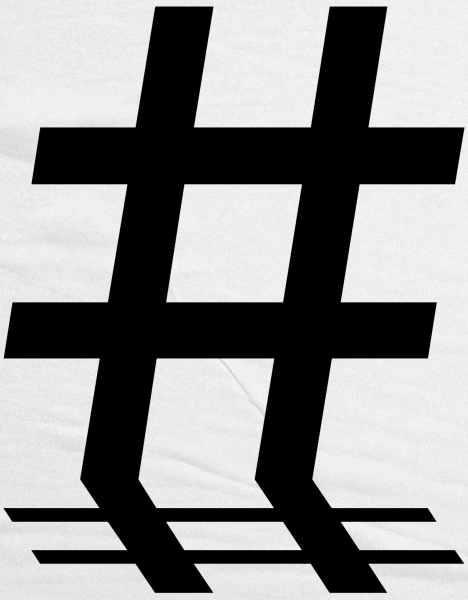
MAXIMUM SECURITY ELECTIONS.



ELENA LUKYANOVA
EVGENIY POROSHIN

WITH THE PARTICIPATION
OF SERGEY SHPILKIN,
ANDRONIK ARUTYUNOV,
AND EKATERINA ZVORYKINA

TRANSLATED
BY **PATRICK MURPHY**

СВОБОДНЫЙ УНИВЕРСИТЕТ
BRĪVĀ UNIVERSITĀTE RĪGA

HOW RUSSIAN ELECTIONS BECAME NON-ELECTIONS AND WHAT TO DO ABOUT IT

A POLITICAL-LEGAL STUDY WITH ELEMENTS OF MATHEMATICS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This book is about the role and significance of elections in democratic and anti-democratic processes. Using the example of the transformation of Russian electoral legislation in the first two decades of the 21st century, it shows how, through manipulation of the electoral system and electoral practices, it is possible to neutralize democratic institutions and change the trajectory of political development in the opposite direction. The authors provide a classification of amendments to electoral legislation, which can be used by other countries as a marker when assessing the transformation of political regimes. The book also analyzes how the effectiveness of parliaments depends on the state of the electoral system.

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From the authors
A Fulcrum and a Lever of Democracy

"Give me a fulcrum, and I will move the world…" It is believed that the author of this expression is Archimedes. In fact, the original phrase sounds a little diffe , rent: "Give me a lever long enough and a fulcrum on which I can place it, and I will move the world." That is, this is an instruction on how to budge the seemingly immovable.

But there are no eternal immovable objects. Not in nature, not in society. Stars go out, mountains collapse, glaciers melt, seas and oceans dry up or change their shape. Every process always has its own lever and its own fulcrum—something breaks the established balance, and then changes begin. In states and societies, everything happens similarly, only faster. Dictatorships are transformed into democracies, and vice versa, dormant institutions suddenly wake up, creaking judicial machines under the pressure of society begin to issue fair and professional decisions, and dictators sometimes go to jail along with their corrupt cliques. These processes always have their own leverage and their own fulcrum. And if in nature there are a huge number of factors that become a catalyst for change, then in democratic processes such a factor is elections. Yes, of course, they are not the only factor. But in the end, elections are the important ones. The freer, fairer and more competitive the elections, the faster the democratic transformation will come. And vice versa.

Today, it seems to some that the Russian state model is an unmovable authoritarian boulder firmly rooted in Russian soil. But this only seems to be the case. The political regime based on artificially constructed electoral authoritarianism is actively announcing something that does not really exist—its imaginary stability. And at the same time, it is trying to introduce the syndrome of learned helplessness into the psyche of people. But the very first free and fair elections can not only move this boulder out of the way, but also show that it is far from having a granite-

like nature. This has happened more than once in history. Yes, of course, a lot will need to be changed, repaired and corrected later. But the leverage and fulcrum are still elections.

Elections (the electoral system, the state of the electoral legislation, and electoral practices) are a very accurate marker of the true goals and objectives of the authorities. If these goals differ from those officially proclaimed or embodied in the Constitution, then they can be fairly easily fixed by changes in the electoral legislation and certain electoral practices. This is what we will try to do when answering the first question about how and why the Russian elections became non-elections.

The second question—what to do about it?—is more difficult. And not just because it is difficult to correct the current electoral legislation in Russia. On the contrary, this is simple, especially considering that if you sort the burden of many years of anti-democratic accretions into a single framework, you can quickly free the electoral legislation from them. But how can such amendments be passed through a parliament formed according to non-democratic rules and which is not in its essence a representative body? And another important question: how do you prove to people who are disappointed in their government and who do not trust any government that only their will and their real participation can change the situation in the country? Here we can only speculate and theorize. However, this can also be useful.

This book was written by lawyers who tried to combine political and legal views on the problems of Russian statehood from the point of view of the dynamics of changes in Russian electoral legislation over the past quarter of a century. How does this work differ from many domestic electoral studies? First, it's shorter. Details that interfere with the perception of the main idea were excised to the extent possible from a huge block of information, but at the same time, the accuracy of meanings was not distorted. We tried to show how and for the sake of what the changes took place, in what ways the results were achieved and how this affected representative power. For greater clarity of conclusions, two mathematicians joined the lawyers, and presented a mathematical model for establishing the administrative practices of electoral authoritarianism.

Secondly, we propose a tool for assessing non-democratic transition based on the classification of amendments to the electoral legislation.

Judge the results for yourself.

Introduction
Why Elections?

> We have entered a closed circle. In order to be elected, you have to have power, and in order to have power, you have to be elected.—*A. Kynev*

According to András Sájo, professor of law at the Central European University in Budapest and academician of the Hungarian Academy of Sciences, "the electoral system is at all times a playing field jealously guarded by politicians, in whose rules outsiders are not allowed to interfere."[1] Why? Because the electoral system and its consolidation in the electoral legislation determine the procedure for the formation of a certain empowered majority, which gets the opportunity to establish binding rules for everyone, including rules on how this majority should come about, with the condition that the majority created by this method again will determine the manner in which the next majority will come about.

That is, the goal of free and fair elections is the formation of an authorized body that, on behalf of the population, adopts generally binding rules of conduct and is a counterbalance (or control) to the executive power. All these three functions—representation, independent rule-making and control — taken together are the defining quality of the parliament. If a body, even if called a parliament, does not possess this quality, then, in essence, it is not one. All democratic transformations in the world began with elections and parliaments. Gradually, the electoral systems and parliamentary powers changed, but in any case, democratic movement has always aimed at expanding the participation of the population in the adoption of state-power decisions and at improving the ways to achieve consensus between society and government through

1 *Samoogranichenie vlasti (kratkiy kurs konstitutsionalizma)* (Self-limitation of power (short course in Constitutionalism)), Moscow, *Iurist* (2001), 64–65.

equal competition of elites in elections. This is where the red line runs that separates democracies from non-democratic regimes.[1]

This means that it is the electoral system and its legal design—electoral legislation—that is the magic key that, depending on the goals and objectives of the authorities, opens or closes the doors of democracy. It is on electoral legislation and on elections as a result of its implementation that the qualitative condition, limits and possibilities of representative bodies depend—institutions that not only set the rules of the game, but which also limit the executive power as being the most potentially authoritarian. And it is precisely this electoral legislation that ultimately determines the effectiveness of the system of separation of powers, the configuration, essence, content and procedure for the interaction of all state institutions.

But exactly for the same reason, the electoral legislation is the main risk group when changing power priorities. If these priorities deviate from the democratic trajectory, the electoral legislation will be the first to fall under attack, since the legitimization of such deviations will certainly require an obedient rule-maker who is ready not to discuss and not to argue, but simply to execute. And by no means to act as a control, but, on the contrary, to be a faithful ally of the executive branch, unconditionally supporting and approving all its initiatives. Such obedience can be achieved only through specific procedures for the formation of elected bodies, which ensure a special personal selection of their members for passive loyalty—a quality that largely determines the essence and content of the activities of future political institutions and creates the basic conditions for the legitimation of any political regime.

Authoritarian leaders in countries with democratic constitutions have to adapt to an extremely uncomfortable legal environment for them and to the requirements of Common Legal Thinking (the presence of generally accepted international democratic standards). Under these conditions, they are forced to make great efforts to create and maintain a "facade" that resembles democratic institutions and is designed to mask the essence of dictatorships. This can only be done by creating and maintaining a system of electoral authoritarianism.

Herein lays the difference. An electoral democracy is a regime where politicians and parties can lose power as a result of electoral defeat, be-

1 V. Gel'man, *Avtoritarnaya Rossiya: begstvo ot svobody, ili pochemu u nas ne prizhivaetsya demokratiya*. (Authoritarian Russia: flight from freedom, or Why democracy does not take hold here), Moscow, Howard Rourke (2021).

cause elections are their basic source of authority. But if in liberal democracies elections work as a tool for changing power, reflecting changing public interests, then managed elections in authoritarian conditions serve to preserve the status quo, helping rulers stay in power[1] through artificially formed parliaments that obediently change the rules of the game to suit the needs of autocrats. Keeping the incumbents in power is a priority goal and is achieved at any cost.

Starting with the "third wave" of democratization, and especially in the post-Soviet space, regimes that are authoritarian in nature and successfully implement the initially democratic political institutions, including elections, are becoming more widespread. However, the presence of such institutions in autocracies should not mislead anyone. The main mechanisms for the reproduction of power in such regimes are precisely authoritarian.

The state carries out such a serious, widespread and manipulative interference in the electoral process that there is no room to speak about any democratic nature of elections.[2] The main difference between electoral democracy and electoral authoritarianism is determined by the quality of electoral competition. It is on this field that one regime is replaced by another. Through an obedient rule-maker, autocracies manipulate the rules of competition (electoral legislation), which are constantly transformed in favour of the incumbent, depending on the electoral mood of the society. In addition to imitation of democracy, autocratic regimes need elections, among other things, because they perform a number of other important tasks. First of all is the legitimization of the regime—the creation of the official illusion of having authority in the eyes of those who are subject to it, and the appearance of agreement to the power of those who claim power.[3]

1 M.V. Grigor'ev, *Institut vyborov v avoritarnykh rezhimakh: diskussii v sovremennoy zapadnoy politicheskoy nauke*(the institution of elections in authoritarian regimes: discussions in contemporary Western political science). Politicheskayanauka(2021), No. 3, 307–317.

2 *See also*Iu. S. Medvedev, *Zachem avtokratam vybory? Politcheskay anauka o roli vyborov priavtoritarizme*. (Why Elections for Autocrats? Political science on the role of elections in authoritarianism) Sravnitel'naya politika(Comparative Politics)(2020). Vol. 11, No. 4, 189–200; M.A. Zavadskaya, *Vremya vybirat': manipulirovanie elektoral'nymi tsiklamy v sovremennykh avtoritarnykh rezhimakh* (Time to elect: the manipulation of electoral cycles in contemporary authoritarian regimes), VestnikPermskogouniversiteta. Politologiya. (2015), No. 4, 5–28.

3 It is acceptable to term the mechanism of supporting authority in politics legitimacy.

And although authoritarian elections are not tasked at all with fulfilling the most important function of elections in democratic systems—the change of power—nevertheless, such a change following the results of elections is possible even under conditions of authoritarianism. This is due to the fact that the measure of the legitimizing function of authoritarian elections depends on the quality of democratic imitation. That is, for authoritarian elections to contribute to the legitimization of incumbents, they must win electoral victories without obvious abuses. Crooked elections are a double-edged weapon. A high level of fraud that cannot be hidden could lead to an acute crisis in the legitimacy of electoral authoritarian regimes, as evidenced by the aftermath of the 2020 presidential election in Belarus.[1] But if this happens, it rather indicates a "failure" of the regime, that it has reduced or lost its authoritarian potential for some time. Protests are always an indicator of the weakening or destabilization of the regime. Stunning or upset elections in conditions of authoritarianism, as a rule, arenot a cause, but a consequence of the collapse of authoritarian regimes. But given minimal stability of autocracies, holding regular elections, on average, increases their survival rate.[2]

This is how a vicious circle of authoritarian elections arises, when "in order to be elected, one must have power, and in order to have power, one must be elected."[3] Setting irremovability from office as his goal, the autocrat in any case falls into the trap of the need to permanently tighten the electoral screws and increase the falsification potential, which inevitably leads to an aggravation of the confrontation between the authorities and society, to political crises and to the weakening of the regime. There are many cases when violations during elections and their controversial results became the reason for mass protests and the subsequent transformation of the regime, sometimes through so-called velvet revolutions, and sometimes through the democratization of the political system "from above," under pressure from protesters. In

See V. Gel'man,*op.cit.* note2, 21.

1 *Ibid.*, 33.

2 Medvedev,*op.cit*. note 5, 193.

3 A. Buzin, *"Pochemu ya ne vystupil na kruglom stole TsIK?"* ("Why didn't I make a presentation at the Central Election Commission Roundtable?") Here in justification of the futility of professional debates in the Central Election Commission lawyer Andrey Buzin cites the political scientist Aleksandr Kynev //https://www.golosinfo.org/articles/143002.

addition, the elections themselves also contain the potential to counteract authoritarianism. The presence of a legal platform for political struggle, albeit a severely limited one, can contribute to the formation of opposition forces and play the role of an instrument of democratization.[1]

Preservation of power at any cost for a particular period of time is always a tactical task. But the consequences of a tactical victory are far from being strategically unambiguous and could lead to a potentially dangerous result for the regime. Therefore, the expression "they know what they are doing, but they know not what they do" very accurately characterizes what is happening in Russia today. Paraphrasing Leo Tolstoy, political scientists joke that "all democracies are alike, but each autocracy is unhappy in its own way."[2] Electoral authoritarianism is a stagnant, corrupt political system that has brought nothing but poverty to the peoples long caught in this trap. Comparative political studies show that the democratization prospects for such regimes are rather weak. On the one hand, they can acquire long-term stability, which means that democratization is delayed. On the other hand, if they do fail, military dictatorships often take their place. The brute-force regimes themselves usually end either in coups aimed at returning to civilian rule, or in revolutions. After that, with a fairly high degree of probability comes democracy.

Politicians and lawyers. Two perspectives on the same problem

Huge numbers of studies have been written about Russian elections and the transformation of Russian electoral legislation. More by lawyers, a little less, but still a lot, by political scientists. Both explore the same phenomenon from different angles and use different terminology.

In general, political scientists and lawyers have many of the same objects of research: political regimes, forms of government, governmental structure, elections, political parties, the state of political competition, the system of separation of powers, the division of powers between

1 M. Komin. *Mozhno I oprokinut'sya. Lyuboy elektoral'ny tsikl mozhet stat' poslednym dlia avtoritarnogo rezhima. Politicheskaya nauka ob'yasnyaet, kak eto rabotaet* (It can tip over. Any electoral cycle can become the last for an authoritarian regime. Political science explains how that works), *Novaya Gazeta*, Aug. 10, 2016 No. 87.

2 M. Gaydar, M. Snegovaya. *Poznaetsya v sravnenii: kak dolgo zhivut diktatury* (It becomes clear in comparison: how long do dictatorships live). *Vedomosti*, July 29, 2013 // https://www.vedomosti.ru/newspaper/articles/2013/07/29/kak-dolgo-zhivut-diktatury.

state bodies, the relationship between the state and society, etc. Only approaches and methods differ. For example, the course "Parliamentarism and the Fundamentals of Lawmaking" as an independent academic discipline is taught, each in her own university, by political scientist Ekaterina Shulman and lawyer Elena Lukyanova, one in the Faculty of Political Science, and the other in the Faculty of Law. For the first, rulemaking is a political process, for the second, method of organization and activity and of legal regulation, and the analysis of practice. What if both approaches are combined? It seems that in this case the result of both analyses will be more reliable. Perhaps when lawyers introduce the word "incumbent" into scholarly usage, and political scientists learn to use the phrases "electoral systems" and "electoral legislation" instead of the term "electoral institution," we will finally hear and recognize each other, and at the same time mutually sharpen our scholarly optics. But something tells us that it's not about our mutual ignorance of each other. What then? It seems that the reason is extremely bureaucratically banal.

The fact is that until the beginning of the 1990s, there was no systematized and separately recognized political science in Russia, although back in 1804 a department or faculty of moral and political sciences was created at Moscow University. However, despite the presence of the works of a number of pre-revolutionary scholars (B. N. Chicherin, V. S. Solovyov, P. I. Novgorodtsev, and I. A. Ilyin), to fully explore such issues as political power and its social foundations in the conditions of autocracy, theory of elites, typologies of political and party systems and civil society, was impossible. Just as under the conditions of Soviet ideological uniformity, the emergence of a systematic political science could not, by definition, take place, although there were attempts to do so. Suffice it to recall the appearance in the 1960s–1980s of a group of Soviet social scientists (G. Arbatov, O. Bogomolov, F. Burlatsky, B. Grushin, Iu. Levada, G. Osipov, A. Rumyantsev, G. Shakhnazarov, F. Petrenko, M. Titarenko, and others).

Here is what modern researchers write about Soviet social science:

> In the Soviet state, the concept of "social sciences" was firmly established in the official vocabulary immediately after the 1917 revolution. At the same time, it was about creating a fundamentally new model of social science, in contrast to the pre-revolutionary system. Its foundations were laid by V. I. Lenin. In the draft Regulations on the People's Commissariat of Education (early 1921), he specifically pointed out that "the content of education should be determined only by the communists." So in the USSR, the functions of social science to protect the Soviet political and ideological system became

> the main ones, and the function of social criticism atrophied. A feature of the social sciences in the Soviet Union was the fundamental dependence on Soviet ideology, the closing off of dialogue with scholarly opponents, and the impossibility of free scientific development outside the sanctioned communist ideas. The prospects for the development of social science were determined by the degree of their impact on the consciousness of people, and not by the scientific search for objective truth.1

Therefore, what is now called political science was partly handed over to lawyers. It was their educational and scientific classifiers that included the history of political and legal doctrines, political and electoral systems, forms of government, parliamentarism and federalism. Of course lawyers study phenomena from their own normative-institutional point of view and using methods other than those of political science. They more often define the state without analyzing the prerequisites, goals and objectives of the government, that is, without explicit politics, a method which was what the Soviet government needed. But at least the subjects themselves and the terminology remained in the programs of higher education.

Only in March 1987, under pressure from the already mentioned group of Soviet scholars, a joint Resolution of the Central Committee of the CPSU and the Council of Ministers of the USSR was adopted, instructing the relevant governing bodies and other organizations to revise the nomenclature of scientific specialties, as a result of which, in the fall of 1988, specialties in political and sociological sciences appeared in this nomenclature.[2] In the preface to his book, Vladimir Gelman, a mechanical engineer by training, writes: "Unfortunately, I did not have the opportunity to receive a formal education in the field of political science. Despite this (or because of it?), I later became a professor of political science at two universities in two different countries."[3]Other reputable Russian political scientists likewise did not have such an oppor-

1 T.A. Bulygina, *Obshchestvennye nauki v SSSR v seredine pyatidesyatikh—pervoy polovine vos'midesyatykh godov: avtoref. dis. dokt. ist. nauk* (Social sciences in the USSR in the middle 1950s to the first half of the1980s, author's abstract of doctoral dissertation), Moscow, 2001.//https://www.dissercat.com/content/obshchestvennye-nauki-v-sssr-v-seredine-pyatidesyatykh-pervoi-polovine-vosmidesyatykh-godov.

2 *See* for more detail Ia. A. Plyais, *Politicheskaya Nauka v Rossii: proshloe i nastoyashchee* (Political Science in Russia: the past and the present). Vestnik TGY. Vyp. 1 (45) (2007), 5–16.

3 Gelman, *op. cit*., note 2, 7.

tunity, for example philologist Kirill Rogov, historians Grigory Golosov, Tatyana Vorozheykina, and Gleb Pavlovsky, journalist-historian Sergei Medvedev, and geographer Dmitry Oreshkin.

Naturally, after 70 years of the official non-existence of Russian political science, it had to re-learn the basics and actively "catch up" with world studies that had gone far in this direction. Having received recognition, it actively and with great enthusiasm took up this challenge, leaving without attention or "for later" the work of its lawyer colleagues, who for many years partly filled the void in this area. This is how the separation of disciplines took place, supported by a scientific-bureaucratic procedure, when scientific councils blame the authors of studies for a mixture of approaches and are jealous and protective of any intrusion into their priority and monopoly on truth. Lawyers-constitutionalists are particularly zealous in this, proceeding from a legalist approach to law and being afraid of the penetration of a slightly different (primarily political) view of problems that seem to them exclusively legal. For example, the relationship between elections and the quality of the work of parliaments is denied. Thus, an artificial loss of fields of scholarly vision occurs, which is extremely detrimental to qualitative scholarly analysis. Although in the modern world, different disciplines, on the contrary, are connected, intersected and mutually enriched at an accelerated pace. Political economy, biochemistry, biophysics, chemical physics and many others have long become familiar and understandable areas of combined knowledge. Therefore, we will try to overcome the artificial and, in our opinion, extremely harmful barrier between political science and public law science, based on the fact that the legal regulation of power relations cannot be explained and properly understood without an analysis of political relations and processes.

