at instigating social, racial, national and religious strife.

In consideration of this constitutional provision, the court must scrupulously analyze and evaluate the aggregate of all presented written and material evidence, testimonies of witnesses, and other evidence to the effect of the goals, objectives, and factual activities of public associations.

12. In compliance with the International Covenant on Economic, Social, and Cultural Rights the states that are member-states to the Covenant have made a commitment to ensure the right to strike provided it is exercised in compliance with national legislation.

The Constitution of the Russian Federation guarantees workers and their groups the right to individual and collective labor disputes, including the right to strike (Para. 4, Article 37). However, implementation of the right to strike may not violate rights and freedoms of other individuals and it may be restricted by a federal law but only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defense of the country and security of the state (Para. 3 Article 17, Para. 3 Article 55 of the Constitution of the Russian Federation).

Proceeding from the above, deliberating whether or not a strike is illegal, the courts must bear in mind that restriction of the right to strike in the above cases is only permitted for such categories of workers with respect to which, considering the nature of their work and potential consequences of work stoppage, the necessity to ban a strike directly follows from the aforementioned provisions of the Constitution. Restriction of the right to strike of a larger number of workers than it is necessary to achieve the goals specified in Para. 3, Article 17 and Para. 3, Article 55 of the Constitution of the Russian Federation is illegal.

13. In adjudication of cases originating from housing-related legal relations the courts must bear in mind that the Constitution of the Russian Federation has provided everyone who legally stays in the territory of the Russian Federation with the right to free travel, choice of place of stay or residence, as well as guaranteed the right to a home (Para. 1, Article 27, Para. 1, Article 40).

Proceeding from these provisions of the Constitution one should bear in mind that lack of registration in itself may not serve as grounds for limitation of human rights and freedoms, including the right to a home. In adjudication of cases associated with recognition of one's right to use a residential premise one must take into account that the data confirming one's possession or otherwise of registration is only one of the factors demonstrating if an agreement has been executed between the lessee (owner) of the residential premise and his or her family members on one's establishment in the residential premise in question and conditions of such establishment.

14. Given that limitations of the right of citizens to privacy of correspondence, telephone conversations, postal, telegraph and other messages are only allowed by court decision (Para. 2, Article 23 of the Constitution of the Russian Federation), the courts must bear in mind that in compliance with the Federal Law of the Russian Federation

"On Operative-Investigative Activities" the conduct of operative-investigative activities limiting the said constitutional rights of citizens may only be allowed when the bodies that carry out operative-investigative activities possess information about an illegal deed that is being prepared, is committed or has been committed that requires conduct of preliminary investigation; about persons who are preparing, committing, or who have committed an illegal deed that requires conduct of preliminary investigation; or about events or actions that jeopardize the state, military, economic, or ecological security of the Russian Federation. The list of bodies that are authorized to conduct operative-investigative activities is provided in the said Law.

The courts must also bear in mind the said circumstances in consideration of materials confirming the necessity to access a residential premise against the will of individuals residing therein (Article 25 of the Constitution of the Russian Federation) if such materials are submitted to the court by bodies conducting operative-investigative activities.

The courts must pay attention to the fact that results of operative-investigative activities associated with restriction of the constitutional right of citizens to privacy of correspondence, telephone conversations, postal, telegraph, and other messages, as well as with accessing residential premises against the will of individuals residing therein (except for cases established by the federal law) may be used as evidence in proceedings only when they are acquired with court's permission to conduct such activities and are verified by investigative authorities in compliance with the criminal-procedural legislation.

15. The presumption of innocence principle secured by Article 49 of the Constitution of the Russian Federation, pursuant to which everyone accused of committing a crime is considered innocent until his guilt is proved according to the rules secured by the federal law and confirmed by the sentence of a court which has come into legal force, must be observed in proceedings on criminal cases. In consideration of the provisions of this constitutional norm, the defendant must not be required to prove his innocence.

The courts must bear in mind that, pursuant to Para. 3, Article 49 of the Constitution of the Russian Federation, irremovable doubts with respect to defendant's guilt must be interpreted in his favor.

16. The courts must ensure compliance with the constitutional provision, pursuant to which evidence obtained in violation of the federal law may not be used in administration of justice (Para. 2, Article 50 of the Constitution of the Russian Federation), as well as compliance with the requirements of Para. 3, Article 69 of the Criminal Procedural Code of the RSFSR, pursuant to which evidence obtained in violation of the law may not be used for indictment.

The courts must recognize any evidence as obtained in violation of the law if its acquisition and verification was accompanied by violation of the rights of the human being and citizen guaranteed by the Constitution of the Russian Federation or violation of the order of its acquisition and verification established by the criminal-procedural legislation, as well as if acquisition and verification of evidence has been carried out by an unauthorized individual or body or it occurred as a result of actions unaccounted for by procedural norms.

17. The right of everyone to qualified legal assistance guaranteed by the Constitution (Para. 1, Article 48) must be strictly complied with in court proceedings. In considera-

tion of this constitutional provision, the court must ensure participation of a counsel in proceedings if it is requested by the defendant or when participation of a counsel is required by law.

Pursuant to Article 50 of the Criminal Procedural Code of the RSFSR, the defendant has the right to refuse to use a counsel in proceedings at any moment; such a refusal however may not be forced and must only be accepted when real participation of a counsel in proceedings is possible.

Pursuant to Para. 2, Article 48 of the Constitution of the Russian Federation and Article 47 of the Criminal Procedural Code of the RSFSR, every person who has been detained and taken into custody has the right to receive assistance from a lawyer (legal counsel) from the moment when a detention protocol or a decision to apply a restraining measure in the form of confinement to custody has been read to him, and each person who is accused of having committed an offence, pursuant to the said constitutional norm, as well as Article 46 of the Criminal Procedural Code of the RSFSR, has the right to use assistance of a lawyer (legal counsel) from the moment of being charged. If this constitutional right is violated all testimonies of a detainee, a person in custody, or an accused person, as well as results of investigative activities carried out with his participation, must be regarded by courts as evidence obtained in violation of the law.

18. In adjudication of civil and criminal cases the courts must bear in mind that, pursuant to Article 51 of the Constitution of the Russian Federation, no one must testify against himself, his spouse or his next of kin the range of whom is determined by the federal law.

Taking into consideration this constitutional provision the court, suggesting that a defendant should testify on account of his indictment and case circumstances known to him (Article 280 of the Criminal Procedural Code of the RSFSR), must at the same time explain Article 51 of the Constitution of the Russian Federation to the defendant. Provisions of the said Article of the Constitution must also be explained to defendant's spouse or next of kin prior to the inquest of this person in the capacity of a witness or victim, as well as to the person subpoenaed to court in the capacity of a witness on a civil case if this person is a spouse or next of kin of the plaintiff, defendant, or other individuals participating in proceedings.

If the said constitutional provision has not been explained to the suspect, defendant, his spouse or next of kin at the inquest or pre-trial investigation, testimonies of these individuals must be recognized by the court as obtained in violation of the law and, therefore, they may not be used as evidence proving the guilt of the suspect (defendant).

19. The courts must bear in mind that explanations on application of the current legislation provided by the Plenum of the Supreme Court of the Russian Federation prior to the enactment of the Constitution of the Russian Federation may be applied in adjudication of cases in parts that do not contradict the Constitution of the Russian Federation.

Chairman of the Supreme Court of the Russian Federation

¹ *Bulleten Verkhovnogo Suda Rossiiskoi Federatsii* (Bulletin of the Supreme Court of the Russian Federation). 2003. No.12. P. 3-8.

V.M. LEBEDEV

Plenum Secretary, Judge of the Supreme Court of the Russian Federation
V.V. DEMIDOV

3.20 (11.28). DECISION NO. 5 OF THE PLENUM OF THE SUPREME COURT OF THE RUSSIAN FEDERATION OF OCTOBER 10, 2003 "ON APPLICATION OF THE UNIVERSALLY RECOGNIZED PRINCIPLES AND NORMS OF THE INTERNATIONAL LAW AND INTERNATIONAL TREATIES OF THE RUSSIAN FEDERATION BY COURTS OF GENERAL JURISDICTION"¹

Pursuant to Para. 4, Article 15 of the Constitution of the Russian Federation, the universally recognized principles and norms of the international laws and international treaties of the Russian Federation are an integral part of its legal system.

Federal Law No. 101-FZ of July 15, 1995 "On International Treaties of the Russian Federation" provides that the Russian Federation, advocating compliance with conventional and regular norms, confirms its adherence to the fundamental principle of the international law – the principle of conscientious implementation of international commitments.

International treaties are one of the most important means of the development of international cooperation; they facilitate expansion of international links with participation of state and nongovernmental organizations, including subjects of the national law and physical entities. International treaties play the leading role in the protection of human rights and fundamental freedoms. This accounts for the necessity to further improve judicial activities associated with realization of provisions of the international law at the national level.

