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Federalism and Elections in the Russian Federation: National and Regional Aspects

SERGEY D. KNYAZEV*

Russian constitutional principles setting out a federal system and a republican form of government are integral attributes of Russian nationality. It makes it necessary to create an adequate blend of federalism and electoral politics. Accordingly, there is a special interest in the problem of electoral federalism. It implies, together with provisions for the unity of the Russian Federation's electoral system, fundamental principles, and real opportunities for the subjects of the Federation to independently solve problems on organizing and holding elections in their territories. At least, such an approach correlates to federalism and elections at the national and regional levels and is declared in the articles of the Constitution of the Russian Federation as well as decisions of the Russian Constitutional Court.

From the moment of its establishment, the Constitutional Court of the Russian Federation has continually worked on the problem of elections and election legislation. One way to understand the legal and constitutional nature of Russian electoral federalism can be found in the constitution's provisions and definitions directly related to the organization of state power, the formation of the Russian electoral system, as well as various aspects of organizing and holding elections.

¹ The most important idea here is that the Russian Constitution contains neither a complete list of state power in individual regions, nor limitations of powers except by the higher federal authorities for the purpose of forming a system of regional state power and establishing the parameters of an electoral system throughout the federated regions of Russia.

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¹ In this regard, we should consider the Russian Federation Constitutional Court's provision of January 24, 1997 № 1-II on the constitutionality of Udmurt Republic Law of April 17, 1996, "On the System of State Power Authorities in the Udmurt Republic."

As a result, subjects of the Russian Federation, within the framework of forming (fixing) their own constitutional legal status, are authorized in the texts of their constitutions (charters) to envisage the formation of state power authorities not only at the regional level but in particular cities and regions. In this context, state power authorities, being formed at the level of cities and regions, in accordance with their status and competence, as well as character of formation, functioning and interacting with higher authorities, must correspond to the fundamentals of the Russian Federation constitutional regime. As a result, principles of democracy and decentralization are the basis for organizing local public authority, whether carried out by the local state power authorities or municipal authorities.²

Speaking about the Constitutional Court's recognition of electoral independence of the Russian federated regions, one should consider the Act adopted on November 29, 2004 № 17-II, which concerns verifying the constitutionality of the first abstract of Clause 4, Article 64 of Leningradskaya Oblast Law, "On Elections of Deputies of the Representative Authorities and Officials of the Local Self-Government in Leningradskaya Oblast" due to the claim of V.I. Gnezdilov and S.V. Pashigorov. In the applicants' opinion, the electoral legislation of Leningradskaya Oblast must not set a special regulation for recognizing municipal elections to be held, as it contradicts the Constitution of the Russian Federation and means illegal interference of Oblast into the Russian Federation authority. However, the Constitutional Court disagreed with them, pointing out that federal electoral legislation does not set the rules for determining the winners of municipal elections. Setting regulations for recognizing a candidate to be elected for the position in the municipal self-government authorities does not concern the basic guarantees of the Russian citizens' electoral rights. As a result, it is not an exclusive prerogative of federal legislators. According to the fundamentals of the Russian Federation's electoral system, the subjects of the Federation are authorized to consider the rules for recognizing municipal elections if they do not contradict the constitutional principle of equality while exercising electoral rights by the citizens.³

The above-mentioned example is a clear example of the Russian Federation Constitutional Court gradually taking the position that when a body organizing and holding elections, including issues of the legal regulation of the Russian citizens' electoral rights, the body itself and the issue in question are simultaneously under the jurisdiction of the Russian Federation

² Collection of the Russian Federation Legislation. 1997. № 5. Art. 708.

³ Collection of the Russian Federation Legislation. 2004. № 49. Art. 4948.

and its subjects. Electoral federalism is one of the fundamental principles of the national electoral system's formation and functioning, together under the direct authority of the Russian Constitution's establishment of the state power organization.