PART ONE

CORRELATION BETWEEN CHANGES IN THE ELECTORAL LEGISLATION AND THE TRANSFORMATION OF THE POLITICAL REGIME

Democracy provides freedom of choice, but does not guarantee the indispensable choice of consistently democratic leaders. Democracy remains democracy if there is a real possibility of a change of leaders. If such an opportunity is blocked, it is time to raise the question of the transformation of the political regime. The emergence of authoritarianism appears to be the result of deliberate actions that can be likened to the poisoning of a political organism. Countries that have long-established democratic "rules of the game" sometimes manage, if not to develop immunity to this kind of "poisoning," then at least to minimize their negative effects. Even if very odious and authoritarian politicians (like Trump) come to power in consolidated democracies, as a rule, they fail to turn democratic regimes into authoritarian ones. But countries that are forced to create their political institutions from scratch (as happened after the collapse of communism) find it much more difficult to develop an effective "antidote" on their own.

As Vladimir Gelman argues, successfully building authoritarian regimes and ensuring their survival is a much more difficult task than successfully building democracies. Potential autocrats seeking to seize and maintain their own monopoly on power for a long time are forced to simultaneously solve several interrelated tasks. First, they must, if not completely get rid of challenges from political competitors and fellow citizens, at least minimize these risks. Secondly, they must prevent threats from those segments of the elite that seek to seize dominance in various ways (from military or "palace" coups, to joining the opposition).

"In the 30 years since the collapse of the USSR, Russia has gone from one consolidated authoritarian regime to another — from a communist one-party regime that dominated the country for 70 years to a personalist electoral authoritarianism that reached its consolidation stage dur-

ing the presidency of Vladimir Putin."[1] Now, looking back, it seems extremely important to analyze and comprehend this entire path. At least for the sake of those who come after us to have in their hands a certain tool for measurement that would help prevent future mistakes, because, as is known, history cruelly avenges the unlearned and unmastered lessons of the past.

We will try to trace the "poisoning" of the Russian political body through the prism of the transformation of electoral legislation. We assume that if our analysis coincides with the political science division into periods of the changes of the political regime which is given by experts in the field of political science, then it is time to raise the question of electoral legislation as a marker of the true goals and objectives of power. For these purposes, we will use the division into periods drawn from the appraisals of Vladimir Gelman, Grigory Golosov, Mikhail Komin and Andrey Medushevsky, Dmitry Oreshkin, and Alexander Kynev.

Elections in Russia before 1993—A Brief Description

It is impossible to truly understand the peculiarities of the development of the electoral legislation of Russia in the first post-Soviet thirty years without taking into account the level of electoral culture, the long tradition of a one-party system and other habits, stereotypes and other layers of the past that have been inherited from the socialist system in modern times. Therefore, it seems necessary to give at least a brief overview of this past.

Almost until the last decade of the twentieth century in Russia, due to the lack of practice, ideas about free elections had not been formed. And we probably cannot yet speak about their fairness. A full comprehension of this reality is possible only now. Because the spirit of freedom and the illusion of a breakthrough in the '90s often overshadow sober assessments of the true state of affairs. So, what did we have before the first partially free and so far the only stunning or overturning elections in the history of Russia, which took place on March 26, 1989?

Elections to the State Duma of the Russian Empire were multistage. They were held in four unequal curiae: 1) landowning, 2) urban, 3) the peasantry and 4) workers. The norm of representation of the land-

1 V. Gel'man. *Avtoritarnaya Rossiya: begstvo ot svobody, ili pochemu u nas ne prizhivaetsya demokratiya*. (Authoritarian Russia: flight from freedom, or Why democracy doesn't take hold here). Moscow, Howard Rourke (2021), 91.

owning curia was one elector for two thousand people; in the city, one elector for four thousand; in the peasantry, one elector for thirty thousand; and in the working class, one elector for ninety thousand.

The democratic law on elections to the All-Russian Constituent Assembly of 1917 was revolutionary for Russia: it was far ahead of the social development of electoral legislation in other countries. In accordance with it, universal, equal, direct elections were established with secret ballot. Voting rights were granted to women and military personnel. The lowest voting age limit in the world for that time was set at 20 years. The regulation on elections to the Constituent Assembly did not recognize property qualifications, residence and literacy qualifications, restrictions on class, religion or nationality. Elections were free and provided alternatives. However, the implementation of all these democratic institutions was far from what was intended. The elections dragged on for several months. Less than 50% of voters took part in them, and the representative body formed as a result lasted only a day and was forcibly dissolved. So this electoral experience turned out to be unsuccessful and fruitless.

In the period from 1918 to 1936, elections in the RSFSR and in the USSR, as in the pre-revolutionary period, were not consistently democratic, since the function of dictatorship (forced removal of part of the population from participation in government) was directly provided for in the Constitution. Therefore, the elections were not universal. The right to vote was given to all citizens who were 18 years old by the day of the elections and earning their livelihood through productive and socially useful labor. These were workers and employees of all types and categories, employed in industry, trade, agriculture, etc., and peasants and Cossack farmers who did not use hired labor to make a profit. Those who lived on unearned income (exploiters) did not receive the right to vote—those who had interest from capital, income from enterprises, income from property, etc. Nor were private merchants, monks and clergymen of churches and religious cults, employees and agents of the former police, and members of the ruling house in Russia allowed to vote. In 1925 in Leningrad, Kyiv and Moscow, about 10% of the entire mass of voters were deprived of voting rights. Of these: persons using hired labor were 5.3%; persons with "unearned" income—8.3%; merchants—39.9%; ministers of a religious cult—4.9%; from the ranks of the former police—3.2%; the mentally ill—1.2%; those disenfranchised by court verdicts—8.8%; and family members of the "disenfran-

chised"—28.4%. During the period of the election campaign for the elections of village councils in 1927 in the country as a whole, persons deprived of the right to vote amounted to 2,110,650 people, or 3.5% of all voters.

The elections were not equal. The Soviet government did not have much confidence in the peasantry and actually reproduced the pre-revolutionary proportions of representation in cities and in the countryside. In the All-Russian Congress of Soviets, one deputy from the city council represented 25,000 voters, and one deputy from provincial councils represented 125,000 provincial residents. The ratio of 1 to 5 allowed the deputies from the workers not to "sink" among the deputies from the less class-conscious peasantry. In the first two Soviet decades, elections were not secret. Voting was by show of hands. Members of party, Komsomol and other organizations closely observed who voted and how.

The 1936 Constitution of the USSR. On December 5, 1936, a new Constitution of the USSR was adopted, which abolished the constitutional dictatorship and expanded the electoral rights of citizens. "All citizens of the USSR who have reached the age of 18, regardless of race and nationality, religion, educational qualification, settlement, social origin, property status and past activities, have the right to participate in the election of deputies and be elected, with the exception of insane persons and persons adjudged disenfranchised by a court." Separate articles guaranteed the observance of the electoral rights of women and military personnel. It was a majoritarian single-mandate system of an absolute majority. However, passive suffrage (the right to stand for election) was limited—the right to nominate candidates was granted only to labor collectives and public organizations. And this was natural, since according to the Constitution (Article 3), all power in the USSR belonged to the working people of the city and countryside.

This situation concerning the restriction of passive suffrage remained until 1988, that is, until the adoption of a new version of the next Constitution of the USSR, that of 1977. This Constitution, which proclaimed the expansion of the social base of power (Article 2. "All power in the USSR belongs to the people"), nevertheless did not eliminate the contradiction between the declared sovereignty of the people and the restriction of passive suffrage, laid down in 1936—as before, only labor collectives and public organizations could nominate candidates for deputies.

The main problem of the elections throughout this period was the practice of the so-called "orders," as a result of which the elections became completely uncontested. Candidates for nomination descended to labor collectives "from above," from party bodies, ostensibly to ensure the norm of representation from all social groups. As a result, only one candidate from the "indestructible bloc of communists and non-party people" was on the ballot. There was not a word about such practice in the legislation. Literally before the war, the ballot papers contained the phrase "strike through the rest." However, there was no one to delete. But this phrase soon disappeared from the ballots.

And it was only the new version of the Constitution, adopted on December 1, 1988, in pursuance of the resolutions of the XIX Conference of the CPSU "On Some Urgent Measures for the Practical Implementation of the Reform of the Political System of the Country", "On the Democratization of Soviet Society and the Reform of the Political System" and "On the Legal Reform," that moved long since overdue reform of the electoral system from a standstill. Today there is a lot of discussion about whether the elections of the Congress of People's Deputies of the USSR in 1989 were free and fair. After all, indeed, during those elections, despite the fact that forces loyal to the CPSU managed to get the majority of mandates, 38 first secretaries of regional committees lost to opposition candidates. Among others, Andrei Sakharov received a mandate, becoming a symbol of the opposition's emotional and reputational victory.

Strictly as a matter of law, these elections were not completely free and fair. Their main difference from the previous forty years of elections was the presence of alternatives. And this was exactly what was met with such enthusiasm by the population. In addition, finally, the right to nominate candidates was granted not only to labor collectives, but to meetings of voters at the place of residence and military personnel in military units (Article 9 of the USSR Law "On Elections of People's Deputies of the USSR"). And yet these elections were not quite equal. Along with single-seat elections for two thirds of the Congress, one third of it was elected directly from all-Union public organizations, again according to "order," but now already provided for by law: 100 deputies from the CPSU; 100 deputies from trade unions; 100 deputies from organizations of cooperatives; 75 deputies from the Komsomol; 75 deputies from women's councils united by the Committee of Soviet Women; 75 deputies from organizations of military and labor veterans; 75 deputies from

scientific societies; 75 deputies from creative unions; and 75 deputies from other public organizations that had all-union bodies.[1]

Nevertheless, these elections clearly showed how the electoral legislation plays the role of a magic key in the process of democratization. Because it was from these elections and from the representative body formed as a result of them that great transformative shifts began in the country. It was democratization from above. Half-hearted and contradictory, when the elites acted partly at random, including due to the lack of serious democratic knowledge in the conditions of the just emerging and still very weak political science. Support for this democratization from below was also based on substitute theses. The total unavailability of goods, the lack of food, the dictatorship of the party and the secret services with which people were totally fed up, censorship in the media—these were the true reasons for this support. If the people knew about democracy, freedom, human rights, separation of powers and the rule of law, it was from hearsay. But slogans for democracy and freedom were heard at rallies. And then another story began, which could not but be a natural continuation of Soviet perestroika and democratization. Imperfect Soviet under-developed democracy continued not as Soviet democracy, but as imperfect defective democracy.

1 This is how, for example, the deputies' mandates from the scientific societies were distributed: 20 deputies from the Academy of Sciences of the USSR, 10 deputies from scientific organizations and associations affiliated with the Academy of Sciences of the USSR, 10 deputies from the Academy of Agriculture, 10 deputies from the Union of scientific and engineering societies of the USSR, 10 deputies from the Academy of Medical Sciences jointly with 40 scientific medical societies, 5 deputies from the Academy of Pedagogical Sciences jointly with the Soviet Association of Pedagogues-Researchers, 5 deputies from the Academy of Arts, and 5 deputies from the organization of inventors.

Chapter 1.
Defective Democracy
Transformation of the Political Regime and Electoral Legislation in Russia in 1993–1999

It's true. Political scientists call this time in the history of Russia "defective democracy." Here is how Grigory Golosov characterizes the period between the collapse of the Soviet Union and the coming to power of Vladimir Putin:

> "Having gotten rid of the communist regime in 1991, Russia began not so much to build democracy as to get rid of the former social order. I think that the then head of the Russian state, Boris Yeltsin, simply did not distinguish between these two points, considering the dismantling of the command economy as a task whose accomplishment would eliminate all problems. The leaders of the country were so little interested in political reforms that they did not even bother to hold new parliamentary elections in conditions when the victory of the democratic forces in them would be practically guaranteed.
>
> The political crisis of the fall of 1993 for a decade determined the image of Russia as, to use the nomenclature of political regimes accepted in science, an "imperfect" or "defective" democracy. The defectiveness was manifested in many ways, and above all in the Constitution of 1993, written personally for Yeltsin. Giving its "guarantor" colossal power, it at the same time limited his political responsibility, allowing parliament to take part in the formation of the government. At the same time, the legislative and supervisory powers of Parliament were minimal. This allowed Yeltsin, who lost the parliamentary elections decisively, to actually retain full power, although some concessions to the Duma majority still had to be made. On the whole, this situation suited Yeltsin quite well.
>
> He was not satisfied with the prospect of losing the 1996 presidential election. It is fairly widely known that Yeltsin had no intention of handing over power to Gennady Zyuganov, even if the latter had won the election. If such a scenario had materialized, then democracy in Russia would have suffered

> a complete collapse even then. This was avoided thanks to the efforts of Yeltsin's then advisers, who nevertheless brought their president to victory. But the price of these efforts was high. The dirty campaign of 1996 made it possible to preserve democracy, but made it even more defective, discrediting the idea of elections for a long time in the eyes of a huge mass of citizens."[1]

Such a long quotation is not accidental. And not everything in it is definitive. But one thing is indisputable—from the not entirely fair stunning or overturning elections of the last Soviet years, when the country opened a window of democratic opportunities and development, today, 30 years later, having gone through electoral authoritarianism, we found ourselves on the verge of a closed dictatorship with a falling economy and a stagnating political system. How did it happen? A fundamental, stormy and, perhaps one of the most difficult segments of Russia's modern history is filled with a huge number of political and legal nuances. And if at a distance their general outlines look very similar to political scientists and lawyers, then assessments of the details often differ. Just the case when it is impossible to paint the canvas of political history in broad strokes, without details, because it was this period that laid the foundation for a twenty-year-long chess game on the electoral board, which ended with the potentially losing side, unable to cope with the solution of the task set according to existing rules, simply overturning the board by amending the Constitution.

Vladimir Gelman formulated everything the same as Grigory Golosov, but much more succinctly and less emotionally:

> 1991—refusal to adopt a new Constitution of Russia and hold new elections of government bodies, partial preservation in Russian politics of the "rules of the game" inherited from the Soviet period;
> 1993—a sharp conflict between the president and parliament, which led to the forceful dissolution of the Congress of People's Deputies and the Supreme Soviet of Russia. One of the consequences of the conflict was the adoption of a new Constitution, which consolidated the broad powers of the president of the country and contained considerable authoritarian potential;
> 1996—presidential elections in Russia, during which the incumbent president Boris Yeltsin was re-elected as a result of an unfair campaign, accompanied by a lot of abuse… During the campaign, Yeltsin intended to cancel

1 G. Golosov, *Zakat elektoral'nogo avtoritarizma. Kak Putin prevratilsya iz garanta rezhima v ego glavnuiu ugrozu* (The sunset of electoral authoritarianism. How Putin changed from the guarantor of the regime into its main threat) //https://theins.ru/opinions/grigorii-golosov/239433. Feb. 17, 2021.

> the elections, dissolve parliament and ban opposition parties, but did not follow through with these plans;
> 1996–2000—the struggle of various segments of the elite for leadership on the eve of the election of a new president of the country. A complete victory in this struggle for Yeltsin's successor, Vladimir Putin, who was able to maximize his own power as a result of forcing the loyalty of all significant actors…[1]

And now let's see how it all looked legally, and try to translate the events into the language of laws and procedures. And it may turn out that not everything is so unambiguous in the assessments of political scientists. Or that at least some clarification is needed.

Both of the above political scientists claim that in 1991 there was a refusal (deliberate, ill-conceived, frivolous, etc.) to adopt a new Constitution and to hold elections. Is it so? Did Yeltsin have a real opportunity in 1991–1992 to adopt a Constitution and hold elections? Hardly. In drawing this conclusion, we proceed from a number of facts and circumstances.

As is known, being a People's Deputy of the USSR, Yeltsin was not elected to the Supreme Soviet of the USSR and miraculously entered it only because the future Prosecutor General of Russia Aleksey Kazannik gave up his seat to him. Yeltsin had no prospects in the Union parliament. Therefore, his further movement to power was not at the Union level, but at the Russian level and was based on a tough confrontation with the Kremlin. On May 29, 1990, he, the leader of the opposition interregional deputy group of the Supreme Soviet of the USSR, in the third round of voting by a margin of only four votes (535 votes with a quorum of 531) took the highest post in Russia and became Chairman of the Supreme Soviet of the RSFSR. Further events developed rapidly. On June 12, 1990, the First Congress of People's Deputies of the RSFSR adopted the Declaration of Independence of Russia, and on June 16, 1990, a resolution was adopted on the formation of the Constitutional Commission to develop a new Constitution of Russia. Again, Yeltsin became the chairman of the commission, and Ruslan Khasbulatov, First Deputy Chairman of the Supreme Soviet of the RSFSR, became his deputy. By the end of 1990/beginning of 1991, the first version of the draft Constitution was ready, but the working group was divided roughly in half on the question of the form of government in Russia. Some supported

1 V. Gel'man, *Avtoritarnaya Rossiya: begstvo ot svobody, ili pochemu u nas ne prizhivaetsya demokratiya*. (Authoritarian Russia: flight from freedom, or Why democracy doesn't take hold here). Moscow, Howard Rourke (2021), 162.

the variant with a presidential republic modeled on the United States, where the entire government would be formed by the president as head of the executive branch and where votes of no confidence in the government from the parliament would be excluded. Others were in favor of having a parliamentary majority play the main role in appointing the government.[1]

On February 7, 1991, the Supreme Soviet of the RSFSR adopted Decree No. 581-1 "On measures to ensure the holding of a referendum of the USSR and a referendum of the RSFSR on March 17, 1991" on the preservation of the USSR, which ordered to simultaneously hold another referendum throughout Russia on the need to introduce the post of president of Russia. On March 17, 1991, 69.85% of Russian voters voted for the introduction of the post of president in Russia. On April 24 of the same year, the Supreme Soviet of the RSFSR adopted the laws "On the President of the RSFSR" and on presidential elections. On June 12, 1991, Yeltsin, who received 57.30% of the vote, was elected President and took office on July 10, 1991.[2]

So Yeltsin was brought to the very top of the political ladder thanks to the Congress and the Supreme Soviet of the RSFSR. He was dependent on the Congress and up to a certain time could not come into conflict with it. For example, he could not offer the people's deputies to re-elect themselves—to resign and call new elections. He himself did not have the authority to set a referendum or adopt a law on his own election. And after the elections, even after becoming President, he could not adopt a Constitution and a law on elections. By the way, in April 1992 the 6th Congress of People's Deputies approved the general concept and main provisions of the draft Constitution. And this project was supported by Yeltsin. That is, there was no refusal to adopt the Constitution. The new Russian Constitution was being prepared in the bowels of the existing USSR.

Normal constitutions are not made "quick and dirty." New elections to new bodies cannot be held according to the old rules. It takes time to develop constitutions and rules. And how can elections be held for bod-

1 A. Gol'tsblat, *Istoricheskaya pravka: kak prinimali rossiyskuiu Konstitutsiiu* (Historical correction: how the Russian Constitution was adopted) //https://www.rbc.ru/opinions/politics/12/12/2018/5c0f9c489a794794d1765333

2 It should be kept in mind that the Union and Russian referendums were conducted according to different rules. Therefore a pure numerical comparison of their results would not be fully correct.

ies that have not yet been constituted? Yeltsin's taking the risk of doing this in 1993—simultaneously holding a referendum on the Constitution and elections to a new parliament provided for by the yet-to-be-adopted Constitution—was a huge risk and a certain amount of political adventurism. If we compare the two main turning points in the history of our country in the last century, then probably we can have exactly the same claims against the provisional government, which, having declared Russia a republic in February 1917, convened the Constituent Assembly for nine months and prepared a draft Constitution. Russia in 1917 was just as unprepared for the instant adoption of a new Constitution as Russia in 1991. Yeltsin, on the other hand, forced rather than dragged out the adoption of the Constitution. Another issue is that in 1991, in contrast to 1917, a representative body with founding powers was already elected and operating. This body was Soviet in form, but completely different in content and goals. And it was this body, together with the president, that drafted the Constitution. The main issue of democracy, always and everywhere, is a matter of procedure and consensus, not confrontation and political squabbling. Yes, democratic decisions take longer and are more difficult than authoritarian ones. But this is their main advantage—reaching agreement. And it was at this point that the Russia of the 1990s failed to hold within democratic standards. Personal authoritarian tendencies, coupled with the Soviet stereotypes of the sole head of state and the inability of parliamentarians to negotiate, undermined the democratic process.