To ensure adequate and uniform application of the international law by courts in administration of justice the Plenum of the Supreme Court of the Russian Federation has deemed it appropriate to provide the following clarifications:

1. In compliance with the universally recognized principles and norms of the international law and the Constitution of the Russian Federation (Para. 1, Article 17 of the Constitution of the Russian Federation) rights and freedoms of a human being and citizen are recognized and guaranteed in the Russian Federation.

Pursuant to Para. 1, Article 46 of the Constitution of the Russian Federation, everyone is guaranteed judicial protection of his rights and freedoms.

Proceeding from the above, as well as from the provisions of Para. 4, Article 15, Para. 1, Article 17, and Article 18 of the Constitution of the Russian Federation, human rights and freedoms, pursuant to the universally recognized principles and norms of the international law, as well as international treaties of the Russian Federation, are directly operative within the jurisdiction of the Russian Federation. They determine the essence, meaning and implementation of laws, the activities of the legislative and executive authorities, and local self-government and are ensured by the administration of justice.

The universally recognized principles of the international law must be interpret-

ed as the fundamental imperative norms of the international law that are accepted and recognized by the international community of states upon the whole, deviation from which is inadmissible.

Among the universally recognized principles of the international law, in particular, are the principle of universal respect for human rights and the principle of conscientious compliance with international commitments.

A universally recognized norm of the international law must be interpreted as a legally-binding rule of behavior that is accepted and recognized by the international community of the states upon the whole.

The substance of the said principles and norms of the international law may be revealed in particular in the documents of the United Nations Organization and its specialized institutions.

2. International treaties of the Russian Federation, on a par with the universally recognized principles and norms of the international law, are an integral part of its legal system (Para. 4, Article 15 of the Constitution of the Russian Federation, Para. 1, Article 5 of the Federal Law "On International Treaties of the Russian Federation").

The legal system of the Russian Federation also includes current international treaties that were executed by the USSR with respect to which the Russian Federation continues to implement international rights and commitments of the USSR as the successor-state of the Union of the Soviet Socialist Republics.

Pursuant to Clause "a", Article 2 of the Federal Law "On International Treaties of the Russian Federation," an international treaty of the Russian Federation must be interpreted as an international agreement executed by and between the Russian Federation and a foreign state (or states) or an international organization in writing that is regulated by the international law regardless of whether or not such an agreement is contained in one document or several documents connected with each other, as well as regardless of its particular title (e.g., convention, covenant, agreement, etc.).

International treaties of the Russian Federation may be executed on behalf of the Russian Federation (interstate treaties), on behalf of the Government of the Russian Federation (intergovernmental treaties), and on behalf of federal bodies of executive power (interdepartmental treaties).

3. Pursuant to Para. 3, Article 5 of the Federal Law "On International Treaties of the Russian Federation," provisions of officially published international treaties of the Russian Federation whose implementation does not require adoption of national acts, are directly operative in the Russian Federation. To implement other provisions of international treaties of the Russian Federation respective legal acts are adopted.

That direct application of provisions of an international treaty of the Russian Federation is impossible if indicated by treaty injunctions to the effect that member-states of the treaty must undertake to modify their national laws respectively.

In adjudication of civil, criminal, or administrative cases the courts must directly apply such international treaty of the Russian Federation that has come into force and become binding upon the Russian Federation, that does not require adoption of national legal acts to ensure its implementation, and that provides for rights and responsibilities of subjects of the national law (Para. 4, Article 15 of the Constitution of the Russian Federation, Para. 1 and Para. 3, Article 5 of the Federal Law "On International Treaties of the Russian Federation," Para. 2, Article 7 of the Civil

Procedural Code of the Russian Federation).

4. Deliberating on whether or not it is possible to apply conventional rules of the international law the courts must proceed from the fact that a treaty enters force in such a manner and upon such a date as it may provide or as the negotiating states may agree. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating states (Article 24 of the Vienna Convention on the Law of Treaties, 1969).

The courts must bear in mind that an international treaty is subject to application if the Russian Federation on behalf of authorized bodies of the state power has expressed its consent to be bound by the international treaty by means of one of the actions specified in Article 6 of the Federal Law "On International Treaties of the Russian Federation" (by means of execution of an agreement; exchange of documents constituting it; ratification of the treaty; approval of the treaty; adoption of the treaty; accession to the treaty; by any other means that negotiating parties have agreed upon), as well as under the condition that the said treaty has come into force with respect to the Russian Federation (e.g., the European Convention for the Protection of Human Rights and Fundamental Freedoms was ratified by the Russian Federation by means of adoption of Federal Law No. 54-FZ of March 30, 1998, but it entered force with respect to the Russian Federation on May 5, 1998, i.e., on the day when the ratification instrument was passed to the Secretary General of the Council of Europe for safekeeping in compliance with Article 59 of this Convention).

Pursuant to Para. 3 and Para. 4, Article 15 of the Constitution of the Russian Federation, as well as Para. 3, Article 5 of the Federal Law "On International Treaties of the Russian Federation," the courts may directly apply those international treaties that have entered force that have been officially published in the Collection of Legislation of the Russian Federation or in the Bulletin of International Treaties in the order provided for by Article 30 of the said Federal Law. International interdepartmental treaties of the Russian Federation are published by decision of federal bodies of executive power on behalf of which such treaties are executed, in official publications of these bodies.

International treaties of the USSR that are binding upon the Russian Federation as the successor-state of the USSR were published in official outlets of the Supreme Soviet of the USSR, the Council of Ministers (Cabinet of Ministers) of the USSR. Texts of the said treaties were also published in collections of international treaties of the USSR but this publication was not official.

Official messages of the Ministry of Foreign Affairs of the Russian Federation on the enactment of international treaties executed on behalf of the Russian Federation and on behalf of the Government of the Russian Federation are subject to publication in the same order as international treaties (Article 30 of the Federal Law "On International Treaties of the Russian Federation").

5. International treaties that are directly operational within the legal system of the Russian Federation must be applied by the courts, including military tribunals, in adjudication of civil, criminal, and administrative cases, in particular:

In adjudication of civil cases if an international treaty of the Russian Federation provides for rules other than those accounted for by the law of the Russian Federation

that regulates the relations under the court's review;

In adjudication of civil and criminal cases if an international treaty of the Russian Federation provides for procedural rules other than those accounted for by the civil-procedural or criminal-procedural law of the Russian Federation;

In adjudication of civil or criminal cases if an international treaty of the Russian Federation regulates the relations, including relations with foreign individuals, that are under the court's review (e.g., in adjudication of cases specified in Article 402 of the Civil Procedural Code of the Russian Federation, petitions regarding execution of decisions of foreign courts, complaints against decisions on extradition of individuals charged with commission of a criminal offence or convicted by a court of a foreign state);

In adjudication of cases on administrative offences if an international treaty of the Russian Federation provides for rules other than those accounted for by laws on administrative offences.

The courts must bear in mind that consent of the Russian Federation to be bound by an international treaty must be expressed in the form of a Federal Law if the treaty in question provides for rules other than those accounted for by the Federal Law (Para. 4, Article 15 of the Constitution of the Russian Federation, Para. 1 and Para. 2, Article 5; Article 14; Clause "a", Para. 1, Article 15 of the Federal Law "On International Treaties of the Russian Federation"; Para. 2, Article 1 of the Civil Procedural Code of the Russian Federation; Para. 3, Article 1 of the Criminal Procedural Code of the Russian Federation).

6. The courts must not directly apply international treaties whose norms account for properties of criminal corpus delicti because such treaties directly provide for the responsibility of the states to ensure implementation of commitments accounted for thereby by establishing penalties for certain crimes by a national law (e.g., the Single Convention on Narcotic Drugs of 1961, the International Convention Against the Taking of Hostages of 1979, the Convention for the Suppression of Unlawful Seizure of Aircraft of 1970).

Pursuant to Article 54 and Clause "o", Article 71 of the Constitution of the Russian Federation, as well as Article 8 of the Criminal Code of the Russian Federation, criminal punishment in the Russian Federation is inflicted upon a person who has committed a deed that contains all properties of corpus delicti accounted for by the Criminal Code of the Russian Federation.

In connection with the above, international-legal norms that account for properties of corpus delicti must be applied by the courts of the Russian Federation in those cases when the norm of the Criminal Code of the Russian Federation directly provides for the necessity to apply an international treaty of the Russian Federation (e.g., Articles 355 and 356 of the Criminal Code of the Russian Federation).

7. Pursuant to Para. 4, Article 11 of the Criminal Code of the Russian Federation, if diplomatic representatives of foreign states and other citizens with immunity commit a crime in the territory of the Russian Federation their criminal liability is determined in compliance with norms of the international law (in particular, in compliance with the Convention on the Privileges and Immunities of the United Nations of 1946, the Convention on Privileges and Immunities of Specialized Agencies of 1947, the Vienna Convention on Diplomatic Relations of 1961, the Vienna Convention on Consular Relations of 1963).