At the same time, recent efforts on strengthening the vertical structure of state power and the present electoral legal practices show that the adequate combination of federalism and elections faces considerable difficulties. The result is the obvious strengthening of the federal center to the detriment of regional independence, at least in the sphere of electoral relations. To prove this, we just need to observe the interests of the Federation and its subjects while considering the types of elections and whether they are allowed at various levels. One can also consider electoral systems and the peculiarities of their application at the federal, regional, and municipal levels, as well as system of election commissions responsible for organizing and administering elections.

Regarding the types of elections and whether they are permitted at various levels of public power, we should note that the Russian Constitution (Article 11) and the Federal Law, "On Basic Guarantees of Electoral Rights and Rights to Take Part in Referendum of Citizens of the Russian Federation," (Clause 9, Article 2). At first blush, the law appears to stipulate the usage of the institution of elections, while at the same time forming a seemingly unlimited number of public power authorities and officials at all levels (federal, regional, and municipal). It is impossible to find the direct prohibition for holding elections with respect to any subjects of state or municipal power. However, if we refer to other legislative acts we can easily find direct limitations of independence of the subjects of the Russian Federation in choosing the method of forming their own state power authorities. Thus, Article 18 of the Federal Law, "On General Principles of Organization of Legislative (Representative) and Executive State Power Authorities of the Subjects of the Russian Federation," stipulates that the position of the head of the subject of the Russian Federation is created by vesting an individual with appropriate power under the personal recommendation of the Russian President.

In accordance with the existing procedure of filling vacant regional gubernatorial positions of a region, and as a result of legal practice, The Russian President recommends only one candidate to the regional legislature. This serves to deprive regional parliaments of an opportunity to truly select its own executive. Moreover, in case of a double rejection of the recommended

candidate, the President is authorized to dismiss the regional legislature and appoint an acting chief official for the region in question. At the same time, the President is authorized to dismiss the chief officials of a region from their positions at the discretion of the president. All these innovations caused a broad response and were ambiguously received. Most lawyers considered them as an attempt to derail federal fundamentals of Russian nationality in the electoral sphere. This contradicts the Russian Constitution.⁴ However, such opinion is exaggerated and extremely categorical.

If we refer to the foreign experience, we will find out that in the contemporary world there are no federations using the method suggested by the Russian legislation for taking the governor's position (head of the subject of federation). However, that does not mean that direct elections by population is the only possible form of taking the governor's position legally.

Elections are far from a universal method of forming regional executive power in the subjects of Federation. To a greater degree, they are typical for the USA and some Latin-American federations (Argentina, Brazil, Mexico), where governors are really elected by citizens in accordance with their direct majority electoral systems. As for the great bulk of federative states, other methods used include: appointing the executive of a region by the head of state at his will (as in India and Pakistan); or, approval by the head of the state of a recommendation of any subject of federation authorities (as in Australia and Canada); or, election by the subject of federation parliament (as in Austria, Belgium, and Germany); and even inheritance of the subject of federation leader's post (as in Malaysia and the United Arab Emirates).⁵

All these illustrate that the institution of elections cannot be considered as the preferred method of taking the position of the head of executive power (governor) in the subjects of a federation. The constitution of the Russian Federation also does not stipulate that the election of its governors is the only possible method of legalizing the status of the head of executive state power in the Russian regions. This fact was directly addressed

⁴ A.V. Ivanchenko, A.E. Lyubarev. RUSSIAN ELECTIONS FROM REORGANIZATION TO FOREIGN DEMOCRACY. M.: Aspekt Press, 2006. P. 192-195.