From April 1992 (the 6th Congress of People's Deputies of the RSFSR), a tough confrontation between the President and the Congress began.[1] The previous one (the 5th Congress) gave him additional pow-

1 Already by February of 1991, when Yeltsin was Chairman of the Supreme Soviet of the RSFSR, six of his deputies made an official political declaration and warned deputies of some personal characteristics of the president. Among these characteristics they named authoritarianism, confrontationalism, a striving to unilaterally decide questions of domestic and foreign policy, and contempt for the law and for the opinion of constitutional organs. The declaration was signed by deputy chairpersons of the Supreme Soviet of the RSFSR S. Goryacheva and B. Isaev, the chairman of the chamber of the Council of nationalities of the Supreme Soviet of the RSFSR P. Abdulatipov, the chairman of the chamber of the Council of the Republic of the Supreme Soviet of the RSFSR V. Isakov, the deputy chairman of the chamber of the Council of the Republic of the RSFSR A. Veshnyakov, and the deputy chairman of the chamber of the Council of nationalities of the Supreme Soviet of the RSFSR V. Syrovatko (*see* V.B. Isakov, Chairman of the Council of the Republic: *Parliamentary diaries*, 238–240).

ers to carry out economic reform for one year,[1] and the 7th Congress in December 1992 not only did not approve the Chairman of the Government proposed by the President, it took these powers away from him.[2] The congress adopted a series of amendments to the Constitution, which allowed the congress to resolve any issue within the competence of the Russian Federation, suspend the decisions of the president and government, and exercise other control functions. And then everything went exactly according to the scenario predicted by Stalin back in 1936. Then, speaking at the 8th All-Union Congress of Soviets with a report "On the Draft Constitution of the USSR," in which it was proposed to introduce the post of a sole president, he noted that this addition was wrong, because "according to the system of our Constitution in the USSR there should not be a single president elected by all the population, on a par with the Supreme Soviet, and able to oppose himself to the Supreme Soviet" Yeltsin put himself in opposition to the Congress.[3]

1 Postanovleniya V S'ezda narodnykhdeputatov RSFSR *"Ob organizatsii ispolnitel'noy vlasti v period radikal'noy ekonomicheskoy reform"* (Decrees of the 5th Congress of peoples deputies of the RSFSR "On the organization of executive power in the period of radical economic reform" and *"O pravovomobespechenii ekonomicheskoy reformy"* (On the legal provision for economic reform), *Rossiyskayagazeta*, Nov. 5, 1991; Vedomosti of the Congress of Peoples Deputies and the Supreme Soviet of the RSFSR (1991), No. 44, art. 1456.

2 The conferring on the President of the RF of "special powers" became a starting point for the arising of the duality of power in the country. Externally this appeared to be a parallel and confrontational existence of two forms of government—the presidential one and that of the Soviet republics. Using the right he was granted, the President of the RF in fact greatly exceeded its limits. The uninterrupted flow of decrees getting around the existing legislation totally swamped the legal field in Russia. The decrees began not only to modify laws, but even to introduce changes in them. In a number of cases the decrees were placed not only higher than laws, but higher than the Constitution itself. (*See* E.A. Lukyanova, *Gosudarstvennost' i konstitutsionnoe zakonodatel'stvo Rossii* (*Government and constitutional laws of Russia),*doctoral dissertation, Moscow (2003)255–288).

3 On December 10, 1992, in violation of the Regulations, immediately after the start of the Congress session, the president took the floor and delivered an address to the citizens of Russia and to all voters, in which he accused the Congress and the Supreme Soviet of hindering reforms and trying to take over excessive functions. On March 20, 1993, he delivered another appeal "To the citizens of Russia." In it, he publicly stated that he "signed the Decree on a special management procedure until the crisis of power is overcome" (hereinafter referred to as OPUS) and that, in accordance with this Decree, "cancelling any decisions of authorities and officials that are aimed at canceling or suspending decrees and orders of the president" (*Rossiys-*

One of the authors of this book was personally at that same 7th Congress and watched how, leaving the columned hall of the Grand Kremlin Palace after the deputies limited the powers of the president, he turned to the press, shook his fist and said: "I will never forgive them for this."

Now the President needed a new Constitution more than ever. And he decided to refine it without the Congress. The Decree of May 12, 1993 "On measures to complete the preparation of the new Constitution of the Russian Federation" said: "Overcoming the constitutional crisis and implementing democratic reforms is possible only through the speedy adoption of the Russian Constitution." And yet, until the fall of 1993, Yeltsin retained his position as chairman of the constitutional commission, but its plenary sessions were chaired by Khasbulatov. By this point, the debate about the Constitution had intensified. Along with the draft of the Supreme Soviet, several more alternative documents were prepared.[1] Within the framework of the democratic process, this could not be ignored.

In May 1993, the president published his draft of the Basic Law—rather premature, although it retained the main content and structure of the draft constitutional commission. And in June 1993, Yeltsin convened a constitutional conference. The Supreme Soviet of the Russian Federation in response formed a committee on constitutional legislation. The work of the constitutional meeting continued until the beginning of July, and on July 12, 1993, the draft Constitution was approved by the President of the Russian Federation. Approximately on the same days, the constitutional commission also presented its updated version. Both drafts were sent to the regions for approval, the results of which

kaya gazeta, March 23, 1993). The Constitutional Court, in its opinion at the request of the SupremeSoviet, found "in the actions and decisions of the President" nine inconsistencies with the Constitution. *Bulletin of the Constitutional Court of the Russian Federation*(1994). No. 1, 47–51.

1 1. Draft of the working group consisting of: S.M. Shakhray (head),E.B. Abrosimova, N.P. Azarov, I.A. Bunin, A.V. Maslov, G.V. Minkh, R.G. Orekhov, A.Ya.Sliva, O.A. Tarasov;
2. Draft of the Political Council of the Russian Movement for Democratic Reforms consisting of: Mayor of St. Petersburg A.A. Sobchak, Mayor of Moscow G.Kh. Popov, one of the best legal theorists S. S. Alekseev, Yu.Kh. Kalmykovand S.A. Khokhlov;
3. Drafts of communist people's deputies—from 1990 to 1993 they proposed three drafts of the Constitution of Russia; the most notable is the draft prepared by the Communists of Russia parliamentary faction of the Supreme Soviet of the Russian Federation.

were unexpected—most of the regions supported the draft of the constitutional commission.[1]

On September 21, 1993, the President of the Russian Federation issued Decree No. 1400, "On a phased constitutional reform in the Russian Federation," by which he dissolved the Congress of People's Deputies and the Supreme Soviet, suspended the country's Basic Law, and called a referendum on the draft Constitution and elections to a new federal parliament called the Federal Assembly.[2] On the night of September 21–22, the Constitutional Court ruled that Decree No. 1400 was inconsistent with the Constitution on 10 points and that its content served as the basis for removing the president from office.[3] The confrontation between the president and parliament continued for two weeks. The Supreme Soviet, which was under siege, surrounded by barbed wire around the perimeter, disconnected from all life support systems, was nevertheless supported by the assembly of 62 (out of 89) subjects of the Russian Federation, which, in their decision of September 30, demanded that Decree No. 1400 be cancelled.[4] But this demand was not met.

These two weeks were filled to the limit with events and actions on both sides. All this has already been described by many persons many times,[5]even including a chronology of events by day and hour.[6] On October 4, 1993, at 5:00 am, the President signed Decree No. 1578 "On urgent measures to ensure the state of emergency in the city of Moscow."[7] Paragraph 3 of this decree contained the following order: "The commandant of the state of emergency area *should immediately take measures to release and unblock objects seized by criminal elements* (read: "deputies."—*E. L.*)." As a result, direct fire from tanks shelled the parliament building in front of

1 Gol'tsblat, *op. cit.*, note 3.

2 *See* V.O. Luchin, *Konstitutsiya Rossiyskoy Federatsii. Problemy realizatsii* (Constitution of the Russian Federation. Problems of its realization), Moscow (2002), 441–442.

3 *Rossiyskaya Gazeta*, Sept. 23, 1993.

4 *See* V.O. Luchin, A.V. Mazurov, *Ukazy Prezidenta RF*(Decrees of the President of the RF), 117.

5 *See, e.g.*, Iu.M. Voronin, *Svintsom po Rossii* (With Lead through Russia). Moscow (1995) (Iuriy Mikhailovich Voronin in the fall of 1993 was the first deputy chairman of the Russian Supreme Soviet).

6 *Vek XX imir* (the 20th century and the world). 93 October. Moscow. *Khronika tekushchikh sobytiy* (Chronicle of Current Events). Moscow (1993).

7 Collection of Acts of the President and Government of the RF (1993). No. 40. Art. 3751.

Muscovites, and CNN broadcast this event to the whole world. The duality of power in Russia ended[1] in the country's traditional authoritarian way, which caused great damage to the ideas of democracy both among the general population andamong those in power, caused a split in society, and aggravated the confrontation between the center and the regions. Among other things, the authoritarian distortions of the Constitution adopted in the wake of this shelling were due to the specific features of its revision in the conditions of a country frozen in a daze from what had happened.

The nature of the confrontation was such that it could not but affect subsequent constitutional development: during it, all Soviet representative bodies of power were forcibly dissolved, the activities of the Constitutional Court were suspended, the building of the Supreme Soviet was fired on and seized, and blood was shed. Under the state of emergency in the capital, a presidential decree called for a constitutional referendum, held according to specially established rules that differed from those established by law. In fact, in the fall of 1993, the president of the country carried out a constitutional coup,[2] or a constitutional revolution (more often it is called a constitutional crisis, although crises are unlikely to be resolved with the help of tanks). This led to a complete change in the national constitutional paradigm and the destruction of the established constitutional tradition.

At the same time, it must be emphasized once again that a change in the Constitution at that time was an absolute necessity. Yeltsin's coming to power on a broad democratic wave of free elections and glasnost, in the context of the removal of the "Iron Curtain," the opening of borders and the beginning of free exchanges, hardly suggested any other way than bringing the country's Basic Law into line with all the basic philosophical, political and legal principles achieved by mankind. But these values in no way implied the change of the Constitution by the Soviet-party methods of the "iron fist"—the shelling of the democratically elected parliament and the holding of a constitutional referendum according to rules that *a priori* rejected the principle of the rule of law.

1 *See* Lukyanova, *op. cit*., note 7.

2 According to the Chairman of the Constitutional Court, V.D. Zorkin, "despite individual interpretations and moral assessments of what happened, the legal one can only be unambiguous—the President staged a coup." *See*V.D. Zorkin, *Uroki oktiabria-93* (Lessons of October-93).*Konstitutsionniy vestnik*(Constitutional Gazette)(1994). No. 1 (17), 17.

History does not work according to the posing of "what-ifs." However, when evaluating any historical events, people always ask themselves the question, "what would have happened if…?" Therefore, in the light of the current constitutional crisis, one would like to imagine what an alternative development of our constitutional history could have been if events had developed differently, if the Congress of People's Deputies of the RSFSR and the president had agreed. Would we then have such or a similar Constitution? It seems that sooner or later, we would have received it. Only much better developed and much more coordinated within society. Of course, it would not have happened instantly. Of course, it would not have been possible without the competition of drafts, without tough parliamentary, public, and scholarly debates. Yes, the communists could have delayed this process for a while. But in any case, the Constitution would have been adopted, and such a path would have been more positive.

Unfortunately, such a development of events was unlikely. It is hard to imagine that a strong and self-confident Congress, elected in free alternative elections, proclaiming the independence of Russia, itself preparing a constitutional reform and supported by the majority (62 out of 89) of the regions on the issue of Presidential Decree No. 1400, would make concessions. It is also hard to imagine that the first president of Russia, who constantly demanded additional powers from the Congress, who did not want to coordinate any of his actions with a representative body of power, who endlessly created "law by decree" and did not tolerate criticism, would have restrained his ambitions. Could they agree? Hardly. They did not want to negotiate, and each considered himself entitled (obliged?) to be incapable of negotiating, despite the desperate efforts of a group of negotiators who tried to reconcile them in a confrontation that had escalated to the extreme and offered a zero option (cancellation of Decree No. 1400 and cancellation of the decision of the Congress to remove the president from office).

But in the end, it happened the way it did: the country fell into the trap of the precedent that had been set for the adoption of a liberal-democratic Constitution by a harsh method from above—this is the special Russian path that we historically got and which, a quarter of a century later, led to another constitutional crisis, but in completely different circumstances. But then, in 1993, all that was left to hope for was free and fair elections, during which a legitimate change of power would be possible.

Electoral legislation and elections 1993–1995

The development of new post-Soviet electoral legislation began within the framework of the constitutional commission of the Supreme Soviet of the RSFSR in December 1992. On the basis of the commission's draft, the Regulations on the Election of Deputies of the State Duma, approved by Presidential Decree in October 1993, were developed.[1] This Decree determined the main parameters of the new elections. A mixed-member parallel electoral system was introduced (in which the results of single-seat elections are not taken into account in determining the results of elections under the proportional system, but are simply added to them), according to which one half of the deputies of the State Duma were elected according to the majoritarian electoral system of relative majority, and the other half according to a proportional system, using the "Hare quota" and the rule of the largest remainder[2] in a single federal multi-member district with a threshold in the amount of 5% of valid votes and the presence of the option "against all" on the ballot. The turnout threshold was set at 25% of the number of registered voters. Such a system was consistently used for ten years in the elections of deputies of the State Duma from the 1st to the 4th convocation (elections of 1993, 1995, 1999 and 2003).

The choice of the electoral model was due to the need to solve several problems. The first and foremost of these is the creation of a multi-party political system. That is, the "proportional half" was supposed to stimulate the accelerated formation of political parties (the application of the "Hare quota" with the largest remainder rule favored small parties to some extent). On the other hand, the election of half of the deputies

1 Decree of the President of the Russian Federation No. 1557 dated October 1, 1993 "On approval of the amended version of the Regulations on the elections of deputies of the State Duma in 1993 and the introduction of amendments and additions to the Regulations on federal authorities for the transitional period". Collection of acts of the President and the Government of the Russian Federation. Oct. 11, 1993. No 41. Art. 3907.

2 The Hare quota is the quotient of the number of votes received by all lists that are admitted to the distribution of seats x by the number of seats to be distributed y, i.e. Q = x/y. The rule of the largest remainder is that the remaining mandates are transferred to the parties one at a time, in descending order of the remainder of dividing the number of votes they received by the quota (or, what is the same, in descending order of the fractional part of the quotient of such a division), that is, first the party with the largest remainder receives the additional mandate, then the party with the next largest remainder, and so on, until it is exhausted.

in majoritarian single-mandate constituencies ensured a smooth transition from the old to the new. The 70-year-old stereotype of exclusively majoritarian elections, familiar and understandable to the population, could not be broken at once, so the majority half of the parliament made it possible for voters who did not have experience in choosing between political ideas and programs to elect representatives who enjoyed local support. That is, the system combined the principles of socio-political and territorial representation. However, it was not without a number of significant shortcomings which largely offset its advantages.

Candidates could be nominated by groups of voters and electoral associations. Electoral associations were understood as general federal parties and other associations whose charters provided for participation in elections.[1] Parties could create electoral blocs to unite before the elections with each other, as well as with other public structures. Given that the procedure for amending the charters of the organizations was relatively easy, it actually allowed any all-Russian public association to participate in the elections. This did not go well with the idea of new Russian party-building and elections under a proportional system.

In contrast to the Soviet period, the elected deputies were completely free to determine their political affiliation. They could join any party faction or form their own non-partisan deputy group. Such freedom came into conflict with the traditional Soviet idea of voters about a rigidly required deputy mandate that made elected representatives completely dependent on the voters or the party. And although from the point of view of the theory of parliamentarism, this was correct, in practice it caused irritation and bewilderment of the population.

A serious shortcoming of the system was the possibility for the same candidate to simultaneously run both in the list of an electoral association and in a single-mandate constituency. Such single-mandate candidateshad an advantage over the rest, since they were exempted from the obligation to collect signatures in support of their nomination. Researchers cite extremely interesting statistics showing that almost a third of the deputies elected on federal lists were defeated in single-mandate constituencies. Thus, the composition of the representative

1 Paras. 1 and 2 of Art. 5, *Polozheniya o vyborakh deputatov Gos. Dumy v 1993 g.* (Statute on the election of deputies of the State Duma in 1993).

body turned out to include a huge number of deputies whom the population of certain territories actually refused to trust.[1]

Another shortcoming of the electoral model was the absence of rules for taking into account the results of protest voting if there was an option "against all" on the ballot. For example, in the 1993 elections, 6.9 million voters (6.5%)[2] voted against everyone on party lists. But this did not have any legal consequences. If such legal consequences had been foreseen in advance, the final result of the vote would have been somewhat different.

Apparently, after the events of October 1993, these votes were feared, because the abolition of the legal significance of protest voting in the proportional part of the elections took place literally a month before they were held.

Considering that the 1993 Electoral Regulations were a one-time act and were not intended for subsequent use, the new parliament faced the urgent issue of adopting a package of new electoral laws. Based on the fact that only the basic principles and basic parameters of the electoral system were defined in the Constitution, all the details of the organization and conduct of elections were completely left to federal legislation. Naturally, such a situation initially meant an extremely wide scope for discretion.

To be fair, right up to the third convocation of the Duma, the Parliament did not abuse this discretion too much. The electoral legislation gradually developed, albeit with mistakes and with periodic distortions, even in the conditions of a low electoral culture of power and in the absence of serious electoral theory and practice. Unfortunately, on this damp electoral soil, like toadstools after a rain, dirty electoral techniques began to grow rapidly and develop. In just a few years, Russia, with great enthusiasm, mastered everything that was invented in this area anywhere in the world, and increased the world's storehouse with its own unique domestic artefacts. Technology was fished out of centuries-old US political history, with the only difference being that America had 200 years to neutralize it or find a legal antidote through trial and error, while we had only one decade to do it all. The faction of the Communist Party of the Russian Federation in the State Duma spared no ex-

1 E. E. Skosarenko, *Izbiratel'naya systema Rossii: mifyipoliticheskaya real'nost'* (The electoral system of Russia: myths and political reality). Moscow, Formula prava (2007), 84–85.

2 *Ibid.*

pense and produced a four-episode educational film on this subject for election headquarters.

According to the transitional provisions of the Constitution, the Duma and the Federation Council of the first convocation were elected for a period of two years (Article 7 of the second section), that is, new parliamentary elections were to be held at the end of 1995, and in 1996, the next presidential elections. The deputies had little time. The views of the president and the various political forces in parliament on the content of the electoral laws did not always coincide. For example, the Yabloko faction initially proposed the creation of a unified electoral code (the Yabloko party defends this position to this day). Nevertheless, during 1994–1995, a system of electoral laws at the federal level was ready.[1] It consisted of federal laws "On Basic Guarantees of the Electoral Rights of Citizens of the Russian Federation"[2] (hereinafter referred to as the Law "On Basic Guarantees…" of 1994), "On Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation"[3] (hereinafter referred to as the Law "On elections of deputies…" of 1995), the Law "On Elections of the President of the Russian Federation"[4] and the Law "On the Procedure for Forming the Federation Council of the Federal Assembly of the Russian Federation."[5]

The Law "On Basic Guarantees…" of 1994 was originally conceived and designed as a framework, regulating only general provisions for the Federation and its subjects on holding elections. It enabled regional legislatures to take into account the specifics of the organization of power in the regions, and the requirement that regional legislation com-

1 A.E. Postnikov. *Aktual'nye napravleniya razvitiya izbiratel'nogo zakonodatel'stva* (Current tendencies in the development of electoral legislation). *Zhurnal rossiyskogo prava* (Journal of Russian law), No. 2 (2004), 3.

2 Federal Law of June 12, 1994, "On the basic guarantees of electoral rights of citizens of the Russian Federation", SZ RF, Dec. 12, 1994, No. 33, Art. 3406.

3 Federal Law of June 21, 1995, "On the elections of deputies to the State Duma of the Federal Assembly of the Russian Federation. SZ RF, June 26, 1995, No. 26, art. 2398. (Hereinafter in the text, Law "On the Election of Deputies" of 1995).

4 Federal Law of May 17, 1995, No. 76-FZ "On the election of the president of the Russian Federation," SZ RF, May 22, 1995, No. 21, Art. 1924.

5 Federal Law from May 12, 1995, No. 192-FZ "On the method of formation of the Council of the Federation of the Federal Assembly of the RF. SZ RF. Nov. 12, 1995. No. 50. Art. 4869.

ply with the provisions of the Law[1] provided it with a central place in the system of normative acts on elections and guaranteed the protection of voting rights in regional and local elections. Such a scheme of legal regulation in a vast federal state was not only justified, but was the only optimal one, especially when it came to regional and municipal elections. Because any detailed unification in federal conditions is fraught with distortions in the course of its adaptation to local conditions.

The need to develop *a new law on presidential elections* was due to the fact that the Law of the RSFSR of 1991 "On the Election of the President of the RSFSR,"[2] according to which the first presidential elections in Russia were held, did not comply with the Constitution adopted in 1993. This law was adopted quite calmly. During its discussion, about 650 amendments were considered, of which about a third were taken into account. The most important of the adopted amendments are:

- lifting the ban on participation in repeat elections for those candidates who did not receive the required number of votes in the previous elections;
- the procedure according to which, when a candidate withdraws during the repeat voting, his place is taken by the candidate with the next largest number of votes. The biggest controversy was the issue of the required number of signatures in support of the nomination of presidential candidates. The proposed number of signatures ranged from 250,000 to 2 million. The State Duma finally settled on 1.5 million, but the Federation Council rejected the law and proposed to reduce this number to 1 million. The Conciliation Commission, and then the State Duma, supported this proposal. In this form, the Law was signed by the President.