Among the individuals with immunity are, for example, heads of diplomatic mis-

sions, members of missions with diplomatic rank and their family members if the latter are not citizens of the country of stay. Immunity is also enjoyed by heads of states, governments, ministries of foreign affairs of states, personnel members of diplomatic missions responsible for administrative and technical support of the mission, members of their families residing with them if they are not citizens or permanent residents of the country of stay, as well as other individuals who enjoy immunity in compliance with the universally recognized principles and norms of the international law and international treaties of the Russian Federation.

8. Rules of a current international treaty of the Russian Federation whose consent to be bound thereby has been adopted in the form of a federal law have priority in application with respect to the laws of the Russian Federation.

Rules of a current international treaty of the Russian Federation whose consent to be bound thereby has been adopted in the form of a federal law have priority in application with respect to the normative acts issued by a body of state power that has executed this treaty (Para. 4, Article 15, Articles 90, 113 of the Constitution of the Russian Federation).

9. In administration of justice the courts must bear in mind that pursuant to Para. 4, Article 15 of the Constitution of the Russian Federation, Articles 369, 379, and Para. 5, Article 415 of the Criminal Procedural Code of the Russian Federation, as well as Articles 330, 362, and 364 of the Civil Procedural Code of the Russian Federation, inadequate application of the universally recognized principles and norms of the international law and international treaties of the Russian Federation by courts may serve as grounds for annulment or modification of a judicial act. Inadequate application of a norm of the international law may occur when a court fails to apply a norm of the international law that was subject to application or, on the contrary, when a court has applied a norm of the international law that was not subject to application, or when the court has interpreted a norm of the international law incorrectly.

10. The courts must bear in mind that an international treaty must be interpreted in compliance with the Vienna Convention on the Law of International Treaties of May 23, 1969 (Section 3, Articles 31-33).

Pursuant to Clause "b", Para. 3, Article 31 of the Vienna Convention, in interpretation of an international treaty its context must be taken into account together with the subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.

The Russian Federation, as a member-state of the Convention for the Protection of the Human Rights and Fundamental Freedoms, recognizes the jurisdiction of the European Court of Human Rights to be mandatory in the issues related to interpretation and application of the Convention and Protocols thereto in cases of presumed violation of provisions of these conventional acts by the Russian Federation when the presumed violation occurred after they come into force with respect to the Russian Federation (Article 1 of Federal Law No. 54-FZ of March 30, 1998 "On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols Thereto"). Therefore, provisions of the said Convention must be applied by the courts in consideration of the practice of the European Court of Human Rights to avoid any violation of the Convention for the Protection of Human Rights and Fundamental Freedoms.

11. The Convention for the Protection of Human Rights and Fundamental

Freedoms has its own mechanism that includes mandatory jurisdiction of the European Court of Human Rights and systematic control over implementation of Court's decisions exercised by the Committee of Ministers of the Council of Europe. Pursuant to Clause 1, Article 46 of the Convention, final judgments of the Court concerning the Russian Federation are legally-binding for all bodies of the state power of the Russian Federation, including courts.

Compliance with judgments concerning the Russian Federation entails, if required, the responsibility of the state to undertake particular measures to eliminate violations of human rights accounted for by the Convention, and consequences of these violations for the plaintiff, as well as general measures in order to prevent recurrence of such violations. Within their jurisdictions, the courts must undertake to ensure compliance of the state with the commitments that are accounted for by participation of the Russian Federation in the Convention for the Protection of Human Rights and Fundamental Freedoms.

If in the course of proceedings circumstances are identified that facilitated violation of rights and freedoms of citizens that are guaranteed by the Convention, the court is entitled to make a particular decision to draw attention of appropriate organizations and officials to the circumstances and facts of violation of the rights and freedoms in question and require that measures be undertaken for their elimination.

12. In administration of justice the courts must take into account that, pursuant to Clause 1, Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. With respect to criminal cases the said term of judicial investigation includes the preliminary investigation procedure and the trial in the court of law.

Pursuant to legal positions developed by the European Court of Human Rights, the term starts from the moment when a person has faced charges or has been detained and taken in custody, or when other measures of procedural coercion have been applied, and ends when the sentence has come into legal force or the criminal case or criminal prosecution has been terminated.

Pursuant to Clause 1, Article 6 of the Convention, the term of judicial hearing on civil cases starts when a lawsuit is received by a court and ends when a judicial act is executed.

Thus, pursuant to Article 6 of the Convention, execution of a judicial decision is regarded as a component of the "judicial hearing." Bearing this in mind, in consideration of issues related to deferral, modification of the method and order of execution of court decisions, as well as in adjudication of grievances against acts of court bailiffs, the courts must ensure compliance with the requirements of the Convention with respect to execution of court decisions within reasonable time.

Complexity of the case, behavior of the petitioner (plaintiff, defendant, suspect, accused, convict), behavior of the state as represented by appropriate bodies, are taken into account in determination of whether or not the term of a court hearing is reasonable.

13. In adjudication of civil and criminal cases the courts must bear in mind that, pursuant to Para. 1, Article 47 of the Constitution of the Russian Federation, no one may be deprived of the right to the consideration of his or her case in that court and by that judge in whose cognizance the given case is according to law. Pursuant to Clause 1, Article 6 of the Convention for the Protection of the Human Rights and

Fundamental Freedoms, everyone has the right to a public hearing of his case in a court established by law in determination of his civil rights and responsibilities or consideration of any criminal accusation against him.

Proceeding from the decisions of the European Court of Human Rights, as applied to the judicial system of the Russian Federation this rule applies not only to judges of federal courts and justices of the peace, but it also applies to members of the jury who are citizens of the Russian Federation included in lists of jury members and summoned to participate in administration of justice in the order established by law.

14. In adjudication of disputes on extension of the term of one's stay in custody the courts must take into account that, pursuant to Clause 3, Article 5 of Convention for the Protection of the Human Rights and Fundamental Freedoms, everyone arrested or detained is entitled to trial within a reasonable time or to release pending trial.

Pursuant to legal positions of the European Court of Human Rights, determining the duration of the term of one's being in custody the courts must take into account the period that starts from the moment when a suspect (accused) was taken in custody and ends with the day when the court of first instance passed its sentence.

One should take into consideration that a justified suspicion that the person in custody has committed a crime is a condition that is required to ensure legality of his detention. At the same time, such a suspicion may not remain the only justification to keep a person in custody for an extended period of time. There must be other circumstances that could justify one's isolation from the society. Among such circumstances, in particular, could be the possibility that the suspect, accused, or convict can continue criminal activity or escape preliminary investigation or trial or falsify evidence on a criminal case, or conspire with witnesses.

The said circumstances must be real, justified, i.e., supported by reliable data. Extending one's custody term the courts must specify particular circumstances justifying extension of the term, and provide evidence supporting such circumstances.

15. Deciding to take a suspect in custody in manner of restraint, or to extend one's custody term, or adjudicating grievances against illegal actions of official representatives of preliminary investigation bodies, the courts must take into account the requirement to observe the rights of persons in custody accounted for by Articles 3, 5, 6, and 13 of the Convention for the Protection of the Human Rights and Fundamental Freedoms.

In consideration of a petition requesting release from custody or a grievance against extension of one's custody term it is necessary to take into account the provisions of Article 3 of the Convention for the Protection of the Human Rights and Fundamental Freedoms, pursuant to which no one may be subjected to torture or to inhuman or degrading treatment or punishment.

In the practice of application of the Convention for the Protection of the Human Rights and Fundamental Freedoms by the European Court of Human Rights "inhuman or degrading treatment" encompasses cases when such treatment is deliberate, is exercised for several hours, or when such treatment results in causing a person real physical harm or profound physical or mental suffering.

It should be taken into account that, pursuant to Article 3 of the Convention and requirements contained in the decisions of the European Court of Human Rights, the conditions of custody must be compatible with respect for human dignity.

Degrading treatment, in particular, is such that causes a person to feel fear, anxi-

ety, or his own inferiority.

A person in custody must not be caused the level of deprivation and suffering that is higher than the level of suffering that is inevitable in the conditions of deprivation of freedom, and health and wellbeing of the person must be guaranteed in consideration of practical requirements of the custody regime.

The said level must be appraised depending on particular circumstances, in particular, on the duration of unlawful treatment of a person and the nature of physical and mental consequences of such treatment. In certain cases the gender, age, and health condition of a person who has been subjected to inhuman or degrading treatment are taken into account.

16. If uncertain how to interpret the universally recognized principles and norms of the international law and international treaties of the Russian Federation, the courts must apply acts and decisions of international organizations, including the UN bodies and its specialized institutions, as well as seek assistance from the Legal Department of the Ministry of Foreign Affairs of the Russian Federation or the Ministry of Justice of the Russian Federation (e.g., to clarify issues associated with the duration of validity of an international treaty, the list of states participating in a treaty, international practice of its application, etc.).