⁵ See, T.Ya. Habrieva. *New Bill of Forming State Duma and Executive Power Authorities of the Subjects of the Russian Federation (Contemporary Analysis of the Russian and Foreign Experience)*// JOURNAL OF THE RUSSIAN LAW. 2004. № 11. P. 3-10.

by the Russian Constitutional Court in its resolution of December 21, 2005 №13-II.⁶

Recognizing the institution of investiture (authorization) of governors of Krai, Oblast and other subjects of the Russian Federation, the Constitutional Court specified several legal positions. First, for the purpose of balancing such fundamentals of Russian nationality as democracy, sovereignty, state entity and federalism the Constitution of the Russian Federation assumes the possibility of various methods of empowering public officials, not directly enumerated in the Constitution as the elected ones, which concerns the position of the governor of the subject of Federation. Second, the possibility of changing the established procedure of empowering public authorities and officials (including refusal to be directly elected by the population) shall not contradict the Russian Federation Constitution if constitutional rights and freedoms of the Russian citizens, including the right to free elections, are observed. Thirdly, in accordance with the Russian Constitution, the governor of the subject of the Federation is not only the head of regional executive power, but also an element of executive power within the unitary system in the Russian Federation. Thus, he or she is subordinated directly to the President of the Russian Federation who, due to his constitutional status, provides the coordinated functioning of all state power authorities at the federal and regional level.

Taking into account these facts, the Constitutional Court made an unambiguous conclusion that the constitutional and legal nature of the chief executive (the president, governor, or head of administration) of a subject of the Russian Federation the appropriate level of citizens' empowerment regarding direct elections by the population of the subject of the Russian Federation. As a result, the Constitution of the Russian Federation does not exclude the authority of the Russian President from recommending a candidate for the position of the head of the region to the legislative authority of the subject of the Russian Federation, as long as the final decision about empowerment is made by the regional legislative authority.⁷

⁶ On verifying the constitutionality of particular provisions of the Federal Law, "On General Principles of Organization of Legislative (Representative) and Executive State Power Authorities of the Subjects of the Russian Federation," due to the claims of the citizens.

⁷ Collection of the Russian Federation Legislation. 2006. № 3. Article 336.

We should note that the general conclusions of the Constitutional Court about the constitutionality of not directly electing governors, which was prompted by the federal executive, and transfer of the procedure of authorizing the decisions of regional parliaments, under recommendation of the Russian President. Explaining compliance of the Russian Constitution with the new procedure of taking the position of a governor of the subject of the Russian Federation, the Constitutional Court, simultaneously acknowledged the constitutional legality of making elections as a method for filling vacancies of regional chief officials. As neither Constitutional Court nor other authorities and officials were able to assure the Russian population that refusal to elect governors, excluding strengthening of the powerful central government is beneficial; still, it is not clear how such a refusal coordinates with the interests of forming democratic state, as it is obviously followed by the reduced usage of the constitutionally guaranteed right to elect and be elected to the state power authorities.

Despite the constitutionally guaranteed right to form state power authorities independently, the regional subjects of the Russian Federation have no opportunity to use elections for filling the vacant position of a governor. If we add that the “appointed” governors have the opportunity, in their turn, practically to “appoint” half of the Federation Assembly members (the upper chamber of the Russian parliament), then we can understand that in the present situation regional electoral authority was sacrificed to Russia’s central government, strengthening that entity, and ostensibly creating unity, even at the cost of damaging Russia’s electoral federalism.

The participation of citizens in municipal elections is not better. And this is despite the fact that Federal Law of October 6, 2003, “On General Principles of Organizing Local Self-Government in the Russian Federation,” greatly extended opportunities for using elections for forming local self-government authorities. This can be seen by establishing a dual system of municipal formations, comprised on the one side of urban districts and municipal areas, and on the other side by urban and rural settlements. As a result, the number of municipalities with their local self-government authorities has been greatly increased, including those which must be formed by direct popular elections. This is an important consideration, as according to Article 23 of the above-mentioned Federal Law, municipal elections must take place in all municipalities in order to elect deputies as well as members

of the elected local self-government authority on the basis of an equal and direct electoral right by ballot.⁸

One should also mention that, in accordance with the Articles 35, 36 and 38 of the Federal Law, “On General Principles of Organizing Local Self-Government in the Russian Federation,” citizens received the right to elect and be elected not only to the representative authority of the municipality, but also to the municipal supervisory body (monitoring audit chamber, auditing committee) if the charter of the municipality implies it in the structure of local self-government authorities. It seems that such legislator’s approach does not imply any issues related to the refusal of elections as the method for forming public municipal power and the restriction of citizens’ electoral rights.