The procedure for the formation of the Federation Council

One of the most difficult in terms of consensus was the shortest of all laws that the authors of this book have ever encountered. This is the law on the procedure for the formation of the Federation Council. It contained only four articles, among which only one was of fundamental

1 Para. 2, Art. 1 of the federal law from June 12, 1994, "On the basic guarantees of the electoral rights of the citizens of the Russian Federation."

2 Law of the RSFSR from Apr. 24, 1991 No. 1096-1, "On Elections of the president of the RF." *VedomostiSND and VS of the RSFSR*. Apr. 25, 1001, No. 17, Art. 510.

importance: "Elections of heads of executive bodies of state power of the constituent entities of the Russian Federation must be completed no later than December 1996" (Article 3). What was the problem, and why is it so important? The fact is that the views of the president and parliament on the question of electing governors categorically differed. The president insisted on his right to appoint the heads of the executive authorities of the regions, and the deputies were convinced of the need for their election by the voters. The constitutional norm that the Federation Council is not elected, but formed, and includes two representatives from each subject of the Russian Federation, one from the representative and one from executive bodies of state power (Articles 95, 96), was at that time introduced on the basis of the same goal—the appointment rather than the election of governors. But the first composition of the Federation Council was still elected. The transitional provisions of the Constitution established that the Federation Council of the first convocation was elected for a period of two years in two-mandate majoritarian districts. As a result of lengthy disputes, a compromise was nevertheless reached during the adoption of the law. By law, the chamber consisted of 178 representatives of the subjects of the Federation—the heads of the legislative and executive authorities. Members of the chamber combined deputy duties with their main work, but at least half of them became elected, and at the same time the issue of the election of governors was resolved. As a result, in practice, from the point of view of the effectiveness of the work of the Federation Council, the compromise turned out to be unsuccessful. The governors could not fully work simultaneously in two places. Moreover, gubernatorial elections were gradually reduced to a minimum. Of course, sooner or later the question of changing the procedure for the formation of the Federation Council would arise again. This body, in its current form, does not properly perform the functions that *a priori* should be performed by a chamber of parliament which represents the subjects in a federal state. And it seems that the best way to form this very important, but so far "sleeping" institution of power is still the formula of the transitional provisions of the Constitution. The Federation Council must be elected by the people. And the election of governors is, of course, also a very important, but still a separate issue of relations between the center and the regions.

The procedure for organizing and holding elections of deputies of the State Duma in 1995–1997

The procedure for organizing and holding elections of deputies of the State Duma was established in a special Federal Law of 1995. The search for a compromise on the final version of this law dragged on until there were rumors about a possible postponement of the elections. The main discussion unfolded about the ratio of proportional and majoritarian parts. The Presidential Administration (PA) considered correct a procedure in which 150 deputies would be elected according to party lists, and 300 in single-mandate constituencies. The head of the Duma group for drafting the law, Viktor Sheinis, insisted on the formula 225:225. The head of the Presidential Administration, Sergei Filatov, argued that the proportional system "tears deputies away from voters," but in the end he "agreed with Sheinis."[1] The President signed the law literally right before the beginning of the election campaign, on June 21, 1995. And already on July 17, he officially launched the campaign, setting elections to the State Duma for December 17 by his decree. That is, the law was barely passed on time without disrupting the electoral cycle.

In the autumn of 1995, the holding of elections was once again threatened with disruption. Deputies Irina Khakamada and Vyacheslav Nikonov criticized the law. They considered the 5% threshold unfair, which, given the large number of electoral associations, allowed "a maximum of four of them" to participate in the distribution of mandates. In their opinion, the elections would also have a negative impact on the one-round system in majoritarian districts: with a huge number of candidates in the district, the winners would represent an absolute minority of voters, and the majority would have voted against them. The deputies appealed to the Constitutional Court of the Russian Federation. The court ruled[2] at the request of the deputies less than a month before the elections, on November 20. It held the content of the law to be within the competence of the legislators, and proposed to discuss the issue of the representative nature of the future Duma after its election.

As a result, the main parameters of this law remained unchanged: a combination of majoritarian and proportional electoral systems,

1 *See* N. Korchenkova. *Uroven' ugrozy: krasniy* (Level of the threat: red), *Kommersant*, Dec. 17, 2015 //https://www.kommersant.ru/doc/2878461.

2 *Opredelenie Konstitutsionnogo suda RF* (Decision of the Constitutional Court of the RF) from Nov. 20, 1995. No. 77-o. SZ RF, Apr. 12, 1995, No. 49. Art. 4867.

a turnout threshold, a five percent protective threshold, the ability for candidates to simultaneously run on party lists and in single-mandate constituencies, and the nomination of candidates by persons who are not members of the corresponding entity.[1] Only the details were corrected, although some of them turned out to be significant in practice. For example, the procedure for nominating and registering lists of candidates was complicated. Unlike the previously required 100,000 signatures of voters, now they needed to collect 200,000, and provided that no more than 7% of the signatures could be collected in one subject of the Federation, and not 15%, as before. For electoral associations, a rule was introduced obliging them to divide party lists into separate regional groups, and the federal part of the list was reduced. All this was supposed to shift the center of the election campaign to the regions and bring the candidates closer to the voters. In addition, candidates from electoral associations nominated in single-member districts were now required to collect 1% of voters' signatures in support of their nomination, which were added up in favor of registering an electoral association to participate in elections under the proportional system.[2] This made it possible to partially mitigate the advantages of candidates nominated by electoral associations, but did not eliminate them completely.

Looking ahead, it should be noted that the results of the parliamentary elections confirmed the correctness of the deputies who applied to the Constitutional Court on the issue that a threshold on the proportional part of the elections and a one-round vote on the majoritarian part would reduce the representative nature of the parliament. With the introduction of a threshold, the gradual withering of political competition and the dying of real party life began. If in the 1995 elections 43 electoral associations were registered and took part in the election campaign (as opposed to 13 in the 1993 elections), in 1999 only 4 associations were able to overcome the threshold. In 1993, political parties for which 8.72% of voters in aggregate voted did not overcome the established threshold; in 1995, the parties that had received a total of 44.82%

1 Art. 5, para. 4 of Art. 61, para. 10 and 2 of Art. 62, and Art. 36 of the Federal Law from June 21, 1995 *"O vyborakh deputatov Gos. Dumy Federal'nogo Sobraniya RF"* ("On the elections of deputies to the State Duma of the Federal Assembly of the RF") respectively.

2 Para. 2 of Art. 39, para. 4 of Art. 37, para. 1 and 3 of Art. 39, Federal Law of June 21, 1995 *"O vyborakh deputatov Gos. Dumy Federal'nogo Sobraniya RF"* ("On the elections of deputies of the State Duma of the Federal Assembly of the RF"), respectively.

of the vote did not overcome the threshold.[1] That is, the associations that ended up in the Duma received a total of only 50.5% of the votes, and almost half of the voters who participated in the voting under the proportional system voted in vain.

According to some estimates, up to 70% of the votes were lost in the 1995 elections under the majoritarian system.[2] This is actually an unacceptable amount, especially given the low turnout threshold. As a result, it turned out that the parliament represented the minimum part of the voters. But on the whole, the elections themselves were more or less fair, except for the dirty electoral technology of administrative interference that was emerging and gradually gaining momentum in the regions. But state fraud was not yet an integral attribute of the electoral system. Yeltsin, who continued to compete with the communists, lost these elections. According to the official results of the voting, the Communist Party of the Russian Federation won a landslide victory both in party lists and in single-mandate constituencies. In total, the Communists got 157 deputy mandates. Three more associations were able to overcome the 5% threshold: the Liberal Democratic Party, Nash Dom Rossiya (NDR), and Yabloko. Another 19 parties got deputies into the parliament by districts. For the president, on the eve of his own elections in 1996, this was very dangerous.

The Elections of 1996

When political scientists assign characteristics to the political regime of Russia during the period of "defective democracy," one of the central events of this time and proof of the incompleteness of democratic reforms in their assessments are the presidential elections in Russia in 1996, when Boris Yeltsin was re-elected for a second term "in the course of an unfair campaign accompanied by an abundance of abuses" (*Vladimir Gelman*). Indeed, the 1996 elections are to this day one of the most controversial and mythologized in terms of their results. Until now, there is talk that it was not Yeltsin who won them, but Zyuganov, but… Then a bunch of gossip and a variety of incredible assumptions begin.

1 S. Sabaeva, *Zagraditel'niy bar'er v proportsional'noy izbiratel'noy sisteme* (The threshold in the proportional electoral system). *Zhurnal o vyborakh* (Election journal), 2013, No. 2, 33.

2 Skosarenko, *op.cit.*, note 22, 93.

For us, the main question is whether these elections were really "dirty" and if so, how dirty? To be honest, from the point of view of today's practicing electoral lawyers, the "electoral dirt" of 1996 seems like child's play to us. Judge for yourself, here are the facts. With a signature collection rate of one million, 78 initiative groups were registered to nominate presidential candidates. The requirement of 1,000,000 voter signatures was met by 16 groups. The Central Election Commission (CEC) registered nine candidates, and seven more were rejected. Six of them appealed the refusal of the CEC to the Supreme Court, and the court ruled to register two more. Can you imagine this today? From all points of view: the procedures for collecting signatures, checking signature sheets, registering nine candidates with the CEC, the possibility of judicial appeal with the prospect of winning? Of course not. But, apparently, this is what distinguishes electoral authoritarianism from defective democracy.

Yeltsin's final decision to run was greatly influenced by the results of the parliamentary elections. "As long as there is a threat of a clash between 'reds' and 'whites,' my human and civic duty, my duty as a politician is to seek the consolidation of all the healthy forces of society and prevent possible upheavals up to civil war," the president said at an event on the official start of his election campaign in Yekaterinburg. At that time, his rating, according to Russian Public Opinion Research Center (VTsIOM) polls, was 8.4%, and 15.8% were ready to vote for Gennady Zyuganov, whose party had just won the elections to the State Duma. Boris Yeltsin's rating exceeded the level of support for Gennady Zyuganov only a month before the first round of elections. In the first round, Yeltsin won 35.28% of the vote across the country, ahead of Zyuganov by only 3.25%. As a result, according to official data from the CEC, as a result of the second round of elections, Yeltsin won 53.8% of the vote, and his opponent only 40.3% (4.8% voted against all).[1] Another question arises: is this possible in a fairly short election campaign? Theoretically, it is possible, subject to a huge concentration of forces, means and techniques, including without the use of administrative resources.

But in Russia, the administrative resource was at work. But it was not centralized. The governors, realizing the vagueness of the prospects for the head of state in the elections, were in no hurry to declare their support for him. Many, both the heads of the so-called red belt regions and

1 N. Korchenkova. *Kampaniya, sobravshaiasia na kukhne* (A campaign gathered in a kitchen), *Kommersant*, Feb. 2, 2016 //https://www.kommersant.ru/doc/2916755

the pro-Yeltsin leaders of the subjects of the federation, waited. They got involved in the work only at the finish line, when they saw the ratings and cheated each in their own way, due to their own ideas about what should be done without a command from above. But there was no question of any rewriting of the protocols or making adjustments to the State Automated System (GAS) "Vybory" ("Elections").However the State Automated System "Vybory" itself in 1996 was in its infancy. The decision to establish it was made in mid-1994,[1] and it began to function in full only in 1997. The administrative resource worked, for example, at the stage of collecting signatures, when, according to his aides, complaints were sent to the president that without a signature "for Yeltsin" they refused to issue salaries and threatened with troubles up to and including dismissal. Administrative and financial resources worked at full capacity in the media. Coverage of Yeltsin's campaign was many times greater than coverage of Zyuganov's campaign. The authorities did not disdain administrative bribery of voters either. Among the presidential decrees signed during the campaign, there are very eloquent documents: decrees "On measures to strengthen state support for science and higher educational institutions of the Russian Federation," "On state support for citizens in the construction and purchase of housing", "On measures to ensure the timely payment of wage payments from budgets of all levels, pensions and other social payments." On June 15, the day of silence, when campaigning is prohibited, Boris Yeltsin presented state awards and met with the head of the CEC, Nikolai Ryabov, and Patriarch Alexsey II, with full television coverage.

Zyuganov, as the leader of a faction in the Duma, also used his administrative resources. For example, on March 15, 1996, the Duma adopted two very original resolutions: one confirmed the validity of the results of the 1991 referendum on the preservation of the USSR, the other actually cancelled the Belovezhskaya Accords and the creation of the CIS.[2]

1 Ukaz Prezidenta(Presidential Decree) of Aug. 23, 1994 No. 1723, "*O razrabotke I sozdanii Gosudarstvennoy avtomatizirovannoy sistemy RF "Vybory"* (On the development and creation of the Government Automated System of the RF "Elections"."

2 Postanovleniya Gos. Dumy RF ot 15 marta 1996 g. *"Ob uglublenii integratsii narodov, obedinivshikhsia v Soiuz SSR, i otmene Post. Verkhovnogo Sovieta RSFSR ot 12 dek. 1991 "O denonsatsii dogovora ob obrazovaniya SSSR"* ("On the deepening of the integration of the peoples united in the USSR, and the cancellation of the decree of the Supreme Soviet of the RSFSR of Dec. 12, 1991, "On the denouncement of the agreement on the formation of the USSR"), SZ RF 1996, No. 3, Art. 1274; *"O iuridicheskoy sile dlia RF — Rossii rezul'tatov referenduma SSSR 17 marta 1991 goda po voprosu o sokhranenii Soiuza SSR"*

It was clear pre-election public relations through abuse of power. Later, the Chairman of the Duma, Gennady Seleznev, had to justify himself and insist on the adoption of another special resolution, which emphasized that the documents dated March 15, 1996 "reflect the civil and political position of the deputies and do not affect the stability of the legal system and Russia's international obligations."[1]

"It is a fact that there were manipulations, of course, it is just that everything depends on the assessment of their scale. I doubt that the falsifications amounted to10 million votes (the difference between the president and the leader of the Communist Party in the second round)," ArkadiyLyubarev, an expert on the 1996 elections, assesses the 1996 situation. "The letter of the law was clearly observed," political scientist Dmitry Oreshkin confirms the conclusions of his colleague. "It never occurred to anyone to remove candidates from the elections, no one closed the pro-Zyuganov publications—the newspaper *Zavtra* went on publishing remarkably well. In the second round, the increase in the president's votes occurred mainly due to the candidates who entered the top five. In total, Yavlinsky, Lebed and Zhirinovsky got 27%. And although only General Lebed directly declared support for Yeltsin, they were all pronounced anti-communists. In fact, in 1996, everything was so obvious that Zyuganov found the courage to congratulate Yeltsin on his victory."[2]

Another question is that after the bright and competitive elections of 1989 and 1995, any electoral violations, and especially violations of the president, against whom the people had accumulated many complaints, were subject to heightened attention. None of them remained without discussion and appraisal. The finely tuned public interest microscope was merciless. The sharp struggle between the "blue and red" regions (as the results of the elections on the night after the vote were indicated on the CEC map) only sharpened the settings of this microscope. Therefore, the assertion that "the 1996 campaign made it possible to preserve democracy, but made it even more defective" is not entirely true. Vice versa. Among other things, it had pronounced positive con-

(On the legal effect for the RF — Russia of the results of the referendum of the USSR of Mar. 17, 1991 on the issue of the preservation of the Union of Soviet Socialist Republics," SZ RF, 1996, No. 13, Art. 1275.

1 N. Korchenkova, *Gonki ot vertikali* (Flights from the vertical), *Kommersant*, May 20, 2016 //https://www.kommersant.ru/doc/2990191

2 N. Korchenkova, *Golosovali, a to proigrali by* (They voted, or they would have lost), *Kommersant*, June 17, 2016 //https://www.kommersant.ru/doc/3013608

sequences for clarifying the types of violations of the electoral legislation and responsibility for them. Yes, of course, the aftertaste from this campaign was, frankly, "not very good." There was an unpleasant feeling of "broken hands" from how the huge media and financial resources were instantly concentrated to solve the issue of preventing a communist revenge in a country with serious socio-economic problems. In fact, the situation in 1993, the shelling of the Parliament and the President's dictatorial handling of the Constitution, caused much more damage to democracy and the rule of law than these elections. The fight against evil by methods of evil, even in the name of the most benevolent goals, does not give rise to order, goodness, or democracy, but releases from the bottle genies with whom we are still fighting.

The 1997 versions of the electoral laws

After the turbulent electoral upheavals of 1995–1996, the next step in reforming Russian electoral legislation was the adoption in 1997 of a new version of the Law "On Basic Guarantees of electoral rights and the right to participate in a referendum of citizens of the Russian Federation"[1] (hereinafter referred to as the Law "On Basic Guarantees…" of 1997), which now, in addition to the norms of electoral law, contained the rules for holding referendums. The reason for this unification was the adoption on October 10, 1995 of the Federal Constitutional Law "On the referendum in the Russian Federation," which revealed the similarity of the procedures of these two institutions of direct democracy. A feature of the new version of the Law was the change in the correlation between federal and regional legislation in the regulation of electoral processes. "The law began to gradually lose the features of a framework, and the legal regulation of the formation of state authorities of the constituent subjects of the Russian Federation and local governments actually began to move more and more into the sphere of responsibility of the federal legislator."[2]

The scope of the Law "On Basic Guarantees…" increased almost fivefold due to the inclusion in it of many details of the legal regulation of the procedure for organizing and holding elections which were previ-

1 Fed. law of Sept. 19, 1997, *"Ob osnovnykh garantiyakh izbiratel'nykh prav i prava na uchastie v referendum grazhdan RF,"*(On the basic guarantees of electoral rights and rights to participate in a referendum of citizens of the RF"), SZ RF, Sept. 22, 1997, Art. 4339.

2 *See*Postnikov, *op. cit.*, note 24, 8.

ously under the jurisdiction of the subjects of the Federation. That is, there was clearly excessive federal interference in the sphere of joint jurisdiction of the Federation and the subjects. Additionally, the wording of the law was strengthened, requiring strict compliance with it of all other, both federal and regional electoral normative legal acts.[1] With regard to federal laws, a legal paradox immediately arose, since, firstly, they have the same legal force as this law, and, secondly, a general law, in comparison with a special one, in any case cannot be considered a priority in regulating specific legal relations. Scholars immediately sounded the alarm. "The provision on the correspondence of some federal laws standing on the same scale in the hierarchy of legal acts to another, more important federal law does not meet the basic generally recognized principles of law."[2] "The Constitution of the Russian Federation does not allow the establishment of a higher legal force of one federal law in relation to another federal law," which was confirmed by the decisions of the Constitutional Court of the Russian Federation,[3]it was stated.

Nevertheless, it was still hardly possible to speak of a clearly emerging trend towards deliberate centralization and unification of the electoral legislation. Deliberate federal intervention and the consistent curtailment of federalism was the destiny of another president and another parliament. And then, in 1999, the State Duma was elected in free alternative elections and was not under the iron heel of the Presidential Administration, as happened later. Yes, and for the Administration—the main spokesman for the goals and objectives of presidential power—such a question was not yet on the agenda. Perhaps, if everything had remained so, most likely, a federal balance would have been gradually achieved again in regulating the procedure for organizing and holding elections. But this "gradually" was not destined to come true in the history of Russian electoral legislation. A few years later, the trend changed dramatically.

Responsibility for violations of the electoral legislation. One feature of the 1997 edition of the electoral laws should be emphasized in particular. We are talking about the appearance in the Law "On Basic Guarantees…" of a large and very clear list of types of violations of citizens' electoral rights (Article 65). As is well known, no rules, procedures or rights

1 Para. 7, Art. 1, *supra* note 42.

2 Skosarenko, *op. cit.*, note 22, 88.

3 Postnikov, op. cit., note 24, 8.

can really work in the absence of obligations to comply with them and responsibility for their violation. Without duties and responsibilities, any legal prescription remains a declaration on paper. Of course, law enforcement and judicial authorities also do not always immediately begin to apply the rules that introduce liability for new types of offenses—they need some time for this. But if duties and responsibilities are not provided for by law at all, then there can be no talk of any law enforcement.