17. It is recommended that the Judicial Department under the Supreme Court of the Russian Federation:

In coordination with the Plenipotentiary Representative of the Russian Federation at the European Court of Human Rights, undertake to keep judges informed of the practice of the European Court of Human Rights, especially on account of judgments concerning the Russian Federation, by providing them with authentic texts and their Russian translations;

Undertake to provide judges with authentic texts of international treaties of the Russian Federation and other acts of the international law, as well as their official translations, on a regular and timely basis.

18. It is recommended that in organization of the training, retraining, and advanced training of judges and employees of court administrations the Russian Academy of Justice pays special attention to examination of the universally recognized principles and norms of the international law and international treaties of the Russian Federation, analysis of sources of international and European law on a regular basis, publication of required practical manuals, commentaries, monographs, and other educational, methodological, and scientific literature.

19. It is required that Judicial Boards on civil and criminal cases and the Military Board of the Supreme Court of the Russian Federation together with the Russian Academy of Justice develop proposals to supplement previously adopted decisions of the Plenum of the Supreme Court of the Russian Federation with appropriate provisions on application of the universally recognized principles and norms of the international law and international treaties of the Russian Federation.

Chairman of the Supreme Court of the Russian Federation

¹ *Bulleten Verkhovnogo Suda Rossiiskoi Federatsii* (Bulletin of the Supreme Court of the Russian Federation). No. 2. 2004. P. 2–5.

V.M. LEBEDEV

Plenum Secretary, Judge of the Supreme Court of the Russian Federation
V.V. DEMIDOV

**3.21 (11.29). DECISION OF THE PLENUM OF THE
SUPREME COURT OF THE RUSSIAN FEDERATION NO. 23
OF DECEMBER 19, 2003 "ON COURT DECISION"¹**

In connection with introduction of the Civil Procedural Code of the Russian Federation (hereinafter referred to as the "CPC of the Russian Federation") on February 1, 2003 and in order to comply with requirements with respect to court decision contained therein the Plenum of the Supreme Court of the Russian Federation has deemed it appropriate to provide the following clarifications to the courts:

1. Pursuant to Article 194 of the CPC of the Russian Federation, a decision is a judgment of a court of first instance that adjudicates a case on the merits.

A decision must be lawful and justified (Para. 1, Article 195 of the CPC of the Russian Federation).

2. A decision is only lawful when it is passed in strict compliance with norms of the procedural law and in full compliance with norms of the substantive law that are subject to application with respect to particular legal relations, or is based, when required, on an analogy of the law or analogy of the right (Para. 1, Article 1, Para. 3, Article 11 of the CPC of the Russian Federation).

If there are contradictions between the norms of the procedural or substantive law that are subject to application in adjudication of a particular case, the decision is considered to be lawful if, in compliance with Para. 2, Article 120 of the Constitution of the Russian Federation, Para. 3, Article 5 of the Federal Constitutional Law "On the Judicial System of the Russian Federation," and Para. 2, Article 11 of the CPC of the Russian Federation, the court applies norms of the greatest legal force. If there are contradictions between the norms of the procedural or substantive law that are subject to application in adjudication of a particular case, the courts must also take into account clarifications of the Plenum of the Supreme Court of the Russian Federation provided in its Decision No. 8 of October 31, 1995 "On certain issues of application of the Constitution of the Russian Federation by courts in administration of justice" and Decision No. 5 of October 10, 2003 "On application of the universally recognized principles and norms of the international law and international treaties of the Russian Federation by courts of general jurisdiction."

3. A decision is justified when facts relevant to the case are confirmed by evidence that has been examined by the court and that meets the requirements of the law with respect to its relevance and admissibility, or circumstances that do not require substantiation (Articles 55, 59-61, 67 of the CPC of the Russian Federation), as well as when it contains exhaustive conclusions of the court that follow from established facts.

4. Given that, pursuant to Para. 4, Article 198 of the CPC of the Russian Federation, a court decision must refer to a law that the court has abided by, its whereas clause must mention the substantive law that the court has applied to par-

ticular legal relations, as well as procedural norms that the court has abided by.

The court must also take into account:

a) decisions of the Constitutional Court of the Russian Federation on interpretation of provisions of the Constitution of the Russian Federation that are subject to application in a particular case and constitutionality or otherwise of normative legal acts specified in Clauses "a", "b", "c", Para. 2 and Para. 4, Article 125 of the Constitution of the Russian Federation upon which the parties base their claims or objections;

b) decisions of the Plenum of the Supreme Court of the Russian Federation adopted on the basis of Article 126 of the Constitution of the Russian Federation that contain clarifications of controversial issues identified in judicial practice in the course of application of the norms of the substantive or procedural law that are subject to application in a particular case;

c) judgments of the European Court of Human Rights that interpret provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms that are subject to application in a particular case.

5. Pursuant to Para. 3, Article 196 of the CPC of the Russian Federation, a court may adopt a decision only with respect to the claims presented by the petitioner.

A court may pass a decision on issues outside of presented claims (adjudicate a claim that has not been presented, satisfy a claim of a plaintiff to an extent greater than has been demanded) only in circumstances directly accounted for by federal laws.

For example, a court has the right to go beyond the presented claims and at its own initiative, on the basis of Clause 2, Article 166 of the Civil Code of the Russian Federation, apply nullity-related consequences of a void transaction (void transactions are those specified in Articles 168-172 of the said Code).

Presented claims are reviewed and adjudicated on the basis of grounds specified by the plaintiff, as well as on the basis of circumstances presented by the court for discussion in compliance with Para. 2, Article 56 of the CPC of the Russian Federation.

In the meantime, it should be born in mind that in adjudication of cases originated from public legal relations the court is not bound by grounds and arguments of presented claims, i.e., circumstances on which the petitioner bases his claims (Para. 3, Article 246 of the CPC of the Russian Federation).

6. Considering that by virtue of Article 157 of the CPC of the Russian Federation one of the primary principles of judicial hearing is its directness, a decision may be based only on that evidence that has been examined by a court of first instance in a court session. If evidence was obtained by a different court (Articles 62-65, 68-71; Clause 11, Para. 1, Article 150; Article 170 of the CPC of the Russian Federation), a court has the right to justify its decision by this evidence only under the condition that it has been obtained in compliance with the order established by the CPC of the Russian Federation (e.g., in observance of the order of implementation of a court instruction established by Article 63 of the CPC of the Russian Federation), has been announced at a court session and presented to individuals participating in the proceedings, as well as their representatives, and, if required, to experts and witnesses, and examined together with other evidence. A court decision may not be based on evidence that has not been examined by the court in compliance with norms of the

CPC of the Russian Federation, as well as evidence obtained in violation of norms of federal laws (Para. 2, Article 50 of the Constitution of the Russian Federation; Articles 181, 183, 195 of the CPC of the Russian Federation).

7. The courts must bear in mind that an expert opinion, like any other evidence available for the case, is not an exclusive means of substantiation and must be appraised together with all other evidence available for the case (Article 67, Para. 3, Article 86 of the CPC of the Russian Federation). Appraisal of expert's opinion by the court must be fully reflected in the decision. In doing so the court must specify the grounds upon which expert's opinion is based, as well as whether or not he has considered all the materials presented for examination and made a respective analysis thereof.

If examination has been commissioned to several experts who have provided separate opinions, the court decision must specify whether or not the court has agreed or disagreed with each separate opinion and provide motives of court's particular reaction to each of them.

8. Pursuant to Para. 4, Article 61 of the CPC of the Russian Federation, a newly enacted court decision on a criminal case must be taken into account by the court that reviews civil consequences of illegal deeds of the convicted person only with respect to the issues of whether or not these deeds (omissions) have taken place and whether or not they have been committed by this particular person.

Proceeding from the above, passing a decision originating from a criminal case, the court has no right to discuss defendant's guilt and may only resolve the issue related to the amount of compensation.

A court decision sustaining a claim, in addition to reference to the criminal case sentence, must also specify evidence of the civil case that justifies the amount of compensation (e.g., defendant's property status or victim's guilt).

Pursuant to Para. 4, Article 1 of the CPC of the Russian Federation, similarly to Para. 4, Article 61 of the CPC of the Russian Federation, one must also determine the implication of the newly enacted decision and (or) judge's decision on an administrative offence in review and adjudication of the case on civil legal consequences of actions of a person with respect to whom this decision has been passed.

9. Pursuant to Para. 2, Article 61 of the CPC of the Russian Federation, consideration of circumstances of a previously adjudicated civil case that have been identified in a newly enacted court decision is mandatory for the court. The said circumstances do not require substantiation and may not be contested in adjudication of a different case in which the same persons participate.

Circumstances identified in a newly enacted decision of an arbitration court have the same implication for the court adjudicating a civil case (Para. 3, Article 61 of the CPC of the Russian Federation).

The court decision specified in Para. 2, Article 61 of the CPC of the Russian Federation must be interpreted as any decision that, pursuant to Para. 1, Article 13 of the CPC of the Russian Federation, is passed by a court of law (court order, court decision, court determination), and the decision of an arbitration court – a judicial act accounted for by Article 15 of the Arbitration Procedural Code of the Russian Federation.