If we refer to such a municipal formation as a municipal region, we will discover that in accordance with Article 35 of the Federal Law, “On General Principles of Organizing Local Self-Government in the Russian Federation,” its representative authority can be elected not just by the local population, but by a combination of the heads of settlements within the municipal region and deputies of representative authorities of the mentioned settlements, elected from their list. Federal legislation does not prohibit taking the position of the head of a municipal region by representative elections from its members, but not by direct population elections. Thus, at the municipal level, a deficiency of electoral local self-government authorities, elected by citizens on the basis of the constitutionally guaranteed right to elect and be elected to the authorities of state power and local self-government, is allowed.

There is no need to prove that this directly contradicts Article 30 of the Constitution, which stipulates that local self-government is implemented by citizens by referendum, elections and other forms of direct will via electoral and other local self-government authority. Refusal to directly elect local self-government authorities in the municipal regions leads to the

⁸ As a result, on the territory of the Primorsky Region, instead of 34 municipal formations took place before adoption of Federal Law of October 6, 2003. “On General Principles of Organizing Local Self-Government in the Russian Federation,” 178 municipalities, including 22 municipal regions, 12 urban districts, 116 rural and 29 urban settlements, were established. The number of municipal deputy corps was inconsiderable, having taken place before the reform, and was replaced by over two thousand local “parliamentaries.” According to the charters of the municipal formations, they total 2051 persons, 137 of them work professionally in the representative authorities.

situation when some categories of citizens are practically deprived of the right to elect and be elected to the local self-government authorities. This especially concerns populations of small settlements with less than 100 voters, as, according to the law, they are taken off the municipal elections not only at the municipal level, but also at the level of an appropriate urban or rural settlement.⁹ All these facts lead to the conclusion that at the local self-government level judicial prerequisites for displacing the institution of municipal elections by alternative methods of forming corps of municipal power subjects are being created, which, in its turn, causes a constriction of Russians' electoral rights at the local self-government level.

According to the Russian Constitution, electoral legislation, though it is not directly named in the constitutional text, is within the joint authority of the Russian Federation and its subjects. It is proved by the Article 1 of the Federal Law, "On Basic Guarantees of Electoral Rights and Rights to Take Part in Referendum of the Citizens of the Russian Federation," which stipulates that the structure of electoral legislation is represented by federal laws, laws of the subjects of the Russian Federation and even charters of municipalities. Moreover, analysis of the Russian Constitution shows that a determination of the procedure of holding elections in the federal state power authorities, fixation of principles of electoral right, and the declaration of electoral rights of citizens and fixation of federal guarantees are prerogatives of the federal government in terms of legislative regulation of elections. Other issues of legal support of organizing and holding elections can be solved by the subjects of the Federation at their will.

However, Federal Law, "On Basic Guarantees of Electoral Rights and Rights to Take Part in Referendum of the Citizens of the Russian Federation," stipulates that the federal legislature essentially monopolizes the right to legislate in the sphere of elections. Actually, the list of election powers reserved to the subjects of the Federation is infinitesimal, and we can talk about regional legislation on elections and its small role in the structure of contemporary Russian legislation with great casualty (exaggeration).

In the juridical literature we frequently see that the content of federal electoral legislation and, particularly, the Federal Law, "On Basic Guarantees

⁹ According to the Article 35 of the Federal Law, "On General Principles of Organizing Local Self-Government in the Russian Federation," the representative authority of the settlement is not formed if the number of voters is less than 100 persons. In this case, competence of the representative authority, including possible election of the head of settlement, is carried out by the meeting of citizens.

of the Electoral Rights and Rights to Take Part in Referenda of the Citizens of the Russian Federation,” is limited through regulation.¹⁰ Otherwise, the intrusion of federal legislation in resolving problems of electoral privileges of the subjects of the Russian Federation would contradict the Russian Constitution.