What is so remarkable about this list? Firstly, it is clearly formed on the basis of the real practice of several election campaigns and a serious understanding of a variety of dirty techniques used in elections (remember, we wrote about a four-episode film shot by the Communist Party faction?). Secondly, the Duma Committee on Constitutional Legislation, which was responsible for electoral legislation and headed in that convocation by a representative of that faction, did a very good job. The wording of the list is extremely accurate and absolutely up to date. This is especially noticeable in comparison with the short and incomprehensible analogous article 34 of the same law in the previous edition.[1] Thirdly, the law specifically emphasized that "officials of state bodies who, on the recommendation of election commissions, did not verify information about violations of this Federal Law, federal constitutional laws, other federal laws, laws of the constituent entities of the Russian Federation, and charters of municipalities and did not adopt measures to suppress them, bear criminal, administrative or other liability in accordance with federal laws." That is, additional guarantees are given to protect participants in the electoral process from the arbitrariness of the state. Fourthly, a year before the appearance of this list of violations in the Criminal Code, in the chapter "Crimes against the constitutional rights and freedoms of the individual and citizen," two articles on liability for violations of electoral rights also appeared—article 141, "Obstruction of the exercise of electoral rights or the work of election commissions," and Article 142, "Falsification of election documents,

1 Article 34. *Otvetstvennost' za narushenie izbiratel'nykh prav grazhdan* ("Responsibility for violation of the electoral rights of citizens").Persons who, through violence, deception, threats, fraud or other means, prevent the free exercise of the right to vote and be elected by a citizen of the Russian Federation, or persons who spread knowingly false information about candidates or commit other actions that defame the honor and dignity of candidates, as well as persons who conduct campaigning on the day before the election day, and on the day of the election, or interfering with the work of election commissions or voting at election stations, are responsible in accordance with federal laws.

referendum documents or incorrect counting of votes" with a maximum liability for these violations of 5 years and 4 years in prison, respectively. These two articles correlate well with the list, since the formula of Article 141 "obstructing a citizen from exercising his electoral rights" needs to be deciphered, and the list harmoniously supplements and specifies it. That is, the two laws in the pair are exceptionally good and convenient for law enforcers.

We specifically include this list here, because Article 65 of the Law "On Basic Guarantees..." was not destined to live long. Such articles cannot exist under conditions of electoral authoritarianism, and one day we will again urgently need this list as part of the program for the restoration of democratic elections.

Types of violations of the electoral rights of citizens:

- obstruction by violence, deceit, threats, forgery or in any other way of the free exercise by a citizen of the right to elect and be elected;
- using the advantage of official or work-related position for the purpose of election;
- coercing or preventing citizens from signing in support of candidates or engaging in signature forgery;
- bribing voters under the guise of charitable activities, as well as the production and distribution of commercial and other advertising for election purposes;
- untimely formation and failure to clarify information about registered voters;
- spreading deliberately false information about candidates or committing other actions discrediting their honor and dignity;
- violation of the rights of members of election commissions, including those with an advisory vote, of observers, including foreign ones, of trusted representatives of candidates, of electoral associations, and of the media, including the right to receive information and copies of election documents in a timely manner;
- violation of the rules for conducting pre-election campaigning, including campaigning on the day preceding voting day and on voting day;
- failure to create conditions for holding mass events, when such an obligation is imposed on them by law;
- violation of the rules for financing the election campaign, including the delay in the transfer of funds to election commissions and candidates;

- concealment of the remainder of the ballots or non-production of additional ones;
- obstruction or unlawful interference in the work of election commissions;
- obstruction of voting at polling stations;
- violation of the secrecy of the vote;
- forcing voters to vote against their own choice;
- forgery of electoral documents, drawing up and issuance of deliberately false documents;
- carrying out deliberately incorrect counting of votes or establishing of the results of elections;
- non-provision or non-publication of information about the results of voting contrary to the duties assigned to them;
- violation of the right of citizens to familiarize themselves with the list of voters;
- issuance of ballot papers to citizens in order to give them the opportunity to vote for other persons or vote more than once in the course of the same vote, or the issuance (transfer) of completed ballot papers to citizens;
- non-provision or non-publication of reports on the expenditure of funds for the preparation and conduct of elections, financial reports of election funds and financial reports on the expenditure of budgetary funds allocated for the campaign;
- refusal by employers to grant statutory leave to participate in elections.

Clear boundaries of lawful behavior are one of the most important foundations of the rule of law. Violations of the electoral rights of citizens, in turn, are among the most dangerous and entail particularly grave consequences for the state and society among all violations of human rights. Therefore, a detailed and understandable list of such violations, based on electoral theory and practice, is essential to prevent them.

The situation around the elections in 1998–1999

Along with the gradual transformation of the electoral legislation at the end of the '90s, many other electoral and near-electoral events took place in the country. Without taking them into account, it is hardly possible to objectively evaluate any changes, since their reasons were most often political, and not purely legal.

Thus the president quickly became "cramped" within the framework of the Constitution he himself adopted. Therefore, having won the 1996 elections, he began the extra-constitutional expansion of powers much more confidently. This was done in three main ways:

- by presidential decrees;
- by federal laws (less often, since during this period the parliament was still elected and functioned in conditions of intense political competition);
- by acts of the Constitutional Court, including interpretations of the Constitution.

Not a single one of the presidential decrees challenged in the Constitutional Court (and there were quite a few of them) was found to be inconsistent with the Constitution. After the court was forcibly suspended during the crisis of 1993 and the Federal Law "On the Constitutional Court of the Russian Federation" was adopted, the supreme body of constitutional control ceased to be in opposition to the executive branch; the judges did not give a single reason to really doubt their loyalty to the president. Up to the point that in August 1995, after long disputes, by a majority of one vote, they nevertheless recognized as constitutional all decrees on "restoring constitutional order" on the territory of Chechnya.

Therefore, when in 1998, in connection with leaked rumors about the president's desire to run for a third term, a group of State Duma deputies[1] asked the court to clarify whether the first presidential term of Boris Yeltsin, which began in 1991, two years before the adoption of the current Constitution of the Russian Federation, should be counted, and whether he would be able to run again, practically no one in the Kremlin doubted the positive decision of the court. However, the decision of the court in the case of the "third term," issued on November 5, 1998, suddenly turned out to be truly sensational. The court recognized

1 Many media, based on insider information and individual public statements, believe that this proposal was premeditated by the president's administration for the legalization of zeroing out or re-setting the president's term. For example, the press secretary of the president, Sergey Yastrzhembskiy, repeatedly stated that the term of the president from 1996 should be considered his first, and that he had the full right to stand for election in 2000. The Kremlin's calculation was simple: the sooner the judges interpreted the Constitution, the sooner clarity would be provided and the uncertainty that interferes with a normal election campaign would end. *See*, for example:*Kommersant Vlast'*, Oct. 20, 1998 // https://www.kommersant.ru/doc/14870.

the current term of Boris Yeltsin's presidency as the second, thus banning him from running in 2000, in accordance with part 3 of Article 81 of the Constitution. Among the arguments of the judges was, in particular, the following: the new Constitution did not interrupt the first term of Boris Yeltsin, and in the elections in 1996, voters and the president himself proceeded from the fact that he was elected for a second consecutive term.[1]The State Duma was represented at the trial by the well-known deputy (then still from "Yabloko") Elena Mizulina, who stated that the consideration of the issue in the Supreme Court is "important as a precedent: If we leave in the constitution a norm under which the president can have more than two terms in a row, next time, we will get a dictatorship. And following a dictatorship, as shown by world experience, a revolutionary situation follows."

After the financial crisis in August 1998, the deputies twice rejected the candidacy of Viktor Chernomyrdin submitted by Boris Yeltsin for the post of prime minister. If they did it for the third time, then in accordance with article 111, part 4 of the Constitution, the president would have to dissolve the chamber, and extraordinary Duma elections could result in even greater political losses for him: in the background of the economic crisis, the popularity of the opposition (mainly the Communist Party of the RF, the KPRF) significantly increased, and the president's rating, on the contrary, decreased rapidly. The President decided not to risk it and chose a compromise figure, Evgeniy Primakov, who was approved by the State Duma on the first vote.

Primakov headed the government for only 243 days. In May 1999, Yeltsin dismissed the government and replaced Primakov with Sergei Stepashin. Stepashin worked in this position for 82 days. After the terrorist attack in Budennovsk and the passing of a partial vote of no confidence in the government by the State Duma, Yeltsin dismissed him and he was replaced by Vladimir Putin. The change of prime ministers in Russia in 1998–1999 resembled the change by capricious monarchs of their favorites. The Chernomyrdin-Kirienko-Primakov-Stepashin-Putin chain is made up of so many different people, and the changes happened so quickly (five prime ministers in a year and a half) that few people understood the nature of the events taking place. The main reason

1 Decision of the Const. Ct. of the RF of Nov. 5, 1998 No. 134-O *"Po delu o tolkovanii stat'i 81 (chast' 3) i punkta 3 razdela vtorogo "Zakliuchitel'nye i perekhodnye polozhenia" Konstitutsii RF* (In the case of interpretation of Article 81 (part 3) and para. 3 of the second section "Final and transitional regulations" of the Constitution of the RF).

for the leap-frogging of the prime ministers was, it seems, the search for Yeltsin's successor, who could ensure the safety of the members of the "family," including himself, and the protection of their economic interests.

At the same time, the standard of living of the population fell: the devaluation of the ruble led to a decrease in real income of almost 20%. In September 1999, a series of terrorist attacks took place (in Buynaksk, Moscow, and Volgodonsk), claiming 307 lives, and 1,700 people were injured in various degrees of severity. In Moscow, in Maryino, stocks of explosives sufficient for the destruction of several residential buildings were found. The feeling of instability, the decrease in income, and the loss of feelings of security greatly affected the voters.

In 1999, the KPRF faction in the Duma initiated the impeachment procedure (*otreshenie ot vlasti*) of Yeltsin on five charges: the breakup of the USSR; the shelling of the White House in 1993; the unleashing of the war in Chechnya; the destruction of the army; and the genocide of the Russian people. None of the accusations received the necessary 300 votes to reach a decision, as the Yabloko faction, which initiated this procedure together with the communists, left the meeting hall and refused to take part in the voting.

The situation in the regions that prevailed at the end of the '90s could be described by the term "authoritarian decentralization."[1] It was at this time that the metaphor "regional feudalism" appeared on the pages of newspapers—albeit not very accurate, but implying both a significant level of decentralization and the authoritarian nature of the overwhelming majority of regional regimes. Yeltsin himself retained power in 1996, but the fate of the governors appointed by him was different. In 1996–1997, former communist functionaries and "strong managers" came to power in many regions, who did not depend on the center and who, once they got power, did not intend to cede it. In 1998, when the economic crisis took away Yeltsin's hope for a political opportunity to "reset" his previous presidential terms, a coalition of Evgeniy Primakov, Yuri Luzhkov and regional bosses was formed, ready to enter the struggle for power. An important feature of the regional authoritarian regimes of the second half of the '90s was that, regardless of their origin, they existed in considerable isolation from the federal authorities. The governors demonstrated external loyalty to the Center, but at the same time

1 Golosov, *op. cit.*, note 1.

they proceeded from the fact that in exchange for loyalty, Moscow must completely refrain from interfering in their "internal" affairs.

This is clearly evidenced by the so-called intra-federal treaties, which by 2000 had accumulated in a thick volume and by which, in addition to the Constitution, powers were individually distributed between the center and individual regions. In 1998–1999 alone, the Ministry of Justice registered about fifty thousand laws of the subjects of the Federation, a third of which contradicted the Federal Basic Law. In turn, during this period, the prosecutor's office brought protests against 1,400 laws of the subjects of the Federation due to their non-compliance with federal legislation.

The 1999 version of the electoral laws

By this time, the parliamentary parties, it seems, had finally fully realized that they were admitted to the "holy of holies" and were capable of forming election rules for themselves. Because, as already mentioned, it is the electoral system and its embodiment in the electoral legislation that determine the procedure for the formation of a certain authorized majority, which gets the opportunity to establish mandatory rules for everyone, including the rules for how this majority should arise, with the condition that the majority created by this method again determines the method of formation of the next majority. That is why most often amendments to election laws are adopted at the end of the next election cycle, when parliamentarians are about to go to new elections and they estimate their chances of victory. The temptation to "twist" the law, based on the current situation, is huge. Coping with this temptation is extremely difficult. Only a serious democratic culture and a system of checks and balances can overcome it. But Russia is far from both of those. It was far from them then, and even further now.

So, in June 1999, half a year before the next elections to the State Duma, a new version of the Law "On Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation" was again adopted[1] (hereinafter, the Law "On Elections of Deputies…" of 1999). In this version, the mixed electoral formula and other main features of

1 Fed. law from June 24, 1999, *"O vyborakh deputatov Gos. Dumy Fed. Sobraniya RF,"* ("On the elections of deputies to the State Duma of the Federal Assembly of the RF"), SZ RF. June 28, 1999, No. 26, Art. 3178.

the existing electoral system were still preserved.[1] The innovations only touched on its individual provisions, but, as is known, "the devil is in the details." Among the amendments, the most significant are the following.

1. The number of candidates in the federal part of the party lists was increased to 18 people. For the parties, the number of these so-called "steam locomotives" was of great importance, since if the party overcame the threshold, the federal part of the list automatically received parliamentary mandates without additional distribution. These seats could also be sold illegally, providing the electoral association with additional unaccounted resources for campaigning.

2. Electoral practice led to the fact that artificial barriers created by Duma parties for their political competitors could, under certain circumstances, lead to an electoral collapse— if only one party overcame the 5% threshold, the elections could not be considered valid. Therefore, in the fall of 1998, the Constitutional Court of the Russian Federation considered a number of provisions of the Law "On Elections of Deputies..." of 1995 as a matter of abstract normative control at the request of the Saratov Regional Duma. Among them was the norm about not allowing to the lists of candidates those who did not overcome the threshold to the distribution of parliamentary mandates. The Constitutional Court came to the conclusion that the threshold itself did not infringe on the electoral rights of citizens and did not violate the equality of electoral associations. It corresponded to the Constitution, the Convention on the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights. At the same time, the Court established that one and the same size threshold under various constitutionally significant legal conditions can be both permissible and excessive. The mechanism for the distribution of mandates established by the Law "On the Elections of Deputies..."of 1999 assumed that the mandates not obtained by lists that did not overcome the threshold are actually distributed among those who have overcome it. However, if all lists that overcome the threshold do not receive an absolute majority of voters (50% plus one vote), the use of the threshold is inadmissible, as it contradicts the purpose of proportional elections. In addition, if the threshold will be overcome by only one electoral association (even if it received an absolute majority of votes), it will receive a monopoly

1 *Ibid*., Art. 3, subpara. "a" para. 2, art. 79, subpara. "a" para. 11 and para. 3 Art. 80 (hereinafter in the text "Law on Election of Deputies . . . of 1999").

on power, which contradicts the democratic principles of political diversity and multipartyism. Therefore, the law must contain provisions for a "floating" threshold, and regardless of the results of the voting, no less than two electoral associations which had received a total of more than 50% of the votes of the voters who took part in the voting must be allowed to distribute parliamentary mandates.

Based on this decision of the Constitutional Court of the Russian Federation,[1] it was established that the 5% threshold was "floating," that is, even if the threshold was overcome by only one electoral association, the following association based on the number of votes was allowed to distribute mandates (even if it didn't reach 5%). In any case, at least 50% of the votes of the citizens who came to the elections must have been cast for associations allowed to distribute mandates.[2]

Thus, at least the artificiality and ineffectiveness of the threshold was somehow smoothed out, which, among other things, led to the disregard of a huge number of voters' votes, to the formation of the parliament by an absolute minority and to the loss of its representative character (taking into account the turnout threshold of 25% from the total list of voters, only 12.5% of the electoral body was sufficient to form half of the composition of the Duma).

3. The institution of electoral deposit or pledge[3] was introduced (a monetary deposit by a candidate or party), which allowed the registration of candidates and federal lists without the collection of signatures of voters. For many candidates for deputy mandates, this significantly simplified the registration procedure, as the actual collection of signatures required no less financial cost, but at the same time, it was not possible to guarantee the registration of the candidate. The pledge could be used as an "insurance option": the candidate or the association could simultaneously provide signatures in their support and pay the election pledge. In this case, if the registration was based on signatures, the pledge was returned. As a result, new or less developed electoral associations had

1 PostanovlenieKonst. Suda RF (Decree of the Const. Ct. of the RF) of Nov. 17, 1998 No. 26-p *"Po delu o proverke konstitutsionnosti otdel'nykh polozhenii Fed. Zakona ot 21.06.1995 "O vyborakh deputatov Gos. Dumy Fed. Sobraniya RF"* (In the case of the review of the constitutionality of separate provisions of Fed. law of June 21, 1995 "On Election of deputies of the State Duma of the Fed. Assembly of the RF"), SZ RF. Nov. 30, 1998, No. 48, Art. 5969.

2 *Supra*, note 51, Para. 8, Art. 39, paras. 3, 4, and 5 Art. 80.

3 *Supra*, note 51, para. 5 and 7, Art. 45.

an additional opportunity to participate in the pre-election struggle. As a result, the extremely controversial institution of the pledge, which was essentially a hidden property qualification, played a positive role in strengthening political competition and became a counterweight to the government's manipulations concerning establishing the authenticity of voters' signatures. During the 1999 elections, 16 of 26 electoral associations were registered on the basis of a pledge[1].

4. In addition, an amendment was introduced in the revised version aimed at limiting the circle of collective subjects of the electoral process, which was sufficiently wide at that time. An electoral association was now treated only as "a general Russian political public association." Moreover, its creation or introduction of changes to the statute of a public-political nature should have been registered no less than a year before the day of the vote[2].

Together with the electoral threshold, this rule "knocked out" five sixths of the total number of registered political subjects from the pre-election campaign and led to a sharp narrowing of the Russian political field. According to the Ministry of Justice, at the end of 1999, 139 public associations with political status were registered in the Russian Federation, and only 26 of them were able to participate in the elections. Both measures (the threshold and the new registration rules) led to the situation that the mandates were distributed between two associations and four blocs, but at the same time, all those who passed took81.7% of the voters' votes as a whole,[3] although this indicator was not entirely reliable. Voters quickly realized that any choice, even such a choice in the absence of normal competition, is better than no election at all, and they began to vote not so much for their real favorites, but for parties that could take votes away from those parties whose entry into the Duma was from their point of view undesirable. In fact, this is how the first amateur "smart vote" happened, which redistributed the votes of a significant part of the protest electorate in favor of parties that tried to ensure their own advantages by transforming the electoral legislation.

5. In the new version of the Law "On the Election of Deputies…" of 1999, there was also an attempt to introduce sanctions for parties for refusing to receive parliamentary mandates (against unscrupulous so-

1 Skosarenko, *op. cit.*, note 22, 98.

2 *Supra*, note 51, para. 1 Art. 32.

3 Skosarenko, *op. cit.*, note 22, 98–99.

called "steam locomotives"). If the deputy who occupied one of the first three places in the federal party list terminated his parliamentary powers without compelling circumstances in the first year from the day of the election, then his mandate should be transferred to the second electoral list.[1] In addition, the reason for the removal of the party's mandate and its transfer to another association was the deputy's failure to comply with the rule on resigning from authority as not compatible with the status of a deputy. However, the wording of the Law, which lists valid reasons for the refusal of the mandate, suffered from legal uncertainty (recognition by the court of incapacity, serious illness, and persistent health disorder of the registered candidate or his close relatives). As a result, the rejection of the mandates of several such "faces of the party" did not result in any negative consequences for electoral associations. The vague wording of the Law, on the contrary, became a different and convenient basis for the subsequently widespread practice of using unscrupulous "candidate steam locomotives" in the pre-election struggle.

The following rule can also be considered as a sanction: if the number of candidates excluded from the federal list during the election campaign at the request of the candidates themselves or by a decision of the electoral association (or bloc) exceeds 25% of the total number of candidates on the list, or in the case of the elimination of at least one of the candidates who occupy a place in the top three of the federal part of the list, then the Central Election Commission is obliged to refuse to register such a list or to cancel it.[2]

6. And finally, in the new version of the Law "On elections of deputies of the State Duma…" in 1999, the legal meaning of protest voting was determined. A norm was introduced on the recognition of elections in a single-mandate electoral district as not being valid in the event that the number of votes scored by the winning candidate was less than the number of votes cast against all candidates.[3]

Actually, this was really a breakthrough novelty aimed at a fuller accounting of the voters' will. The protest votes were not lost, but, on the contrary, when they prevailed, they determined the result of the vote and demanded its full review by holding new elections. There have always been many disputes around the choice "against all." In that

1 *Supra*, note 51, para. 1 and 3, Art. 88.

2 *Supra*, note 51, para. 11, Art. 51.

3 *Supra*, note 51, subpara. "b" para. 2, Art. 79.

case, scholars have shown and provided evidence that in proportional elections, the possibility of voting "against all" works for the party-leader. However, in the conditions of single-mandate elections, such a vote is a serious indicator of voters' confidence in the electorate, therefore, the consideration of the protest factor works only in favor of the real representation of the interests of the population in the legislative body. That's the path that all the electoral systems of the world took—that of gradual identification and legal consolidation of any potential of taking into account the opinion of the maximum number of citizens.

The Elections of 1999

Parliamentary elections held in December 1999 were one of the most significant events of the post-Soviet defective democracy period. In them, as in a drop of water under a microscope, all these democratic defects are visible. On the one hand, they are considered one of the most competitive. Moreover, they are remembered as nothing less than "the last truly competitive parliamentary elections in the country." But competition takes place within the socio-cultural frameworks that exist at the moment, and the framework then was still post-Soviet.