Pursuant to Para. 4, Article 13, Para. 2 and Para. 3, Article 61, Para. 2, Article 209

of the CPC of the Russian Federation, individuals who did not participate in proceedings upon which a court of general jurisdiction or a court of arbitration has passed a respective court decision, have the right to contest circumstances identified by these judicial acts in adjudication of a different civil case with their participation.

10. Composing their decisions the courts must adhere to the order of account established by Article 198 of the CPC of the Russian Federation.

The substance of legal claims must be reflected in the descriptive part of the decision in accordance with the lawsuit.

If the plaintiff has changed the grounds or subject of his suit, increased or reduced the amount of required compensation, if the defendant has admitted the claim partially or in full, it must also be mentioned in the descriptive part of the decision.

A party's acknowledgement of circumstances upon which the other party bases its claims or objections (Para. 2, Article 68 of the CPC of the Russian Federation) is specified in the whereas clause of the decision together with court's conclusions with respect to establishment of these circumstances, unless there are grounds accounted for by Para. 3, Article 68 of the CPC of the Russian Federation that prevent the court from acknowledging these circumstances.

Passing decisions, the courts must bear in mind that the right to acknowledge circumstances upon which the other party bases its claims or objections is also granted to the representative of the party who participates in proceedings in the party's absence, provided this does not lead to full or partial withdrawal of claims, reduction of compensation amount, full or partial admission of the claims, because Article 54 of the CPC of the Russian Federation that determines representative's authorities does not require the letter of attorney to specifically provide for this right.

When passing a decision, the court has no right to accept admission of claims or circumstances upon which the plaintiff bases his claims made by attorney appointed by court as the defendant's representative on the basis of Article 50 of the CPC of the Russian Federation, because it may lead to violation of the defendant's rights in spite of his will.

The attorney appointed by court as the defendant's representative on the basis of Article 50 of the CPC of the Russian Federation has the right to appeal court's decision in the order of cassation (appellation) and in the order of supervision because his authority originates not from the agreement with the defendant but from the law and the said right is objectively required to protect the rights of the defendant whose place of residence is not known.

11. Since a court decision is an act of justice that resolves a case once and for all, its resolute part must contain exhaustive conclusions originating from factual circumstances established in the whereas clause of the decision.

In connection with the above, the resolute part must clearly state what exactly the court decided both on the initial suit and the counterclaim if it has been submitted (Article 138 of the CPC of the Russian Federation), what particular actions must be undertaken by whom and in whose favor and which party has been found to possess the contested right. The court must also resolve other issues specified in the law to ensure that execution of the decision is not complicated (Para. 5, Article 198, Articles 204-207 of the CPC of the Russian Federation). If claims have been rejected partially or in full the decision must clearly specify who has been denied what with

respect to whom.

If a decision is subject to immediate execution or the court concludes it is necessary (Articles 210-212 of the CPC of the Russian Federation) the decision must include an instruction to the same effect.

Decisions listed in Article 211 of the CPC of the Russian Federation are subject to immediate execution by virtue of the imperative nature of law's injunctions therefore the decision's instruction to that effect does not depend either on the defendant's position or the court's discretion.

An instruction to immediately execute the decision on the grounds specified in Article 212 of the CPC of the Russian Federation may only be included in the court's decision at the plaintiff's request. In such circumstances the court's conclusions on the necessity of immediate execution of the decision must be substantiated by reliable and sufficient data proving existence of special circumstances due to which a delay in execution of the decision may inflict significant damage upon the plaintiff or render its execution impossible.

Subjecting a decision to immediate execution at the request of the plaintiff the court has the right to require, if needed, that the plaintiff should ensure a reversal in case of its nullification.

12. Given that recognition claims determine whether or not a certain legal relation or rights and responsibilities of case participants exist, sustaining a claim the court must specify in the resolute part of its decision the legal consequences that such recognition may result in (e.g., annulment of a marriage registration record in case the marriage is recognized to be null).

13. Pursuant to Article 194 of the CPC of the Russian Federation, only those judgments of a court of first instance are documented as decisions that resolve a case on the merits, and the range of issues that constitute the substance of the decision is determined by Articles 198, 204-207 of the CPC of the Russian Federation.

Therefore, inclusion of the court's conclusions on the claims that are not resolved on the merits may not be included in the resolute part of the decision (Articles 215, 216, 220-223 of the CPC of the Russian Federation). These conclusions are presented in the form of determinations (Article 224 of the CPC of the Russian Federation) that are issued separately from decisions. At the same time, one must take into account that inclusion of the said conclusions in the decision in itself is not a significant violation of norms of the procedural law and it does not result in annulment of the decision in the cassation (appellation) and supervision order.

14. The courts must pay attention to the requirement of strict compliance with the term of composition of a substantiated decision established by Article 199 of the CPC of the Russian Federation.

15. Pursuant to the requirements of Article 201 of the CPC of the Russian Federation, the issue of adoption of a supplementary decision may only be raised before a decision on a particular case enters legal force and such a decision may only be made by the same composition of the court that passed the initial decision on the case.

If adoption of a supplementary decision is denied, the interested individual has the right to petition to the court with the same claims in accordance with the regular procedure. The issue of court-related expenses may be resolved by the court's deter-

mination (Article 104 of the CPC of the Russian Federation).

Providing for the right of the court to adopt supplementary decisions Article 201 of the CPC of the Russian Federation at the same time restricts this right by confining it to the issues that were the subject of court proceedings but were not reflected in the resolute part of the court's decision, or to those cases when having resolved the issue of one's right the court did not specify the amount of compensation or resolve the issue of court-related expenses.

Therefore, the court may not go beyond the limits of requirements of Article 201 of the CPC of the Russian Federation; it may only proceed from the circumstances reviewed in a court session, having filled in the gaps in the decision.

16. Given that Article 202 of the CPC of the Russian Federation provides the court with the right to clarify a decision without changing its contents the court may not, under the pretense of clarification, change, even partially, the essence of the decision, and must only provide a more complete and clear account thereof. In view of the fact that the CPC of the Russian Federation, establishing different orders of adjudication of cases within separate types of proceedings (ordinary proceedings, special proceedings, proceedings originating from public legal relations), provides for a single form of completion of adjudication of cases on the merits for all types of proceedings by means of adoption of a decision, the courts must bear in mind that requirements of Article 198 of the CPC of the Russian Federation on the order of account of decisions are mandatory for all kinds of proceedings.

17. It shall be recognized that Decision of the Plenum of the Supreme Court of the Russian Federation No. 9 of September 26, 1973 "On court decision" as amended by Decision of the Plenum No. 11 of December 20, 1983, as well as Decision No. 11 of December 21, 1993 and Decision of the Plenum No. 9 of December 26, 1995 be no longer operative.

Chairman of the Supreme Court of the Russian Federation
V.M. LEBEDEV

Plenum Secretary, Judge of the Supreme Court of the Russian Federation
V.V. DEMIDOV

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APPENDIX No. 2
INTERNET SITES OF INTERNATIONAL ORGANIZATIONS
AND OTHER BODIES AND ORGANIZATIONS

1. United Nations Organization – <http://www.un.org>
2. UN Commission on Human Rights – <http://www.ohchr.org/english/bodies/chr>
3. Office of the UN High Commissioner for Human Rights – <http://www.ohchr.org>
4. Electoral Assistance Division of the UN Department of Political Affairs – <http://www.un.org/Depts/dpa/ead/eadhome.htm>
5. Organization for the Security and Co-operation in Europe (the documentation repository is in the Prague Office of the OSCE Secretariat) – <http://www.osceprag.cz>
6. OSCE Parliamentary Assembly – <http://www.oscepa.org>
7. OSCE Office for Democratic Institutions and Human Rights – <http://www.osce.org/odihr>
8. ODIHR OSCE (ODIHR OSCE Bulletin) – <http://www.osce.org/odihr/publications.html>
9. Council of Europe – <http://www.coe.int>
10. Council of Europe (Council of Europe Publishing) – <http://book.coe.int>
11. The Council of Europe Secretary General – <http://www.coe.int/T/E/SG>
12. Committee of Ministers of the Council of Europe – http://www.coe.int/t/cm/home_en.asp
13. Council of Europe Parliamentary Assembly – <http://assembly.coe.int>
14. Congress of Local and Regional Authorities – http://www.coe.int/T/Congress/Default_en.asp
15. European Court of Human Rights – <http://www.echr.coe.int/echr>
16. Commissioner for Human Rights of the Council of Europe – http://www.coe.int/T/E/Commissioner_H.R/Communication_Unit
17. Venice Commission (the European Commission for Democracy through Law) – <http://www.venice.coe.int>
18. Council of Europe Treaties – <http://conventions.coe.int>
19. European Union – <http://www.eu.int>
20. European Parliament – <http://www.europarl.eu.int>
21. Inter-Parliamentary Union – <http://www.ipu.org>
22. Commonwealth of Independent States (Executive Committee) – <http://www.cis.minsk.by>
23. Interparliamentary Assembly of Member Nations of the Commonwealth of Independent States – <http://www.iacis.ru>
24. Constitutional Court of the Russian Federation – <http://www.ksrf.ru>
25. Supreme Court of the Russian Federation – <http://www.supcourt.ru>
26. Central Election Commission of the Russian Federation – <http://www.cikrf.ru>

APPENDIX No. 3
CONTENTS OF THE RUSSIAN-LANGUAGE PRINTED
PUBLICATION "INTERNATIONAL ELECTORAL STANDARDS.
COLLECTION OF DOCUMENTS" (2004) AND ITS ELECTRONIC
VERSION (2005)

To the reader!