From the position of the existing electoral legislation we can conclude that the Federal Law, “On Basic Guarantees of Electoral Rights and Rights to Take Part in Referendum of the Citizens of the Russian Federation,” can play the role of an electoral code. There, practically every important issue related to organizing and holding elections at all levels of state power are determined. In this regard, it is symbolic that if there is no electoral legislation (or its recognition by the court to be invalid or inapplicable), elections in the subjects of the Russian Federation state power authorities or local self-government authorities must be held by the appropriate election commission on the basis of federal law providing the exercise of citizens’ right to elect and be elected to the state power and local self-government authorities. If the present legal basis in the federal law is insufficient, then, in the portion not regulated by federal law, holding such elections can take place on the basis of a Presidential edict. Thus, at the level of federal law it was actually recognized that the existence of legislative acts of the subjects of the Russian Federation in the structure of electoral legislation is not a mandatory condition for legal regulation of elections.

Transferring total control of elections and establishing legal procedures for exercising electoral rights at the federal level does not meet the requirements of the Constitution nor the interests of evolving Russian federalism.¹¹ No theory about unification of electoral procedures, which are undoubtedly necessary, should be an excuse for the absolute universality of electoral legislation. Meeting the requirements of international electoral standards, an approach must take place in regard to deciding the main features of an electoral system. As for the regulation of the detailed procedure of elections, the subjects of the Russian Federation must keep the constitutionally guaranteed distribution of authority between themselves and Russia’s central government. They must retain their right to search for and

¹⁰ P.A. Astafichev. *Problems of Developing Electoral Legislation in the Russian Federation*. Synopsis of a Thesis. Cand. Sc. (Philosophy). Saratov, 1998 . P. 18.

¹¹ D.B. Sergeev. ELECTORAL RIGHTS OF THE SUBJECTS OF THE RUSSIAN FEDERATION. THEORETICAL AND LEGAL RESEARCH. Petropavlovsk-Kamchatsky: Far Eastern National University Press, 2003. P. 86-90.

legislate their own variants for organizing and holding regional and municipal elections on their territory.

As for the electoral system and the right to choose any of its variants, despite the provision of practically unlimited freedom for regional activity in this sphere, nowadays, federal legislation practically does not provide subjects of the Federation with such an opportunity. In accordance with Article 4 of Federal Law, “On General Issues of Organization of Legislative (Representative) and Executive State Power Authorities of the Subjects of the Russian Federation,” and Article 35 of the Federal Law, “On Basic Guarantees of Electoral Rights and Rights to Take Part in Referendum of the Citizens of the Russian Federation,” no less than half of the deputy mandates in regional parliaments shall be distributed by the proportional electoral system. Thus, practically all subjects of the Russian Federation have been forced to transfer the mixed majority-proportional electoral system, though recently it has only been used in some of them (such as Krasnoyarsky Krai, Sverdlovskaya Oblast, and a few others).¹² And if at the beginning of forming the Russian electoral system, using any variants of its configuration at all levels of public power was justifiably considered as one of the principles of national electoral law,¹³ nowadays, opportunities for regional identity of the Russian regions in this sphere are greatly limited.

Such a limitation of electoral purview of the subjects of the Federation leads to the fact that even regarding municipal formations

¹² The only exclusion from the general rule at present is the Dagestan Republic, Moskovskaya Oblast and St. Petersburg City, where distribution of all deputy mandates in the executive state power authority is based on the proportional electoral system.

¹³ Indirect confirmation can be founding the definitions of the Russian Federation Constitutional Court of November 20, 1995 № 77-II about the refusal to consider the application of the deputies of the State Duma of the Federal Assembly and application of the Russian Federation Supreme Court about verifying constitutionality of some provisions of the Federal Law of June 21, 1995, “On the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation.” There, the Constitutional Court specified that stipulation of electoral procedures does not take place in the texts of constitutions, but by legislation, making the choice of any variant of the electoral system and its fixation in the law to depend on certain social and political conditions and be the issue of political viability. Thus, with constitutional jurisdiction it was officially recognized that the Russian Constitution implies the opportunity to hold elections by various electoral systems depending on the will of legislators. See. Collection of Legislation of the Russian Federation. 1995. № 49. Art. 4867.