On the other hand, these were the dirtiest elections from the point of view of political correctness. A feature of this election campaign was active denigration of opponents. Competitors ordered television stories, cartoons in newspapers and defamatory leaflets against each other, that is, they "butchered" each other outside the bounds of all decency and absolutely unscrupulously. Naturally, such a "butchering" caused a powerful irritation of the population. "By democracy is meant respect for the opinion of the population, observance of the law, and in general, democracy is a positive connotation. And in this case, the competition did not succumb to democracy, a democratic way, freedom, and so forth, because there was competition by three very powerful influence groups. In 1999, real competition, half gangster, burst into the public space. When there was competition for power and property in the post-Soviet reality, it would be strange to think that these people would exchange pleasantries and criticize each other in a polite way. "They communicated as they were able to," writes Dmitry Oreshkin,[1] recalling these elections. And it

1 *"Chto Luzhkov, chto Berezovsky—eto patsany te eshchyo."Mochilova, vodka i bor'ba za milliardy: kto i kak pytalsia poluchit' vlast' v Gosdume 20 let nazad* (Whether Luzhkov or Berezovsky—it's the same guys. "Butchering," vodka and the struggle for billions:

was then that the institution of corrupt purchase of loyalty was formed and established. In the 1990s, this was not yet the case.

In many ways, these elections became the very foundation on which the political picture of today was later written. Why? Because, as we remember, the rules for participating in the elections of public-political organizations were complicated against the background of the party system that was just beginning to form. Together with the electoral threshold, these rules "knocked out" five sixths of its participants from the pre-election struggle, and instead of the competition of ideas and political programs came the competition of the winning, capitalist elites—capitalist, if we use Soviet terminology (not very correct, but used in the absence of others).

The first group of elites included the old "nomenklatura"—communists led by Zyuganov, Makashov and other people who believed that it was necessary to go back to the status of the oblast' committees. They wanted to return a comprehensible vertical, corporate way of management, when everything was controlled by one party.

The second group is a neo-nomenklatura (Otechestvo—VsiaRossiya ("Fatherland—All Russia")), which sought to strengthen the state and wanted government capitalism with limited competition, that is, capitalism for the "promoted," for the "approved," for the "leaders." This group was headed by Luzhkov and Primakov. They had a whole club of governors. In 1999, such a state of affairs was clearly manifested in the results of the voting in those regions which later received the name "electoral sultanates," where the election results were falsified according to the interests of local elites: Tatarstan, Bashkortostan, Dagestan, Ingushetia, Karachay-Cherkessia, Kabardino-Balkaria, Severnaya Ossetiya and others.

The third force was presented by the updated young nomenklatura (Edinstvo("Unity")). This was the team of young Putin, who, like Primakov, also came from the KGB, but, unlike the second one, more westernized, more liberal, relying on the money of young capitalists who were not yet fully oligarchs, but who fought for this status, that is, based on bureaucratic business.

Therefore, the main problem of those elections was not the fight against communism, as in 1995–1996, but the fight between the sup-

who and how they tried to get power in the State Duma 20 years ago). Interview of Dmitry Oreshkin with the portal Lenta.ru Dec. 19, 2019 //https://lenta.ru/articles/2019/12/19/elections1999/

porters of greater "nomenklaturization" and greater competition.[1] The Duma elections determined which parliament the new president would work with, the election of which had to be held three months later. Boris Yeltsin did not interact with the new parliament: he resigned on December 31, 1999, and the first session of the State Duma of the 3rd convocation took place on January 18, 2000.

Compared to the 1995 elections, voter turnout decreased: 61.85% against 64.7%. There were 107,796,558 people in the list of voters, that is, approximately 66.7 million Russians participated in the elections. 3.3% of the voters voted "against all." According to the results of the voting, the Communist Party of the RF received 25.11% of the votes (113 mandates), "Edinstvo" 16.22% of the votes (73 mandates), "Otechestvo—All Russia" 14.67% of the votes (66 mandates), "Soyuz pravykhsil" (Union of Right Forces) 6.44% of the votes (29 mandates), "Yabloko" 3.77% of the votes (20 mandates), and Zhirinovskiy's Liberal Democratic Party of Russia (LDPR)3.77% of the votes (17 mandates).

After some time, representatives of two of the elite groups would merge into one. Their ideas would be combined and developed in practice. The system built on these ideas is *a priori* potentially corrupt, as any bureaucratic business and any state capitalism fully realizes its corrupt potential. They would be transformed and come to be called the party "United Russia," although it is of coursenot a political party and has never been one. Having combined their mandates in the parliament, they would outnumber the communists and become the largest faction that captured the main legislative committees in the Duma and was able to adjust party and electoral legislation to their needs even before the next electoral cycle. But this will be a completely different story and practically a different country with a different president at the head, formatted on the foundation of a defective democracy.

"The new ruling groups were not interested in a change of power as a result of democratic elections. Such an outcome of the post-communist transformation meant the vulnerability of the new political regime, which was deprived of immunity to authoritarianism, but at the same time weakened by the long and dramatic decline of the 1990s, which, in turn, was largely a side effect of the dramatic collapse of the former Soviet economic and political model."[2]

1 *Ibid*.

2 Gel'man, *op. cit.*, note 2, 162.

President Yeltsin played a controversial role in the history of Russian constitutionalism. He of course considered himself the creator and defender of democratic institutions. Indeed, such institutions as independent mass media and political parties developed precisely during the years of his presidency (notably, all three campaigns for the elections to the State Duma which took place during this period ended with the victories of opposition parties). During his time the principle of the election of governors was strengthened. The first president literally saw his mission as rooting democracy in Russia. But at the same time, some of his personal qualities—impulsiveness, authoritarianism, and self-confidence—prevented reforms from being brought to their logical ends. And, in the end, it allowed the reforms to be turned backwards.

Chapter 2.
Transformation of the Political Regime and Electoral Legislation in Russia in 2001–2011

Electoral Authoritarianism: The Beginning (The Seizure of Power)

The entire period of formation and consolidation of electoral authoritarianism in Russia (2000–2020) is divided by political scientists into two parts: the beginning, and evolution (consolidation). In general, such a division is also confirmed by legal analysis. But careful consideration of the legal component makes it possible to clarify the terms and objectives, which from this point of view become clearer and more prominent. According to the regulatory impact, these two parts could be designated as follows:

1) the power grab period (2000–2006);
2) the period of holding power (2006–2020), with 2006–2008 as semi-transitional years, when both tasks are performed simultaneously: the mechanisms for seizing power are still being improved, but power is already being transferred defensively (holding). The watershed between capture and retention is very clear, and we will try to prove it.

Part one. Seizure of power. "The main part of this stage chronologically coincides with the first two presidential terms of V. Putin (2000–2008). In general, it is distinguished by an extremely tough, centralized management of domestic policy, subordinated to the general "anti-regional" policy of the Kremlin. Aleksandr Kynev characterizes this time as "a period of reduced political competition, and voluntary and forcible co-optation of regional elites into an extensively growing single party

of power, which was supposed to become a corporate conglomerate of the nomenklatura."[1]

"2003–2005—the elimination of real and hypothetical obstacles to the dominance of the ruling group, and changes in the most important formal "rules of the game" aimed at monopolizing political power: the abolition of elections for the heads of the executive authorities of the regions and the reform of legislation on parties and elections,"[2]Vladimir Gelman adds to the description. In fact, the changes started much earlier than 2003. It is very likely that preparations for them began with the introduction of the term "presidential successor" into political circulation, and in business with the position of "successor to the president" and with the occupation of this position by Vladimir Putin. It seems everything was ready and thought out in advance, because it developed rapidly.

The king is dead. Long live the king!

No, of course he didn't die. On August 9, 1999, President Boris Yeltsin, in a special address to citizens, announced that he was dismissing the government of Sergei Stepashin, appointing Secretary of the Security Council and director of the FSB Vladimir Putin as acting chairman of the government, and said that he saw him as his successor.

On August 16, Putin took office as prime minister. On December 20, 1999, at a solemn meeting of FSB officers on the occasion of the day of the state security officer, he publicly "joked" that a group of FSB officers sent on an undercover business trip to work in the government had coped with their task at the first stage. On December 30, 1999, *Nezavisimaya Gazeta* published an article by the Prime Minister entitled "Russia at the Turn of the Millennium," in which he outlined his political priorities: "patriotism," "a great power," "social solidarity," and "a strong state." New revolutions were unacceptable, the Soviet experience could not be underestimated, but it was also necessary to remember "the enormous price that society and the people paid during this social experi-

1 A. Kynev. *Vybory 2021 goda i tri epokhi stanovleniya elektoral'noy avtokratii* (The elections of 2021 and three epochs of development of electoral autocracy) //https://liberal.ru/lm-ekspertiza/vybory-2021-goda-i-tri-epohi-stanovleniya-ele.

2 V. Gel'man. *Avtoritarnaya Rossiya: begstvo ot svobody, ili pochemu u nas ne prizhivaetsya demokratiya*. (Authoritarian Russia: flight from freedom, or Why democracy doesn't take hold here). Moscow, Howard Rourke (2021),51.

ment." Russia should look for its own path of transformation instead of "schemes from Western textbooks."[1]

On December 31, 1999, Boris Yeltsin addressed the Russians with a statement of voluntary resignation ("I'm tired, I'm leaving!") and expressed hope that in three months the people would vote "correctly." On March 26, 2000, Putin was elected president of Russia and took office a month and a half later, on May 7. Exactly one week later, on May 13, Decree No. 849 "On the Plenipotentiary Representative of the President of the Russian Federation in the Federal District" was adopted, which actually changed the nature of federal relations and the territorial division of the Russian Federation.[2] That is, everything was ready in advance. The "Club of Governors" of the post-Soviet neo-nomenklatura group ("Fatherland—All Russia"), which was a direct competitor to the 47-year-old president and his team ("Unity"), was ripe for destruction. Therefore, the new government began with forced centralization from above. Grigory Golosov called this process "centralization without authoritarianism."[3] So far it had been so, almost bloodless, although the ruthless struggle with real and imaginary competitors is an integral feature of all Putin's rule.

Centralization

A few months later, on September 1, 2000, Decree No. 1602 "On the State Council of the Russian Federation"[4] was issued, in accordance with which an advisory body with an open list of powers not provided for by the Basic Law was created, consisting, in addition to the president, of the heads of the highest executive bodies of the subjects of the Federation. On August 5, 2000, at the insistence of the President, a new Law "On the procedure for forming the Federation Council" was adopted. Its members began to be appointed by the legislative body of the subject and the head of the executive branch of the region. Before that, as we remember, the upper house of parliament included the governors themselves and the chair-

1 V. Putin, *Rossiya na rubezhe tysyachiletiy* (Russia on the threshold of the millennium), *Nezavisimaya gazeta*, Dec. 30, 1999 // https://www.ng.ru/politics/1999-12-30/4_millenium.html

2 SZ RF. May 15, 2000. No. 20, Art. 2112.

3 G. Golosov, *Elektoral'niy avtoritarizm v Rossii* (Electoral authoritarianism in Russia) // http://viperson.ru/articles/grigoriy-golosov-elektoralnyy-avtoritarizm-v-rossii.

4 SZ RF. Sept. 4, 2000. No. 36. Art. 3633.

men of the legislative assemblies, who combined their main work with the senatorial one. The rotation of members of the chamber was completed by 2002. It would seem that this is not a centralized measure at all. And actually it isn't. The "Club of Governors" lost its official meeting place in Moscow and the ability to consolidate influence on the adopted laws. It was decentralized, while the federal government, on the contrary, increased its leverage over the chamber, which, by definition, is obliged to represent regional interests. The State Council was created for the governors, but, unlike the independent chamber of parliament, which had a number of important legislative and other powers, it was only a legislative advisory body.

By 2002, there was a transition from framework to comprehensive federal regulation of a huge list of issues, undermining the very idea of joint jurisdiction of the Federation and its subjects, which called into question the federal structure of the state as a whole. In the 2003 amendments to the Law "On General Principles of Organization of Legislative (Representative) and Executive Bodies of Power of the Subjects [of the Federation],"[1] a number of positions defined by Article 72 of the Constitution suddenly disappeared from the competence of the subjects. Later, some joint jurisdictions were simply directly redistributed in favor of the Federation. In addition, extra-constitutional forms of federal interference were introduced and implemented (for example, the right of the president to dissolve regional representative bodies) with the actual refusal of the Constitutional Court to use a method specially provided for by the Constitution to resolve such conflicts—disputes over competence. This led to a massive revision of regional constitutions and laws.

The centralization blitzkrieg took place. The next in line in the plans of the nomenklatura that came to power was party building from above and the seizure of parliament.

New legislation on parties

The most important milestone of this period was a radical change in the legal regulation of the party system.

In June 2001, the Law "On Political Parties"[2] was adopted. The fact is that until 2001 in Russia (Soviet and post-Soviet) there was never a special normative legal act establishing the status, organization and activi-

1 SZ RF. July 7, 2003. No. 27 (Part 2). Art. 2709.

2 SZ RF. July 16, 2001. No. 29. Art. 2950.

ties of political parties. Until that time, parties were considered as one of the varieties of public associations, and their features were determined by one article of the relevant federal law. This meant, as in the case of any other public association, three people could hold a congress or meeting, decide on the creation of a party, and submit registration documents to the Ministry of Justice. This provision was not accidental and was not a gap in the legislation. Rather, it was about a conceptual approach to the issue of the limits of state intervention in the activities of political parties as the main non-state players in the political system of society. Because any dependence (including formal) of parties on the state reduces their political potential and electoral competitiveness.[1] Under certain conditions, this potential can be generally reduced to zero, and then the parties recognized by the state turn into a simulacrum—the external appearance of an institution filled with content different from the declared one, which has nothing in common with a real political structure.

A state which is a staunch supporter and defender of the principle of regular periodic change of power is unlikely to interfere much in the organization and activities of political parties. It is likely to be limited to the issues of their partial funding in order to avoid the dependence of parties on large lobbyists, issues of transparency and accountability, as well as the requirement to limit the functioning of the party within the framework of the current legislation as a criterion for its legitimacy. And that is all. But a state that does not consider the turnover of power as one of its priorities is likely to act differently. It will certainly try to bring the process of political competition to a level that can be regulated from above. Including by adopting complex technical rules that will make political parties completely dependent on the state. We remember Kynev's maxim about the vicious circle: "In order to have power, you need to be elected, and in order to be elected, you need to have power." Then there is an endless chain of needs, which becomes more capricious as the electoral situation transforms. Having a tool in hand to manipulate the "life and death" of their group political opponents is the coveted dream of any autocrat.

And this tool was created.

1 In fact such a law was prepared and considered by the parliament, however it was not adopted. *See* E.I. Volgin, *Problema prinyatiya rossiyskogo Zakona "O politicheskykh partiyakh" v seredine 90-kh gg* (The problem of adoption of the Russian law "On political parties" in the middle of the 1990s). *VestnikMosk. Universiteta*. Ser. 8. Istoriya(2019). No. 6, 96–119.

Firstly, according to the new law, all-Russian parties became the only type of public organizations that had the right to nominate candidates and participate in federal elections (another ardent greeting to the Club of Governors from the new President). Moreover, participation in the elections was an obligation for the parties, and non-participation for a certain time called into question their very existence.

Secondly, the law prohibited the creation of parties based on professional, racial, national, or religious affiliation.

Thirdly, all parties had to re-register with the Ministry of Justice according to new rules and new requirements. Thus, the state directly made the parties dependent on the executive branch, and the rules and requirements were instantly and radically changed:

- the total minimum number of the party was set at 10,000 members, and a requirement was introduced for the presence of branches of at least 100 people in at least half of the regions;
- the internal structure, membership and charter of the party, and the procedure for adopting the main party documents was strictly regulated;
- state funding for parties was established.

To be honest, it is still not entirely clear how it was possible to carry out the plan. Why did the communists not only support the Law on Parties, but supervise its adoption, since the responsible committee was headed by their representative? Why didn't Yabloko and SPS speak out sharply and loudly? Didn't they understand the meaning? Was this law considered an unimportant specifying act? It was clear from the outset that it severely curtailed competition in the electoral process. The only plausible version, proposed by Gennady Gudkov, is that it was adopted at the very end of a deliberately extended session, in a package with some special government order, when most of the deputies were no longer at their workplaces. Indeed, in May 2001, Prime Minister Kasyanov sent a letter to State Duma Chairman Gennady Seleznev with a proposal to extend the chamber's spring session until July 12, 2001. The law was adopted on July 11.[1]

1 The extension of the spring session was necessary for the adoption of a block of draft laws in the field of structural reforms prepared by the Government of the Russian Federation. Among them were the draft of the Land Code, and draft laws in the area of pension and tax reform. In the case of consideration of the State Duma by the end of the spring session, the Government intended to put most of the acts into effect

By the time the new law was adopted, 59 political parties were registered in the country. By mid-2004, only 46 parties were able to complete all registration procedures. In 2004, the minimum number of members of a party was increased to 50,000 members. The parties were given only one year to bring the number in line with the new requirements. Parties that did not meet the new requirements by January 1, 2006 were subject to judicial liquidation. As a result, by the middle of 2006, out of 46 previously registered parties, 35 had retained their status (by this time, some parties had already been liquidated due to the inability to meet the new requirements), and after the Rosregistration check, only 19 remained. By the beginning of the election campaign for the State Duma elections in 2007 15 political parties remained. In autumn 2008, the process of reducing the number of political parties continued. As a result, of the previously existing parties, only six remained. Everyone who did not fit into the rather narrow "Procrustean bed" of the current political system was actually deprived of the right to exist. They had to either disappear altogether or be artificially squeezed out of the framework of the legal political process.

As a result, there was a sharp artificial reduction of participatory actors in the political process at the federal and regional levels, and a de facto ban on the creation of new parties was introduced for more than a decade. The electoral field was cleared of unnecessary competitors of the ruling party. By 2008, in most regions, only the parties represented in the Duma, United Russia, the Communist Party of the Russian Federation, the Liberal Democratic Party and Just Russia, participated in the elections. Only they were not afraid of legislative obstacles (more precisely, they were afraid, just to a lesser extent), since the law gave them privileges in the form of registering regional lists without submitting signatures or making pledges.[1]

And it gets worse and worse the farther it goes on. It didn't matter anymore which party the candidate was elected from as mayor or deputy in the district in the region, they tried to force him to move to United Russia, which eventually included representatives of all existing parties, from liberals to nationalists and former communists (one can re-

starting in 2002 // https://www.dp.ru/a/2001/05/15/Pravitelstvo_toropit_Dumu.

1 A. Kynev. *Vybory parlamentov rossiyskiikh regionov 2003–2009: Perviy sikl vnedreniya proportsional'noy izbiratel'noy sistemy* (The elections of the parliaments of the Russian regions in 2003–2009: The first cycle of introduction of the proportional electoral system). Moscow, Center Panorama (2009), 11.

call the joining of United Russia by mayors elected from the Communist Party V. Kondrashov (Irkutsk), A. Kasyanov (Orel), and R. Grebennikov (Volgograd); by a member of Rodyna, E. Kachanovsky (of Smolensk), etc.). Therefore, Alexander Kynev calls this period "The Age of Surkov: co-optation, centralization, and verticalization."[1] Actually, these three nouns are quite enough to characterize the program of the United Russia party. Everything else that is written about it is superficial and has nothing to do with its real goal-setting and activities.

The provisions of the Law on Parties were twice the subject of review by the Constitutional Court.[2] The court, as usual, analyzed the constitutionality of the requirements imposed by the state on political parties with a high degree of legal uncertainty: "In the issue of the numerical composition of political parties and the territorial scale of their activity the legislature possesses a sufficient degree of discretion, and considering that the issue to a considerable degree is connected with political expediency…," "only sufficiently large and well-structured political parties can reflect the will and interests of the multinational people of the Russian Federation." That is, once again the Court refrained from considering the issue on the merits. Thus, the Russian Law "On Political Parties" actually became a law on state control over political parties and the political process as a whole.

Of all the "dead" parties, only one—the Republican Party of Russia—continued to fight for its rights. After a series of lawsuits related to the refusal of the Ministry of Justice to recognize its congresses as legitimate, and the cancellation of the RPR registration in the Supreme Court of the Russian Federation, the party applied to the ECtHR and won. In its decision on the complaint of the Republican Party, the European Court found the Russian legislation on political parties to violate human rights, the decision of the Supreme Court of the Russian Federation on liquidation was canceled, and the registration of the party was restored. But this happened only 10 years later, in April 2011.[3] Now the party has been renamed PARNAS (party of people's freedom).

1 Kynev, *op.cit*. note 1, 11.

2 Decision of the Const. Ct. of the RF, Feb. 1, 2005. No. 1-p. SZ RF. 2005. No. 6. Art. 49;Decision of the Const. Ct. of the RF of July 16, 2007. No. 11-p. SZ RF 2007. No. 30. Art. 3989.

3 Ruling of the European Court of Human Rights, Apr. 12, 2011. *Republican Party of Russia. v. Russia* (complaint No. 12976/07) //https://www.garant.ru/products/ipo/prime/doc/70017370

The Seizure of Parliament

From 1994, for two and a half convocations, the main chamber of the Russian parliament, responsible for lawmaking, was a platform for heated discussions. Contradictory, lively, arguing, reaching compromises and very active. None of the factions within the Duma had a significant quantitative advantage. Moreover, in the absence of any sanctions for switching to another faction, the balance of power in the chamber was constantly changing.[1] The Duma openly criticized the President and the government, actively used the control powers at its disposal, and was a counterbalance to the executive power, as far as possible.