Foreword – A.A. Veshnyakov, Chairman of the Central Election Commission of the Russian Federation

SECTION 1
UNITED NATIONS

Fundamental Documents

- 1.1. Charter of the United Nations (*San-Fransisco, June 26, 1945.*)
- 1.2. Universal Declaration of Human Rights (*Adopted by the UN General Assembly on December 10, 1948.*)
- 1.3. Convention on the Political Rights of Women (*New York, December 20, 1952.*)
- 1.4. Declaration on the Granting of Independence to Colonial Countries and Peoples (*December 14, 1960.*)
- 1.5. International Convention on the Elimination of All Forms of Racial Discrimination (*November 20, 1963.*)
- 1.6. International Convention of the Elimination of All Forms of Racial Discrimination (*December 21, 1965.*)
- 1.7. International Covenant on Civil and Political Rights (*December 16, 1966.*)
- 1.8. Optional Protocol to the International Covenant on Civil and Political Rights (*December 19, 1966.*)
- 1.9. Declaration on the Elimination of Discrimination against Women (*November 7, 1967.*)
- 1.10. Declaration on the Rights of Disabled Persons (*December 9, 1975.*)
- 1.11. Declaration on Race and Racial Prejudice (*November 27, 1978.*)
- 1.12. Convention on the elimination of All Forms of Discrimination against Women (*December 18, 1979.*)
- 1.13. Declaration on the Elimination of Intolerance of All Forms of Intolerance and of Discrimination Based on Religion or Belief (*November 25, 1981.*)
- 1.14. Declaration on the Human Rights of Individuals Who are not Nationals of the Country in Which They Live (*December 13, 1985.*)
- 1.15. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (*December 18, 1990.*)
- 1.16. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (*December 18 1992.*)
- 1.17. Vienna Declaration and Program of Action (*Vienna, June 25, 1993.*)
- 1.18. International Code of Conduct for Public Officials (*Annex to resolution No. 51/59 of the UN General Assembly of December 12, 1996.*)

1.19. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (*December 9, 1998.*)

1.20. United Nations Millennium Declaration (*September 8, 2000.*)

1.21. We the Peoples Millennium Forum Declaration and Agenda for Action: Strengthening the United Nations for the twenty-first century (*May 26, 2000.*)

1.22. Resolution of the 58th session of the UN General Assembly, United Nations Convention Against Corruption (*November 21 2003.*)

UN General Assembly Resolutions

1.23. Resolution 58/165 International Covenants on Human Rights (*December 22, 2003.*)

1.24. Resolution 58/168 Strengthening the United Nations action in the field of human rights through the promotion of international cooperation and the importance of non-selectivity, impartiality and objectivity (*December 22, 2003.*)

1.25. Resolution 58/189 Respect of the principles of national sovereignty and diversity of democratic systems in electoral processes as an important element for the promotion and protection of human rights (*December 22, 2003.*)

1.26. Resolution 57/195 The fight against racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Program of Action (*December 18, 2002.*)

1.27. Resolution 58/142 Women and political participation (*December 12, 2003.*)

1.28. Resolution 45/151 Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes (*December 18, 1990.*)

1.29. Resolution 46/130 Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes (*December 17, 1991*)

1.30. Resolution 47/130 Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes (*December 18, 1992*)

1.31. Resolution 48/124 Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes (*December 20, 1993*)

1.32. Resolution 52/119 Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes (*December 12, 1997*)

1.33. Resolution 54/168 Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes (*December 17, 1999*)

1.34. Resolution 56/154 Respect for the principles of national sovereignty and non-interference in the internal affairs of States in electoral processes as an important element for the promotion and protection of human rights (*December 19, 2001*)

1.35. Resolution 43/157 Enhancing the effectiveness of the principle of periodic and genuine elections (*December 8, 1988*)

1.36. Resolution 46/137 Enhancing the effectiveness of the principle of periodic and genuine elections (*December 17, 1991*)

1.37. Resolution 48/131 Enhancing the effectiveness of the principle of periodic and genuine elections (*December 20, 1993*)

1.38. Resolution 49/190 Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization (*December 23 1999*)

1.39. Resolution 50/185 Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization (*December 22, 1995*)

1.40. Resolution 54/173 Strengthening the role of the UN in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization (*December 17, 1999*)

1.41. Resolution S-23/3 Further actions and initiatives to implement the Beijing Declaration and Platform for Action (*June 10, 2000*)¹

1.42. Resolution 56/159 Strengthening the role of the UN in enhancing the effectiveness of the principle of periodic and genuine elections and promotion of democratization (*December 19, 2001*)

1.43. Resolution 58/180 Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization (*December 22, 2003.*)

UN Secretary General Reports

1.44. Enhancing the effectiveness of the principle of periodic and genuine elections: report of the Secretary General at the 54th Session of the UN General Assembly (*October 25, 1999*)

1.45. Enhancing the effectiveness of the principle of periodic and genuine elections: report of the Secretary-General at the 56th Session of the UN General Assembly (*October 25, 2001*)

1.46. Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization: report of the Secretary-General at the 58th Session of the UN General Assembly (*August 4, 2003*)

1.47. Support by the United Nations System of the efforts of Governments to promote and consolidate new or restored democracies: report of the Secretary General at the 58th Session of the UN General Assembly (*October 23, 2003*)

Documents of UN Commissions and Committees

1.48. UNESCO and the Struggle against Racism (*A part of the Concluding Statement of UNESCO Scientific Colloquium in Athens, 1981*)

¹ This document was not included in the printed Russian version of the Collection, but was included in the electronic Russian version (CD "International Election Standards. Collection of Documents" // Central Electoral Commission of Russian Federation and the Kordis and Media Company Information Project, 2005.

1.49. Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral process (*Draft resolution to the report of the Third Committee at the 54th Session of the UN General Assembly, November 12, 1999*)

1.50. General Comment No. 25 (57) adopted by the Human Rights Committee under Article 40, paragraph 4 of the International Covenant on Civil and Political Rights (*August 27, 1996*)

1.51. Moderator's summary of the panel discussion and dialogue on women in power and decision-making, UN Commission on the Status of Women (*New York, March 10-21, 1997*)

1.52. General comments and recommendations of the United Nations Human Rights Committee No. 25 The right to participate in public affairs [1996] (*Geneva, May 12, 2003*)

SECTION 2

ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE

Fundamental documents

2.1. Final Act of the Conference on Security and Cooperation in Europe (*Helsinki, August 1, 1975*)

2.2. Document of the Conference on CSBMs and Disarmament and Disarmament in Europe (*Stockholm, January 17, 1984 - September 19, 1986*)

2.3. Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Cooperation in Europe, Held on the Basis of the Provisions of the Final Act Relating to the Follow-Up to the Conference (*Vienna, January 15, 1989*)

2.4. Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (*Copenhagen, June 29, 1990*)

2.5. Charter of Paris for a New Europe (*Concluding Document of the Conference for Security and Cooperation, Paris, November 21, 1990*)

2.6. Document of the Moscow Meeting of the CSCE Conference on Human Dimension (*Moscow, October 3, 1991*)

2.7. Decision on OSCE Action for Peace, Democracy and Stability in Bosnia and Herzegovina (*Budapest, December 8, 1995*)

2.8. Lisbon Summit Declaration (*Lisbon, December 3 1996*)

2.9. Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the Twenty-First Century (*Lisbon, December 3, 1996*)

2.10. Istanbul Summit Declaration (*Istanbul, November 19, 1999*)

2.11. Charter on European Security (*Istanbul, November 19, 1999*)

2.12. Bucharest Declaration of the OSCE Parliamentary Assembly and the Resolutions Adopted During the Ninth Annual Session (*Bucharest, July 10, 2000*)

2.13. Rotterdam Declaration of the OSCE Parliamentary Assembly and Resolutions Adopted During the Twelfth Annual Session (*Rotterdam, July 5–9 2003*)

2.14. Edinburgh Declaration of the OSCE Parliamentary Assembly and Resolutions Adopted at the Thirteenth Annual Session (*Edinburgh, July 5–9, 2004*)

Documents by the OSCE High Commissioner on National Minorities

2.15. The Lund Recommendations on the Effective Participation of National Minorities in Public Life (*Warsaw, June 1999*)