(compared to the subjects of Federation) there are more reasons to consider their independent choice of an electoral system. At least, in accordance with Article 32 of the Federal Law “On General Principles of Organizing Local Self-Government in the Russian Federation,” municipalities have the right to choose their own electoral systems. And though this right is not absolute and depends on the appropriate law for holding municipal elections of the regional set of electoral systems, we can see that federal legislation on elections of local self-government authorities and officials does not have any mandatory directives fixing universal parameters of electoral system for each municipal formation.

It should be noted that recently there has been a tendency for more unification of the principle fundamentals and details of electoral systems at all levels of public power. Thus, the practice of holding elections more obviously takes the features of “unitarism,” eloquently witnessing the virtual character of Russian federalism, in the electoral sphere. Striking confirmation can be seen in the December 2006 provisions of federal electoral legislation, stipulating that it is impermissible during any elections in the Russian Federation to vote against all candidates (or against all lists of candidates). There is also a mandatory level of the voters’ attendance as a condition for recognizing elections to take place.

Forming a system of election commissions as independent authorities providing organization and holding elections also implies the necessity of adequate voter registration. This requires a certain level of independence necessary for the subjects of the Russian Federation to form election commissions at the regional level. However, rules (procedures) of appropriate members of election commissions and, particularly, procedures for taking the position of a chairman of the commission, practically, suspend subjects of the Federation from the process of forming regional election commissions. This resulted in the system of election commissions turning from the ordered collection of (relatively) independent federal, regional and municipal links into the centralized electoral system.¹⁴ As a result, activities of the subjects of the Federation’s election commissions are mostly focused on the Central Election Commission of the Russian Federation. This does not contribute to sustaining real federalism of the Russian electoral system.

¹⁴ S.D. Knyazev. *System of Election Commissions. Do We Need an Electoral Vertical?* // ACADEMIC JURIDICAL JOURNAL. 2002. № 1. P. 34-38.

In this regard, it is important to stress that an election is not only a procedure regulated by legal provision which helps to form the corps of deputies and heads of municipal executive power, but also an exclusive political and legal mechanism showing, like a litmus test, the whole spectrum of moods, tastes, and interests of various social strata and population groups. To give the electoral process real political context, it must meet particular requirements providing legitimacy to form representative fundamentals of sovereignty and exclude direct state interference in the expression of the voters' will through election results. And this is possible, as noted in legal literature, only in cases where organizing and holding elections, national sovereignty is not replaced by state sovereignty. The results of elections must not be a transfer (loss) of the voters' (people) sovereign power, but the election of representative authorities of state and municipal power.¹⁵ In the electoral environment focused on the monopolistic state control of elections via the Central Election Commission of the Russian Federation and various subordinate election commissions in the Russian Federation, there is a serious danger that the national electoral system will turn into a convenient institution of electoral reproduction, serving competing interests, and challenging fundamentals of representative sovereignty.

To summarize, we should point out that federalism and elections are undoubtedly recognized and declared by the Russian Constitution as fundamental to the Russian political landscape. However, constitutional declaration of federalism itself, as well as a stated commitment to the electoral process, does not automatically guarantee electoral federalism in reality, but implies insistent efforts of the central government and regional governments to use the advantages of federalism and elections. Otherwise, as it often happens in the contemporary Russian political environment, Russian citizens will be forced to have a unitary model of elections, while at the same time having a constitutionally recognized system of electoral federalism.

¹⁵ M.G. Pryahin. *Lenin's Ideas about Elections and Electoral Rights*. Synopsis of a Thesis. Cand. Sc. (Law). Saratov, 1973. P.11-14.