For example, during the two years of operation of the first transitional parliament, only two thirds of all adopted laws (310 out of 461) were signed by the president and entered into force. Many laws were not automatically approved by the Federation Council, but went to the joint conciliation commissions of the chambers for revision. In a number of cases, the president was forced to exercise the right of suspensive veto granted to him by the Constitution, which the chambers tried (sometimes successfully) to overcome. In six years, from 1994 to 2000, Yeltsin used the right of veto 307 times.[2] The deputies even made an attempt to initiate the procedure for removing the president from office, and twice the chamber voted for a vote of no confidence in the Government (once successfully) and raised questions about passing votes of no confidence in individual ministers.

1 In the State Duma of the first convocation, 12 parliamentary associations were represented: Agrarian Party of Russia, Vybor of Russia, Democratic Party of Russia, Women of Russia, the Communist Party of the RF, the Liberal Democratic Party of Russia, New Regional Policy, the Party of Unity and Agreement, the Liberal-democratic union, Rossiya, Stability, and Yabloko. Plus three deputy groups and part of the independents not included in any deputy association. In the State Duma of the second convocation, the number of party factions decreased to seven: the Agropromyshlennayagruppa (Agroindustrial group), Communist Party of Russia, Liberal Democratic Party of Russia, Narodovlastie, Nash Dom Rossiya, Russian Regions, and Yabloko. And two deputy groups. In the State Duma of the III convocation, 9 parties and parliamentary groups were represented: Agropromyshlennayagruppa, Edinstvo (Unity), Communist Party of Russia, Liberal Democratic Party of Russia, People's Deputy, Otechestvo—VsiaRossiya (OVR), Regions of Russia, SPS, and Yabloko.

2 *Medvedev porabotal na publiku. Dutaya Sensatsiya*(Medvedev played to the crowd. An inflated sensation) //https://www.kommersant.ru/doc/1532244.

Such an active parliamentary life went on until the middle of the third convocation, when in April 2002 the so-called "package agreement" on the distribution of posts and responsibilities of the parties that received deputy mandates, which had been concluded by the factions at the very beginning of the convocation, even before the first meeting of the chamber, was violated.[1] Violation of the package agreement can safely be called *a parliamentary coup*. As a result of the revision of the package agreement, the left, which had the largest faction in terms of numbers, lost most of the committees they controlled. The "Duma revolution" took place at a truly whirlwind pace. On April 1, the leaders of six factions and deputy groups (Edinstvo (Unity)), Otechestvo—VsiaRossiya (OVR), People's Deputy, Regions of Russia, Union of Right Forces (SPS) and Yabloko) at a closed meeting decided to revise the package agreement. On April 2, the relevant resolution was submitted for discussion to the Duma. And already on April 3, the chamber voted to remove left-wing leadership positions in seven committees and transfer these positions to factions that were deprived during the distribution of posts in January 2000: OVR (the future United Russia), Union of Right Forces, Regions of Russia, and Yabloko.

From the position of today, a completely logical question arises: did the liberal factions really not understand that by violating the package agreement, they themselves signed their future sentence? It seems that they naively automatically continued their fight against the communists, not seeing anything further than their own noses. After all, procedure is always a guarantee of democracy, and a departure from it is a departure from democracy. Even in the most difficult situations, it is the procedure that allows you to keep the system from destruction. But the democratic tradition had not yet been formed. The deputies acted tactically, not understanding the threat looming over them for many years to come. Violation of the agreement showed the executive branch all the advantages of working with a controlled and obedient parliament. While the right-wingers were implementing the desired reforms in relation to land and property, the committee responsible for constitutional legislation, which had passed into the hands of the future party in power,

1 Seven committees were taken away from the Communists in the Duma. Lenta.ru April 3, 2002 //https://lenta.ru/news/2002/04/03/duma/

began active preparations for the 2003 elections, which blocked the representation of the real opposition in parliament for the next 18 years.[1]

Transformation of the electoral legislation of Russia in 2002–2003

Establishing a monocentric system of power with fully integrated representative and other elected bodies is not an easy task. It was impossible to solve it without distorting the constitutional principles of the electoral system, since it is impossible to form obedient bodies during free and fair elections. An independent parliament is unacceptable for a vertical monocentric system, since monocentrism does not imply any additional participation in making any decisions. In addition, it is elections that ensure the natural turnover of power, and this categorically contradicts the very idea of monocentrism. Based on the task set, a systematic, gradually increasing transformation of the electoral legislation began in the direction of building a system of electoral authoritarianism, that is, in the opposite direction from democracy. After all, "democracy by no means guarantees citizens that they will live better. Democracy only reduces the risk that, in an autocracy, they will suffer from the arbitrariness of corrupt rulers who violate their rights, while not having the opportunity for a peaceful change of power."[2]

Since 2002, not a single election in Russia has been held according to the same rules as the previous ones. For example, in the period from 2002 to 2015, the Federal Law "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation" was amended 73 times. A total of 898 amendments were made to it (an average of 69 changes per year and between 250 and 300 changes during each four-year election cycle), and the length of the text of the law grew from about 470,000 to about 760,000 characters. Amendments were repeatedly made to the same norms, individual institutions were haphazardly excluded and returned depending on the momentary situation and political expediency (for example, the position "against all"). As a result, electoral laws ceased to be laws as such and turned into hard-to-execute instructions actively used to manipulate the electoral process.

1 D. Kamyshev, *Partiya—Nash nulevoy* (The party—our zero). *Kommersant*, Apr. 9, 2002 //https://www.kommersant.ru/doc/317473

2 Gel'man, *op.cit*., note 2, 38.

And this is understandable. Before the elections, the task of creating a discussion platform for parliament to reach consensus was no longer set. On the contrary, it was necessary by any means to form an obedient parliament dependent on the executive branch. That is why the electoral legislation changed so often. In each election cycle, it had to adjust to the situation—the fall in the ratings of the ruling party, the growing opposition, the emergence of charismatic leaders, the decline in turnout, growing public oversight—anything, any factor that would interfere with the achievement of goals.

A few months after the parliamentary coup, in June 2002, a new Law "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation" was adopted[1] (hereinafter referred to as the Law "On Basic Guarantees…" of 2002). The adoption of this law was a top priority, as the authorities were preparing for the next parliamentary elections. The text of the law almost doubled in size. "In terms of the volume of legal regulation, the affected areas of public relations, the level and quality of systematization, the Federal Law "On Basic Guarantees" began to have the value of a code in the electoral legislation."[2] As a result, a situation arose where, when holding elections at any level, it was necessary to rely on the norms of at least two laws at once, largely duplicating each other and containing detailed regulation of all stages of the electoral process. These laws often contradicted each other, created confusion, and complicated the electoral process.[3] Thus, the electoral legislation turned into a hard-to-read, hard-to-enforce, and largely internally contradictory set of norms that created artificial obstacles in the course of preparing and holding elections.

Following the new version of the Law "On Basic Guarantees…", a new Law "On Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation" was adopted.[4] Having retained outwardly

1 Federal law of June 12, 2002, "On basic guarantees of the electoral rights and rights to participate in a referendum of citizens of the RF," SZ RF. June 17, 2002. No. 24. Art. 2253.

2 E.E. Skosarenko, *Izbiratel'naya sistema Rossii: mify i politicheskaya real'nost'* (The electoral system of Russia: myths and political reality), 89.

3 A.E. Postnikov, *Aktual'nye napravleniya razvitiya izbiratel'nogo zakonodatel'stva* (Current tendencies in the development of electoral legislation), 9.

4 Fed. law of Dec. 20, 2002 "On the elections of deputies of the State Duma of the Fed. Assembly of the RF," SZ RF Dec. 23, 2002. No. 51, Art. 4982 (hereinafter in the text

the main parameters of the electoral system, this law made significant adjustments to its individual provisions. Thus, the party list was now required to be divided into at least seven regional groups.[1] The institution of nominating candidates by a group of voters,[2] which had existed in the Russian electoral legislation for almost ten years, was abolished.

Less than six months before the 2003 State Duma elections, a whole package of amendments was again introduced to the Laws "On Basic Guarantees…" and "On the Elections of Deputies…" in 2002. The main innovationwas the ban on participation in elections of public associations that were not political parties (even as part of electoral blocs).[3] Thus, the state artificially forced the socio-political environment into the party framework and led to the strengthening of the indirect control of the state bureaucracy over the deputy corps through control over the party bureaucracy.

The new rules also limited the right of candidates to free airtime for election campaigning. All-Russian public organizations that "have debts to television and radio broadcasting organizations and editorial offices of printed periodicals on the day of the official publication of the decision to call elections" were deprived of this time.

Another innovation: for the first time in ten years of history, the value of the threshold was changed—it was raised to 7%. The goal was to fight corruption. In practice, a different result was achieved—the most favorable conditions were created for large political parties.[4]"In democratic countries, only blocs are cut off at such a mark, not parties. Potentially, this means that with an average voter turnout of about 65% of registered voters, up to 4 million citizens who voted for a party that did not overcome the threshold, will generally be deprived of representation in parliament,"V. L. Sheinis described the situation.[5] The potential for such

"Law on Election of Deputies" of 2002).

1 *Ibid*., Part 8, Art. 40.

2 *Ibid*., Part 2, Art. 6.

3 Fed. law of June 23, 2003, "On the introduction of additions to subpara. 2 of para. 4 of Art. 98 of Fed. law "On election of deputies of the State Duma of the Fed. Assembly," SZ RF, June 30, 2003, No. 26, Art. 2573.

4 Skosarenko, *op. cit.*, note 21, 101.

5 V.L. Sheinis, *Pochemu v Rossii net oppozitsii. Vzglyad iurista* (Why there is no opposition in Russia. A lawyer's view) //https://www.specletter.com/vybory/2008-11-15/print/pochemu-v-rossii-net-oppozitsii-vzgljad-jurista.html

a huge loss of votes nullified all previous achievements in the field of ensuring the representative character of the Parliament.

The Law "On Basic Guarantees…" introduced a rule on the participation of party lists in the elections of legislative (representative) authorities of the constituent entities of the Federation. This rule became mandatory on July 15, 2003. The first elections under the new rules were held in seven regions along with the elections of the State Duma of the Russian Federation of the 4th convocation on December 7, 2003. The regions gradually brought their legislation in line with the new norms. However, in 2002–2003, not a single region that had not previously used a mixed electoral system switched to it "voluntarily."

The Elections of 2002–2003

The parliamentary elections on December 7, 2003 were the first federal campaign held under Vladimir Putin. By that time, as we know, the institution of plenipotentiaries in federal districts had already been invented and introduced, and governors, although they could still be elected in direct elections (they would be canceled in 2004), ceased to be *ex officio* members of the Federation Council. Big business was explained the inadmissibility of interference in social and political life: the first was Vladimir Gusinsky, who signed Protocol No. 6 in exchange for freedom, abandoning his own NTV channel. On the eve of the Duma elections, in September 2003, Boris Berezovsky received asylum in the UK, and on October 25, 2003, the head of Yukos, Mikhail Khodorkovsky, who provided financial support to a number of parties, was arrested.

Representatives of the nomenklatura, who in the previous three convocations failed to get a majority in the Duma, this time united in the United Russia party and seriously fought for victory. "Together with the President", "A Strong Russia—United Russia", "Let's take power—we will respond with deeds!" the head of the supreme council of the new party Boris Gryzlov and its founders Sergei Shoigu, Yuri Luzhkov and Mintimer Shaimiev promised in campaign materials. United Russia's agitation firmly tied it to the image of Vladimir Putin: according to the Levada Center, in December 2003, 86% of the respondents approved of his activities. "Only a professional, competent government, formed by the president and supported by a parliamentary majority, is able to solve the tasks set by the president," the United Russia party leaflet said, and among these "tasks" were mentioned "doubling the GDP" and "overcoming poverty."

As a result of the campaign, the party in power for the first time took first place in the Duma elections, receiving a total of 223 mandates. Another 52 seats went to the Communist Party, 37 to Motherland, 36 to the Liberal Democratic Party. But the Union of Right Forces and Yabloko did not get into the State Duma.[1] They were not admitted thanks toa careful falsification. This made it possible to create a stable constitutional majority in the lower house, regularly rubber-stamping any laws necessary for the executive branch.

An important feature of the election campaigns of this period is that from 2002, in regional and then in federal elections, the administrative-resource electoral technique began to be tested, eliminating political competition and achieving the desired result on the ground through a total "cleansing" of all groups of voters: pressure on state employees; threats to pensioners; ballot box stuffing; falsification of voting results; falsified vote counts in voting held outside the voting premises; the organization of 100% voting in psychiatric clinics, etc. Actually, all the dirty electoral methods that Russian political technologists and election headquarters mastered over the previous decade were adopted by the state itself. Moreover, these techniques were monopolized and improved by it.

Representatives of the executive branch, election commissions, law enforcement agencies (through non-intervention) and courts were involved in the implementation of the techniques, which did not find liability for violations of electoral legislation and did not cancel the voting results, that is, they provided a system of impunity for violators.

This was largely facilitated by the attack on the independence of the judiciary, which began simultaneously with the reform of the party system. In order to maintain control over the courts, the president's powers in this area were specially expanded. In December 2001, contrary to the provision of paragraph "e" of Article 83 of the Constitution (the right to submit candidates to the Federation Council for appointment to the position of judges of the Supreme, Supreme Arbitration, and Constitutional Courts), an amendment was made to the law on the status of judges, according to which the Federation Council appoints chairmen and deputy chairmen of the Supreme and Higher Arbitration Courts on the uncontested proposal of the president. The president also received the monopoly right to appoint the chairmen of *all* courts, up

1 *Slogan i delo* (Slogan and case), *Kommersant Vlast'*. Sept. 5, 2016 //www.kommersant.ru/doc/3076638

to and including district courts. The "birth trauma" of the Constitution, the final version of which was drawn up in emergency conditions and provided a strong bias in favor of presidential power, placing it above all other branches, actively began to realize its authoritarian potential.

On September 28, 2004, a collective lawsuit was filed with the Supreme Court of Russia to challenge the results of the 2003 parliamentary elections. Revision of the results was demanded by the political parties of the Communist Party of the Russian Federation and Yabloko, as well as representatives of the organization "Committee—2008: A Free Choice"—Vladimir Ryzhkov, Irina Khakamada, Sergei Ivanenko, Evgeny Kiselev, Georgiy Satarov and Dmitry Muratov. The Central Election Commission of the Russian Federation was named the defendant in the upcoming case.

The applicants believed that the number of violations of the electoral legislation committed in the autumn and winter of 2003 exceeded all permissible limits, which meant that on this basis the Supreme Court should review the election results. If the Supreme Court agreed with the plaintiffs, the CEC would have to call and hold new elections to the State Duma.

The first group of claims brought by the applicants in court contained evidence of gross violations of the rules for informing voters about the course of the election campaign. According to the plaintiffs, the state media were deliberately used to campaign in favor of one party, United Russia. The rest of the election participants were either ignored or deliberately compromised. State TV channels, which were obliged to provide equal air time to all candidates, gave United Russia 40% of this time. Of this amount of broadcasting, almost two thirds was, according to the losing parties, illegal election campaigning.[1]

The second group of claims related to the provision of deliberately false information about candidates to voters. The main complaints were, of course, directed against the same "United Russia." The applicants asserted that the "party of power" deliberately misled the representatives of the electorate, as it included in its list 37 people who renounced their mandates after the elections. Among them were the heads of regions, ministers and other famous people such as Sergey Shoigu, Yuri Luzhkov, Mintimer Shaimiev, Yegor Stroev, Boris Gromov, Eduard Rossel, Aman

1 The total amount of information about the party "United Russia" was 860 minutes 48 seconds. Of this, the amount of information that represented illegal pre-election campaigning was 529 min 9 sec., or 61.5%.

Tuleev, and Alexander Khloponin. According to the plaintiffs, voters voted precisely for these public figures, and since they immediately entrusted their mandates to lesser-known party comrades immediately after the elections, it turned out that the citizens who voted for them were misled.

The third group of claims contained data on violations in the counting of votes. Basically, these were inconsistencies revealed when comparing the official data of the protocols for single-mandate and federal districts. The plaintiffs found violations in the documents of 73 district election commissions out of 225. According to them, there were also numerous discrepancies in the data of precinct and territorial commissions (that is, about rewriting protocols).

The hearing of the case in court lasted daily for five weeks, with breaks only on weekends. The result was predictable—the court dismissed the complaint. It is from this time that we can talk about unfree, unfair and non-competitive elections in Russia under conditions of blocking a fair trial of electoral disputes in the courts. Moreover, the level of lack of freedom, injustice and non-competitiveness increased every year.

Subsequently (in 2013), the procedural deadlines for appealing the election results would be reduced by four times: from one year to three months. After the Duma elections in 2003 and 2007, it took at least six months to collect documents for applying to the Supreme Court to cancel the voting results. This innovation seriously reduced the chances of any attempt to reasonably challenge any of the results of a vote.

All subsequent elections in Russia were held according to the same administrative-resource scheme, with minor nuances, supported by amendments to the electoral legislation that changed in favor of the authorities. Their results were easily predictable, and the population progressively and steadily lost faith in their political rights and trust in the state.

Transformation of the electoral legislation of Russia in 2004–2008

On September 3, 2004, two explosions thundered in the sports hall of secondary school No. 1 in the city of Beslan (North Ossetia). They became the bloody denouement of a three-day drama: on Knowledge Day (Sept. 1), terrorists took hostage participants of the school assembly festivities—teachers, schoolchildren and their parents, as well as small children who came to see their brothers and sisters who were already going to school. The result of the tragedy: 335 dead, of which 186 were children. Losses

were suffered by the "Alpha" and "Vympel" special forces—10 people did not return from this mission.

Ten days after the Beslan tragedy, on September 13, 2004, Russian President Vladimir Putin, speaking at an enlarged government meeting, announced what needed to be done so that such terrorist attacks did not happen again. "While fighting manifestations of terror, we practically did not achieve visible results," these words, uttered by Putin on September 13, 2004, were both logical and expected. But what the president said next surprised many. It turned out that in order to fight terrorism, it was necessary to change the political system of the country, by abolishing the election of governors. "The highest officials of the constituent entities of the Russian Federation should be elected by the legislative assemblies of the territories on the proposal of the head of state," the president said.[1]

"If most of Putin's reforms in 2000 involved a consistent rejection of the 'Yeltsin legacy,' then in the last three months of 2004, President Putin's activity was actually reduced to his struggle with the year 2000 model of himself," wrote *Kommersant Vlast'* magazine.[2]

So, the most notorious "anti-terrorist" reform of 2004 was the transition from popular elections of governors to their actual appointment. The rejection of perhaps the main democratic achievement of the Yeltsin era turned out to be all the more unexpected since the problem of the "gubernatorial freemen" seemed to have been finally resolved back in 2000. Then the president first appointed "overseers" to the regional leaders—his plenipotentiaries in the federal districts, then expelled the governors from the Federation Council, depriving them of the parliamentary immunity attached to this status, and, to top it off, introduced a norm into the legislation that allowed the removal of heads of regions from office for violating federal laws.

In September 2004, Putin decided to abandon even the semblance of free elections and move on to the approval of governors by regional parliaments on the proposal of the president, or, in other words, to their direct appointment by the Kremlin. It is clear that this measure had nothing to do with strengthening the fight against terrorism: it is

1 Opening remarks at an extended meeting of the Government with the participation of the heads of the subjects of the Russian Federation // http://www.kremlin.ru/events/president/transcripts/22592.

2 *Otritsanie proydennogo(The denial of what was experienced), Kommersant Vlast'*, Dec. 20, 2004 //https://www.kommersant.ru/doc/534501.

unlikely that, say, the president of North Ossetia, being not popularly elected, but appointed by the president of the Russian Federation, could have prevented the seizure of the school in Beslan. On the other hand, this procedure allowed the Kremlin not to be distracted by all sorts of trifles, such as pushing through the candidates it needed in the gubernatorial elections, but to focus entirely on the task that it considered to be the main one for itself at the moment— mobilizing the entire society for the war declared on Russia by terrorists.

Another "anti-terrorist" measure was the amendments to the Law "On Political Parties." Its main goal was to drastically limit potential election participants.[1] The requirements for the minimum membership of a political party and its regional branches were increased fivefold: from 10,000 to 50,000 people and from 100 to 500 people, respectively. The requirements for the number of regional branches were also changed: now they had to be created in more than half of the subjects.[2]

And a year later, the electoral system itself was changed. With the adoption of the Law "On Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation"[3] in 2005, there was a transition from a mixed majority-proportional system to a fully proportional one. Now all 450 deputies of the State Duma were to be elected on party lists in a single federal constituency using the "Hare quota" and the rule of the largest remainder.