Documents of the Office for Democratic Institutions and Human Rights

2.16. Guidelines for Reviewing a Legal Framework for Elections (*Warsaw, January 2001*)

2.17. Guidelines to Assist National Minority Participation in the Electoral Process (*Warsaw, January 2001*)

2.18. Existing Commitments for Democratic Elections in OSCE Participating States, a Progress Report (*Warsaw, June 30, 2003*)

SECTION 3 COUNCIL OF EUROPE

Fundamental Documents

3.1. Statute of the Council of Europe (London, May 5, 1949)

3.2. Convention for the Protection of Human Rights and Fundamental Freedoms (*Rome, November 4, 1950*)

3.3. Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (*Paris, March 20, 1952*)

3.4. European Charter of Local Self-Government (*Strasbourg, October 15, 1985*)

3.5. Convention on the Participation of Foreigners in Public Life at Local Level (*Strasbourg, February 5, 1992*)

3.6. European Charter for Regional or Minority Languages (*Strasbourg, November 5, 1992*)

3.7. Framework Convention for the Protection of National Minorities (*Strasbourg, February 1, 1995*)

3.8. European Convention on Nationality (*Strasbourg, November 7, 1997*)

Documents of the Council of Europe Parliamentary Assembly

3.9. Resolution 1264 (2001) Code of good practice in electoral matters (*Strasbourg, November 8, 2001*)

3.10. Opinion 232 (2001) Draft Recommendation of the Committee of Ministers to member states on the participation of citizens in local public life (*Strasbourg, November 8, 2001*)

3.11. Resolution 1308 (2002) Restriction on political parties in the Council of Europe member states (*Strasbourg, November 18, 2002*)

3.12. Resolution 1320 (2003) Code of Good Practice in Electoral Matters (*Strasbourg, January 30, 2003*)

3.13. Recommendation 1595 (2003) Code of Good Practice in Electoral Matters (*Strasbourg, January 30, 2003*)

3.14. Recommendation 1676 (2004) Women's participation in elections (*Strasbourg, October 5, 2004*)¹

Documents of the Committee of Ministers of the Council of Europe

3.15. Resolution (62)2 Electoral, civil and social rights of prisoners (*February 1, 1962*)

3.16. Declaration and Program on Education for Democratic Citizenship, Based on the Rights and Responsibilities of Citizens (*Budapest, May 6-7, 1999*)

3.17. Recommendation R (99)15 to Member States on Measures Concerning Media Coverage of Electoral Campaigns (*Adopted on September 9, 1999 at the 678th meeting of the Ministers' Deputies*)

3.18. Recommendation 4 (2003) to member states on common rules against corruption in the funding of political parties and electoral campaigns (*Strasbourg, April 8, 2003*)

3.19. Decision Relations between Council of Europe and Non-Governmental Organizations (NGOs) (*837th meeting, April 16, 2003*)

3.20. Recommendation R (2004)11 to member states on legal, operational and technical standards for e-voting (*Adopted on September 30, 2004 during the 898th meeting of the Committee of Ministers*)²

Documents of the European Commission for Democracy through Law (Venice Commission)

3.21. Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures (*Venice, December 10-11, 1999*)

3.22. Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report (*52nd session, Venice, October 18-19, 2002, Strasbourg, October 30, 2002*)

SECTION 4

DECISIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS

4.1. Decision on *Lingens v. Austria* (*Strasbourg, July 8, 1986*)

4.2. Decision on *Mathieu-Mohin and Clerfayt v. Belgium* (*Strasbourg, March 2, 1987*)

4.3. Decision on *Oberschlick v. Austria* (*Strasbourg, May 23 1991*)

4.4. Decision on *Castells v. Spain* (*Strasbourg, April 23, 1992*)

4.5. Decision on *Vogt v. Germany* (*Strasbourg, September 26, 1995*)

4.6. Decision on *Gitonas and others v. Greece* (*Strasbourg, July 1, 1997*)

4.7. Decision on *Bowman v. the United Kingdom* (*Strasbourg, February 19, 1998*)

¹ The text of this document was not included into the printed Russian version of the Collection, but was included in the electronic Russian version thereof.

² The text of this document was not included into the printed Russian version of the Collection, but was included in the electronic Russian version thereof.

4.8. Decision on the Socialist Party and others against Turkey (*Strasbourg, May 25, 1998*)

4.9. Decision as to Admissibility of Application No. 51501/99 by Viktor Cherepkov against Russia (*Strasbourg, January 25, 2000*)

4.10. Decision on Zdanoka v. Latvia (*First Section, Strasbourg, March 6, 2003*)

4.11. Decision on Victor-Emmanuel de Savoie v. Italy (*Second Section, Strasbourg, April 24, 2003*)

4.12. Decision on Russian conservative party of entrepreneurs, Zhukov and Vasilyev v. Russia (*First Section, Strasbourg, March 18, 2004*)

4.13. Judgment on Hirst v. The United Kingdom (*Fourth Section, Strasbourg, March 30, 2004*)

4.14. Decision on Guliyev v. Azerbaijan (*First Section, Strasbourg, May 27, 2004*)¹

4.15. Judgment on Zdanoka v. Latvia (*First Section, Strasbourg, June 17, 2004*)¹

4.16. Judgment on Aziz v. Cyprus (*Second Section, Strasbourg, June 22, 2004*)¹

4.17. Judgment on Santoro v. Italy (*Third Section, Strasbourg, July 1, 2004*)¹

4.18. Judgment on Melnychenko v. Ukraine (*Second Section, Strasbourg, October 19, 2004*)¹

SECTION 5 EUROPEAN UNION

5.1. European Union Charter of Fundamental Rights (*Nice, December 7, 2000*)

SECTION 6 COMMONWEALTH OF INDEPENDENT STATES

6.1. Resolution of the Council of Heads of States of the Commonwealth of Independent States on adoption of the Charter of the Commonwealth of Independent States (*Minsk, January 22, 1993*)

6.2. Declaration of Local Self-Government Principles in Member States of the Commonwealth (*Adopted by the Inter-parliamentary Assembly of Member States of the Commonwealth of Independent States on October 29, 1994*)

6.3. The Charter of Elderly People (*Adopted by the Inter-parliamentary Assembly of Member States of the Commonwealth of Independent States, St. Petersburg, June 15, 1998*)

6.4. Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States (*Cisinau, October 7, 2002*)

6.5. Resolution "On the course of ratification of the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States and the practice of observation of elections in member states of the Commonwealth by observers representing the Inter-parliamentary Assembly of the member states of the Commonwealth of

¹ The text of this document was not included into the printed Russian version of the Collection, but was included in the electronic Russian version thereof.

Independent States" (*Adopted by the Inter-parliamentary Assembly of the member states of the Commonwealth of Independent States, St. Petersburg, November 15, 2003*)

6.6. Note of the CIS Executive Committee No. 03/1524 to *Ministries of Foreign Affairs of Member States of the Commonwealth of Independent States*

SECTION 7 ORGANIZATION OF AMERICAN STATES

7.1. American Convention on Human Rights (*November 22, 1969*)

SECTION 8 ORGANIZATION OF AFRICAN UNITY (AFRICAN UNION)

8.1. African Charter on Human and People's rights (*Nairobi, June 26, 1981*)

SECTION 9 INTER-PARLIAMENTARY UNION

9.1. Declaration on Criteria for Free and Fair Elections (*adopted at the 154th session of the Inter-Parliamentary Council, Paris, March 26, 1994*)

9.2. Universal Declaration on Democracy (*adopted without a vote at the 161st session of the Inter-Parliamentary Council, Cairo, September 16, 1997*)

9.3. Resolution on the 50th Anniversary of the Universal Declaration of Human Rights (*adopted at the 161st session of Inter-Parliamentary Council, Cairo, September 16, 1997*)

9.4. Documents of the 98th Inter-Parliamentary Conference Ensuring lasting democracy by forging close links between parliament and the people (*Cairo, September 11-16, 1997*)

SECTION 10 INTERNATIONAL MONITORING OF ELECTIONS

United Nations

10.1. Note of guidance on electoral assistance (prepared by the Department of Political Affairs of the United Nations Secretariat and the United Nations Development Program as an Annex to the Second Report of the Secretary General at the 56th Session of the United Nations General Assembly Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections) (*October 25, 2001*)

Organization for Security and Cooperation in Europe

10.2. The ODIHR Election Observation Handbook (*Warsaw, April 1999*)

Commonwealth of Independent States

10.3. Election Monitoring Recommendations for International Observers of the Commonwealth of Independent States (*St. Petersburg, December 4, 2004*)¹

10.4. Decision of the Council of Ministers of Foreign Affairs of CIS member states on the Provision on the CIS Observation Mission at presidential and parliamentary elections and referenda in members states of the Commonwealth of Independent States (*Minsk, March 26, 2004*)

SECTION 11

INTERNATIONAL TREATIES OF THE RUSSIAN FEDERATION WITH THE MEMBER STATES OF THE COMMONWEALTH OF INDEPENDENT STATES. UNIVERSALLY RECOGNIZED PRINCIPLES AND NORMS OF INTERNATIONAL LAW IN THE PRACTICE OF THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION AND THE SUPREME COURT OF THE RUSSIAN FEDERATION

International Treaties of the Russian Federation with the Member States of the Commonwealth of Independent States

11.1. Agreement between the Russian Federation and the Republic of Kazakhstan on the legal status of citizens of the Russian Federation permanently residing on the territory of the Republic of Kazakhstan, and citizens of the Republic of Kazakhstan permanently residing on the territory of the Russian Federation (*Moscow, January 20, 1995*)

11.2. Agreement between the Russian Federation and Turkmenistan on the legal status of citizens of the Russian Federation permanently residing on the territory of Turkmenistan, and citizens of Turkmenistan permanently residing on the territory of the Russian Federation (*Moscow, May 18, 1995*)

11.3. Agreement between the Russian Federation and the Republic of Georgia on the legal status of citizens of the Russian Federation permanently residing on the territory of the Republic of Georgia, and citizens of the Republic of Georgia permanently residing on the territory of the Russian Federation (*Tbilisi, September 15, 1995*)

11.4. Agreement between the Russian Federation and the Kyrgyz Republic on the legal status of citizens of the Russian Federation permanently residing on the territory of the Kyrgyz Republic, and citizens of the Kyrgyz Republic permanently residing on the territory of the Russian Federation (*Bishkek, October 13, 1995*)

11.5. Agreement between the Russian Federation and the Republic of Kazakhstan on the status of the city of Baikonur, the order of formation and the status of its bodies of executive power (*Moscow, December 23, 1995*)

11.6. Agreement between the Russian Federation and the Republic of Armenia on the legal status of citizens of the Russian Federation permanently residing on the

¹ The text of this document represents a new revision of the existing Election Monitoring Recommendations for International Observers of the Commonwealth of Independent States adopted on December 5, 2002 and was included into the Russian printed version of the Collection. The electronic version thereof includes the new revision of the Recommendations.

territory of the Republic of Armenia, and citizens of the Republic of Armenia permanently residing on the territory of the Russian Federation (*Moscow, August 29, 1997*)

11.7. Resolution of the Interstate Council of the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic, and the Russian Federation No.28 on the Agreement on the legal status of citizens of one member state permanently residing on the territory of another member state of the Agreement of March 29, 1996 (*Moscow, April 28, 1998*)

11.8. Agreement between the Russian Federation and the Republic of Belarus on equal rights of citizens (*Moscow, December 25, 1998*)

11.9. Treaty between the Russian Federation and the Republic of Belarus on the Formation of the Union State (*Moscow, December 8, 1999*)

Decisions of the Constitutional Court of the Russian Federation

11.10. Decision No. 9-P of July 10, 1995 in the case on verification of constitutionality of Para. 2, Article 42 of the Law of the Republic of Chuvashia "On the Election of Deputies of the State Council of the Republic of Chuvashia," as amended on August 26, 1994

11.11. Decision No. 7-P of April 30, 1997 in the case on verification of constitutionality of Decree No. 315 of the President of the Russian Federation March 2, 1996 "On the Procedure of Postponement of the Dates of Elections of Legislative (Representatives) Bodies of State Power of the Subjects of the Russian Federation," the Law of the Perm Region of February 21, 1996 "On Elections of Deputies of the Legislative Assembly of the Perm Region," and Para. 2, Article 5 of the Law of the Vologda Region October 17, 1995 "On the Procedure of Rotation of Deputies of the Legislative Assembly of the Vologda Region" as amended on November 9, 1995

11.12. Decision No. 26-P of November 17, 1998 in the case on verification of constitutionality of certain provisions of the Federal Law of June 21, 1995 "On the Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation"

11.13. Decision No. 4-P of March 23, 2000 in the case on verification of constitutionality of Para. 2, Article 3 of the Law of the Orenburg Oblast of September 18, 1997 "On the Elections of Deputies of the Legislative Assembly of the Orenburg Oblast" in response to complaint submitted by citizens G.S. Borisov, A.P. Butchnev, V.I. Loshmanov, and L.G. Makhova

11.14. Decision No. 7-P of April 25, 2000 in the case on verification of constitutionality of Para. 11, Article 51 of the Federal Law of June 24, 1999 "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation"

11.15. Decision No. 1-P of January 15, 2002 in the case on verification of constitutionality of certain provisions of Article 64 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" and Article 92 of the Federal Law "On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation" in connection with a complaint submitted by citizen A.M. Traspov

11.16. Decision No. 2-P of January 22, 2002 in the case on verification of constitutionality of Para. 2, Article 69, Para. 2, Article 70, and Article 90 of the Constitution

of the Republic of Tatarstan, and Clause 2, Article 4 and Clause 8, Article 21 of the Law of the Republic of Tatarstan "On the Election of People's Deputies of the Republic of Tatarstan" in connection with a grievance submitted by citizen M.M. Salyamov

11.17. Decision No. 10-P of June 11, 2002 on the case on verification of constitutionality of provisions of Clause 1, Article 64, Clause 11 of Article 32, Clause 8 and Clause 9, Article 35, Clause 2 and Clause 3 of Article 59 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" in connection with inquiries of the Supreme Court of the Russian Federation and the regional court of the Tula oblast

11.18. Decision No. 12-P of July 9, 2002 on the case on verification of constitutionality of provisions of Clause 5, Article 18 and Article 301 of the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State power of the Subjects of the Russian Federation," Article 108 of the Constitution of the Republic of Tatarstan, Article 67 of the Constitution (Main Law) of the Sakha (Yakutia) Republic and Para. 3, Article 3 of the Law of the Sakha (Yakutia) Republic "On Election of the President of the Sakha (Yakutia) Republic"

11.19. Decision No. 10-P of June 11, 2003 in the case on verification of constitutionality of the Federal Constitutional Law "On Amendments and Addenda to the Federal Constitutional Law "On the Referendum of the Russian Federation"

11.20. Decision No. 15-P of October 30, 2003 in the case on verification of constitutionality of certain provisions of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" in connection with petitions submitted by groups of deputies of the State Duma and grievances submitted by citizens S.A. Buntman, K.A. Katanyan, and K.S. Rozhkov

11.21. Decision No. 4-P of February 25, 2004 in the case on verification of constitutionality of Clause 10 of Article 75 of the of the Federal Law "On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum" and Para. 1 of Article 259 of the Civil Procedural Code of the Russian Federation in connection with an petition of the Supreme Court of the Russian Federation

11.22. Decision No. 17-P of November 29, 2004 in the case on verification of constitutionality of Paragraph 1, Clause 4, Article 64 of the Law of the Leningrad Oblast "On the Election of Deputies of Representative Bodies of Local Self Government and Officials of Local Self-Government in the Leningrad Oblast" in connection with a grievance submitted by citizens V.I. Gnezdilov and S.V. Pashigorov¹

11.23. Decision No. 18-P of December 15, 2004 in the case on verification of constitutionality of Clause 3, Article 9 of the Federal Law "On Political Parties" in connection with a petition submitted by the Koptevsky district court of Moscow, grievances submitted by the all-Russian public political organization "Orthodox Party of Russia," and citizens I.V. Artyomov and D.A. Savin

11.24. Decision No. 1-P of February 1, 2005 in the case on verification of constitutionality of Para. 2 and Para. 3, Clause 2, Article 3 and Clause 6, Article 47 of the

¹ The texts of the documents Nos. 11.22-11.24 were not included into the Russian printed version of the Collection, but were included in the electronic Russian version thereof.

Federal Law "On Political Parties" in connection with a grievance submitted by the public-political organization "The Baltic Republican Party"

Decisions of the Supreme Court of the Russian Federation

11.25. Decision of the Plenum of the Supreme Court of the Russian Federation No. 8 of October 31, 1995 "On certain issues of application of the Constitution of the Russian Federation by courts in administration of justice"

11.26. Decision No. 5 of the Plenum of the Supreme Court of the Russian Federation of October 10, 2003 "On application of the universally recognized principles and norms of the international law and international treaties of the Russian Federation by courts of general jurisdiction"

11.27. Decision of the Plenum of the Supreme Court of the Russian Federation No. 23 of December 19, 2003 "On court decision"

11.28. Determination of the Civil Judicial Board of the Supreme Court of the Russian Federation of December 6, 2003 adopted on case No.45-GOZ-31 in response to a cassation appeal contesting the decision of the Sverdlovsk regional court of November 13, 2003, submitted by V. N. Lapkin

11.29. Determination of the Cassation Board of the Supreme Court of the Russian Federation of September 2, 2004 adopted on case No. KAS04-350 in response to a cassation appeal contesting the decision of the Supreme Court of the Russian Federation of May 27, 2004, submitted by M. V. Izotov

Appendix

Appendix No .1. Alphabetical and subject index

Appendix No. 2. Internet addresses of international organizations and other bodies and organizations