Back in May 2004, the head of the Central Election Commission, Alexander Veshnyakov, first announced the expediency of canceling elections to the State Duma by single-mandate districts and switching to purely party elections. However, this idea really took hold of the ruling masses precisely in September, when President Putin named it among other measures to strengthen the "vertical of power" in the fight against terrorism. And if in May this proposal seemed just a way to simplify the procedure for forming the lower house of parliament as much as possible (after all, it is obviously easier for the Kremlin to organize the passage of three or four necessary parties to the Duma than to promote two hundred of its single-mandate members), then in September,

1 Sheinis, *op.cit.*, note 28.

2 Art. 1, Fed. law of Dec. 20, 2004, "On introduction of changes in the Fed. law "On political parties," SZ RF. Dec. 27, 2004. No. 52 (part I). Art. 5272.

3 Fed. law of May 18, 2005 "On the election of deputies of the State Duma of the Fed. Assembly of the RF. SZ May 23, 2005. No. 21. Art. 1919. (Hereinafter in the text, Law on election of deputies of 2005).

against the background of the initiative to appoint governors, this idea took on a whole new meaning. After all, now Russians were deprived of the right to personally vote not only for the head of their region, but also for a specific State Duma deputy. And although the law on the election of deputies "allowed" non-party candidates to be included in party lists, it became much more difficult for a non-party Russian to get into the party list than to become a candidate for deputy by means of declaring one's candidacy (self-nomination).

Naturally, among the arguments in favor of a complete transition to a proportional system, there were arguments that it was more fair and that, unlike the majority system, it takes into account the will of the majority of active voters.[1] However, the opposite arguments are no less weighty, since the loss of votes in such a system can also be significant. In addition, the complete rejection of the majoritarian part of the elections inevitably leads to a weakening of the connection between voters and those elected, so it would be more reasonable to replace the majoritarian system of relative majority with a similar system of absolute or even qualified majority, which by their nature provide a high level of representation in parliament. The "disappearance" of votes could also be minimized by establishing an alternative vote.[2] But, unfortunately, all these arguments were not taken into account by the legislator, despite the fact that opinion polls in 2005 showed an extremely low level of public confidence in political parties (according to VTsIOM polls, parties in Russia were less trusted than courts and police, by only about 17% of citizens).[3]

All this was extremely strange, because in the 2003 Duma elections, United Russia, having received only 37.6% of the votes on party lists and winning in less than half of the single-mandate constituencies, was able to secure the status of the dominant party by recruiting the majority of the single-mandate members who participated in elections as independent candidates. The decision to abandon the mixed system in favor of

1 Skosarenko, *op.cit.*, note 21, 105–106.

2 *Ibid.*

3 According to the data of the May 2005 All-Russian Poll conducted by VTsIOM, 17% of respondents trusted parties, 20% trusted trade unions, 26% trusted courts, and 31% trusted the police. See: *Partiyam v Rossii doveryaiut men'she, chem. militsii* (Parties in Russia are less trusted than the police) // https://utro.ru/articles/2005/06/22/451063.shtml

a purely proportional one looked all the more paradoxical—victory had been achieved precisely thanks to the mixed form.

It also looked strange from the point of view of the authoritarian strategy, which by this time had already manifested itself quite clearly. The literature is ambiguous about the impact of mixed systems in general and mixed independent (parallel) systems in particular on the development of democracy. However, it can be considered established that such systems are used more widely in autocracies than in democracies. This indirectly indicates that mixed systems at least do not contradict the structure of political incentives characteristic of authoritarian regimes,[1] especially since the use of proportional representation entails fragmentation of the party system (risk of competition). Under these conditions, the use of a mixed system (at least its independent version) looks like an acceptable institutional compromise. But, apparently, the authors of the reform acted tactically and situationally, having only momentary electoral plans. Naturally, this tactic did not justify itself strategically, because it was *a priori* dangerous for the current course. Therefore, over time, the fully proportional system was abolished. Everything went back to normal.

But then, in 2005, in connection with the rejection of majoritarian elections, the ratio of the federal and regional parts of the list of candidates changed dramatically, which seriously complicated the procedure for compiling and nominating them. No more than three people could now be included in the federal part, and the minimum number of regional parts increased to one hundred.[2] The principle of equal access of parties to elections was also changed. Since 2005, parties not represented in the State Duma were put in a deliberately worse position compared

1 *See* M.S. Shugart, Mixed-Member Electoral Systems: The Best of Both Worlds? M. S. Shugart, M. P. Wattenberg (eds.).Oxford, UK: Oxford University Press (2001); E. Linhart, J. Raabe, and P. Statsch, (2019). Mixed-member proportional electoral systems—The best of both worlds? E. Linhart, J. Raabe, P. Statsch, Journal of Elections, Public Opinion and Parties. (2019). No. 29 (1), 21–40; G. Golosov, *Ot post-demokratii k diktature. Konsolidatsiya elektoral'nogo avtoritarizma v Rossii* (From post-democracy to dictatorship. Consolidation of electoral authoritarianism in Russia), in *Novaya Real'nost': Kreml' i Golem* (New Reality: The Kremlin and the Golem). *Chto govoryat itogi vyborov o sotsial'no-politicheskoy situatsii v Rossii* (What do the election results say about the socio-political situation in Russia) Ed. K. Rogov. Moscow: Liberal Mission Foundation (2021), 98–112 // https://liberal.ru/wp-content/uploads/2021/11/kreml-i-golem.pdf.

2 *Supra* note 35, paras. 19, 20 and 10 of Art. 36.

to the electoral associations that overcame the threshold in the previous elections. The former now had to either collect signatures in their support or pay an electoral pledge, but could not do both at the same time (making an "insurance" deposit in case registration failed based on the collected signatures). At the same time, the procedure for verifying signatures was complicated: the percentage of acceptable "defects" decreased from 25 to 5%. Thus, the state had a legal opportunity to reject any number of signatures for a variety of practical reasons. But the possibility of contesting the results of verification of signatures was actually eliminated. All this together put the opposition parties not represented in the Duma in a deliberately losing position when exercising their right to nominate a list of candidates, and, consequently, had an extremely negative impact on the formation of a multi-party system in the country and the possibility of a real discussion and competitive struggle in the political system. The opposition was artificially ousted to the periphery of public life and, at best, got the right to exist within a strictly limited "electoral ghetto."

The 2005 Law "On the Election of Deputies…" also completely eliminated the sanctions for refusing to accept a deputy's mandate. But it is precisely this argument, as we remember, that was voiced in the courts when appealing against the election results. Now any candidate had the opportunity freely and with impunity within seven days after the day of voting to decline the mandate.[1] This was done specifically for the so-called "steam locomotives"—media or regional leaders inserted into the federal part of the list, but who had no real intentions to run for parliament. For example, in the 2007 elections, governors, the President of the Russian Federation personally, as well as a number of other media people acted as such figures. Only 19 out of 84 heads of regions of the Russian Federation were not included in the lists of candidates (all of these cases concern the list of candidates from the United Russia party). Ultimately, this led to the consolidation of the monopoly of the officials put at the head of the party and the heads of party building on the formation of party lists and the selection of candidates and opened up wide opportunities for manipulation—up to and including the correction of the composition of already elected and formed factions.[2]

1 *Ibid.*, para. 13 of Art. 82.

2 V.L. Sheinis, *Izbiratel'naya sistema Rossii: istoriya degradatsiyi* (The electoral system of Russia: a history of degradation) //https://www.specletter.com/vybory/2008-11-05/sistema-rossii.html.

In addition, a rule was introduced on depriving a deputy's mandate in the event of a deputy's transfer from one faction to another.[1] It would seem that such a norm is a guarantee against political defectors, which allows better taking into account the will of voters who voted for specific electoral associations, which, ideally, should reflect the balance of political forces in society through the composition of the chamber of parliament. However, as a result, the deputies completely lost their independence and responsibility to the citizens who elected them, becoming hostages of the leadership of political parties.

Subsequent changes in the electoral legislation affected several more fundamental provisions of the electoral right. First of all, the possibility of voting against all presented candidates was abolished,[2] that is, protest voting was completely excluded at elections at all levels. It seemed to cease to exist altogether and to influence the results. The only way to express their opinion for citizens who disagreed with the proposed party lists was to vote "with their feet"—by ignoring the elections, or damaging or removing ballots from the polling stations.[3] All the talk that voting "against all" is "destructive"[4] is worth absolutely nothing. Even the dependent Constitutional Court was forced to state that "voting "against all" in free elections does not mean an indifferent, but a negative attitude of voters towards all candidates,"[5] that is, these candidates do not have the support of voters necessary and sufficient to ensure genuine representation of the people, which should be the result of the election.

1 Subpara a, para. 1, Art. 2 of Fed. law of July 21, 2005 No. 93-FZ, "On introduction of changes in the legislative acts of the RF on elections and referenda and other legislative acts of the RF." SZ RF, July 25, 2005. No. 30 (part 1), Art. 3104.

2 Fed. law of July 12, 2006, "On introduction of changes in separate legislative acts of the RF in the part cancelling forms of voting against all candidates (against all lists of candidates)." SZ RF, July 17, 2006. No. 29. Art. 3125.

3 Skosarenko, *op.cit*., note 21, 111.

4 D. Golovanov. *Problemy regulirovaniya prava na predvybornuiu agitatsiu v kontekste Post. Konst. Suda po voprosu ob agitatsii "protiv vsekh"* (Issues of regulation of law on pre-election campaigning in the context of the decision of the Constitutional Court on the issue of campaigning "against all"), *Sravnitel'noe konstitutsionnoye obozrenie* (Comparative Constitutional Review), No. 2 (55), 2006, 138.

5 Post. Konst. Suda RF of June 10, 1998 No. 17-P, "On the matter of checking the constitutionality of clause 6 of article 4, subsection "a" of article 3 and article 13 of article 4, article 19 of article 3 and article 58 of article 2 of the Federal Law of 19.09.1997 "On the main guarantees of electoral rights and the right to participate in Referendum of citizens of the Russian Federation." SZ RF June 22, 1998. No. 25. Art. 3002.

Thus, the role of voting "against all" was officially designated as a form of expression of the will of citizens during elections, which would be a mistake to consider as less important than other forms for ensuring the representativeness of the elected body. But who listens to the court in authoritarian regimes?

In the summer of 2006, parties were forbidden to include representatives of other parties in the electoral lists, and deputies were forbidden to leave the party from which they were elected. This meant that, following the ban on pre-election blocs in 2005, inter-party unions were now banned altogether, when members of one ally party are included in the electoral list of another (in such a way, for example, members of the Union of Right Forces were included in the Yabloko list in the elections of the Moscow City Duma). In November-December 2006, new amendments to the electoral legislation abolished the turnout threshold for declaring elections valid, prohibited criticism of opponents on television during the official campaign, and strengthened the grounds for restricting passive suffrage in connection with participation in "extremist" activities.

In fact, the turnout threshold is a very important factor in elections. "Turnout" refers to the percentage of voters who take part in the vote. The presence of a turnout threshold (elections are considered valid if a certain percentage of voters participate in them) is a guarantee that the opinions of the majority are taken into account. The fall in voters' confidence in the state and elections inevitably leads to a decrease in turnout. The critical drop in turnout casts doubt on the legitimacy of any vote. Turnout is always a headache for authoritarian regimes.

For example, in the presidential elections on March 14, 2004, the main intrigue was not the name of the winner, but what the turnout would be, since in order for the elections to take place in principle, it was necessary to ensure that more than 50% of Russians with the right to vote went to the polls. Officials across the country made a lot of efforts to ensure that citizens exercised their right to choose. A few weeks before March 14, information began to appear in the media about gifts, discounts on utility bills and free haircuts for those who voted, as well as about the sale of cheap food organized in front of the polling stations. In some institutions, March 14 was declared a working day, and ballot boxes were delivered directly to workshops and offices. In others, all employees were assigned to voting brigades, and in each of the brigades a person was appointed responsible for the turnout of all its members

at the polling station. People were forced to vote under the threat of not passing college or university exams, not receiving bonuses, or even being fired. And according to the information of the CEC members from the Communist Party of the Russian Federation, in the Moscow city and Saratov regional election commissions, citizens who were not even registered as residing in Russia were included in the voting lists.[1] And such a hassle every election! Of course, for the unhindered achievement of authoritarian goals, the turnout threshold had to be abolished. Such a trifle, but what a hindrance! Since the abolition of the turnout threshold, the term "to dry the elections" has appeared in the lexicon of Russian political techniques. It means governmental media oblivion of the ongoing election campaign, when the elections seem to be scheduled, the campaign is underway, but they don't talk about it or write about it in the media. What is this for? Why write and speak? The turnout threshold has been abolished. Everyone who needs to be is brought to the polls. The desired result will still be provided. And if you write and speak, then you never know what will happen. The practice of "drying" elections was especially widespread in the regions, ensuring the calmness of the local administration.

Blocking of referendums

To complete the picture, it is necessary to say a few words about the Russian legislation on referendums. This instrument of direct democracy in our country has always been very much feared. The federal law on the referendum was adopted almost the last of all the laws directly named in the Constitution of the USSR of 1977—in December 1990, two months later than a similar law of the RSFSR. And only one referendum under this law was held (March 17, 1991, on the preservation of the USSR). The Russian Law on Referendum was also used only twice: when introducing the post of President of Russia and during the referendum on April 25, 1993, which received the popular name "yes-yes-no-yes." As we remember, the referendum on December 12, 1993 on the adoption of the Constitution was held not according to the rules of the law, but according to a special one-time procedure provided for by a presidential decree. Not a single referendum passed without scandal and they were not distinguished by the cleanliness of procedures.

1 https://m.lenta.ru/articles/2004/03/15/election.

Not a single federal referendum has been held since, and this is no coincidence. The legislation on the referendum in Russia is designed in such a way that it is almost impossible to initiate and hold one, despite the existence of the current law. Experts have long been proposing to transfer the study of the institution of the referendum from the course in constitutional law to a course in history. The "twisting" of the legal regulation of this institution to the state of complete impossibility of implementation falls precisely in the period of transformation of the electoral legislation that we are describing. Moreover, there is only one framework law for a referendum and elections—"On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation." The Constitutional Court has repeatedly examined the provisions of the legislation on the referendum for its compliance with the Constitution,[1] but this did not lead to a correction of the situation.

In 2002–2004, the State Duma adopted amendments to the legislation that significantly complicate the already difficult organization of referendums. In particular, a moratorium was introduced on holding a referendum in the last year before the presidential and parliamentary elections. The deadline for collecting the two million signatures required to initiate a referendum was reduced from three months to 45 days. The number of initiative groups of 100 people was increased to a number equal to half of the subjects of the Federation. The requirements for the formulation of questions submitted to a referendum became more complicated in such a way that even the most sophisticated minds who have tried to formulate any question that satisfies them have failed.

Nevertheless, attempts to hold a referendum were made repeatedly. The communists went the farthest in 2005. They planned to put 17 issues to the vote, mostly of a socio-economic nature. However, the Central Election Commission stood in their way as a formidable wall and did not allow the expression of the will of all the people. The main argument of officials was that, according to the referendum law, it is impossible to submit questions that could lead to a revision of the state's financial obligations. The communists went to court. The Supreme Court supported the position of the CEC, and then the initiators of the failed referendum appealed to the Constitutional Court. On March 21, 2007, the court ruled

1 *See, e.g.*, A.A. Petrov. *Institut referenduma v svete resheniy Konst. Suda RF* (The institution of the referendum in light of decisions of the Const. Court of the RF). *Izbiratel'noe pravo* (2007), No. 4, 22–29.

that the Central Election Commission allowed a broad interpretation of the "financial ban." The state could be forced to revise its financial obligations by means of a referendum, if this revision did not affect the current budget. The Court also ordered Parliament to clarify the wording.[1]

The deputies' response to this demand was swift and demonstrative. By April 2007, they had developed and adopted a package of amendments to the legislation, according to which it is forbidden to submit any issues related to the exclusive competence of state authorities to a referendum.[2] The media quoted the Duma discussion: "It's simply absurd for issues that are in the hands of the government and State Duma deputies to be decided in a referendum. People should not decide in a referendum on essential issues, especially financial ones."[3] Thus, referendums in Russia at the initiative of citizens were completely blocked. And not only federal, but also regional. Popular voting began to be held exclusively on initiative from above in order to legitimize changes in the federal structure or administrative-territorial division.

The result is as follows: for the period from January 1, 2016 to June 30, 2021 alone (that is, for 5.5 years), 268 applications were submitted to the election commissions of the constituent entities of the Federation for registration of initiative groups for holding regional referendums. In 2016, 59 applications were filed, in 2017, 61 applications, in 2018, 48 applications, in 2019, 51 applications, in 2020, 29 applications, and in the first half of 2021, 20 applications (data are presented based on an analysis of decisions of election commissions of constituent entities of

1 Decision of the Constitutional Court of the Russian Federation dated March 21, 2007 № 3-P *"On the matter of constitutional verification of a number of provisions of Articles 6 and 15 of the Federal Constitutional Law "On the Referendum of the Russian Federation" in connection with the complaint of citizens V.I. Lakeev, V.G. Solov'eva and V.D. Ulas. Rossiyskaya gazeta*. March 30, 2007 Federal issue № 0(4329). // https://rg.ru/2007/03/30/referendum-dok.html.

2 Federal Law "On Amending Certain Legislative Acts of the Russian Federation in Connection with the Adoption of the Federal Law "On Amending the Federal Law "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation" and the Code of Civil Procedure of the Russian Federation", and also in order to ensure the implementation of the legislation of the Russian Federation on elections and referendums" dated April 26, 2007 No. 64-FZ.

3 *Pishite pis'ma. Edinorossy izbavyat rossiyan ot referendumov* (Write letters. Members of Edinaya Rossiya rid Russians of referenda). //lenta.ru/articles/2007/10/12/referendum/.

the Russian Federation). The initiative groups were denied registration at two stages. First, at the stage of checking the application and the documents attached to it, as required by legislation, then, at the stage of checking the content of the question. At the first stage, for the period from January 1, 2016 to June 30, 2021, the initiative groups were denied 153 petitions, at the second stage, 111. And only three petitions were registered by the initiative groups. As a result, according to the results of the verification of the collected signatures, only one referendum was held, in the Volgograd region, on the issue of the transition from the second to the third time zone.[1]

Amendments of 2006–2007. Transition. Restriction of voting rights. The beginning of the defense

We specifically dwell on this small segment of the transformation of the electoral legislation, because, in our opinion, it is of fundamental importance in the division of the authoritarian transition into periods. Political scientists designate the boundary separating the initial stage of the accumulation of the authoritarian potential of power from the stage of consolidation of authoritarianism, as approximately 2010–2011. However, an analysis of the legislation shows that this watershed occurred earlier, in the course of creating a legislative platform for the parliamentary and presidential elections of 2007–2008. And this border is clearly visible. Why do we think so?

The fact is that all the reforms of the previous six years were, so to speak, of a general nature. Building a centralized vertical (neutralization of the "Club of Governors"), changing the role and creating conditions for control over the personal composition of the parliament (qualified majority, accountability of the executive branch, liquidation of the discussion platform), building a certain type of party system (reducing the number of and eliminating collective competitors), gradual redistribution of powers to a narrower circle of political actors—all these measures fully fit into the definition of "seizure of power." Yes, many of the actions were chaotic and inconsistent, which most likely indicates the absence of a serious strategy, a misunderstanding and underestimation of the logic of socio-political processes. But all of them are

1 A. Podgaynaya, *Referendum sub'ekta RF: 268 popytok za 5.5 let* (Referendum of a subject of the RF: 268 attempts over 5.5 years) https://zakon.ru/blog/2021/9/6/referendum_subekta_rf_268_popytok_za_55_let.

somehow aimed at reducing the influence of the system of checks and balances in the system of democratic institutions of power, at changing the balance of power through the redistribution of state power to a subject—the president—placed by the Constitution outside the system of separation of powers and nevertheless having significant levers of influence on each of the branches of power. In other words, the "birth injury" of the Constitution, its initial imbalance between the fundamental chapters and all other chapters potentially created such a possibility. To be honest, lawyers warned of such a threat as early as the winter of 1993. Until a certain time, the potential of the disbalance was used to a limited extent and even more or less precisely. But since 2000, it has been used to the maximum.

In addition, for the 2007 elections, the leadership of the CEC was replaced. V.E. Churov, who used to be Putin's assistant for international activities in St. Petersburg, was named chairman. This position itself was a nomenklatura position for the KGB. It was with his arrival that falsification ceased to be considered shameful and became a matter of honor, glory, valor and heroism for every electoral worker.

As for the point of transition, we see it in the fact that from measures of a general nature (institution building), power passed to individual measures. Passive suffrage restrictions for certain categories of individuals began to be introduced. And this is understandable. Unprofessionally built on false and often momentarily justified messages, the vertical political system in a huge, complex country should have faltered by itself. But besides this, with the liquidation of collective (party) competition, individual competition would inevitably arise, since life abhors a vacuum. On a field cleared of collective actors, personalities naturally should have appeared, violating the picture of unity and cohesion around the officially proclaimed leader. And personalities are not the same as collective subjects. There may be many of them, and they are not subject to institution building. Having built its own system, the government discovered that it was imperfect and went on the defensive. In a targeted way at first. But then, as threats increased, targeted measures began to expand and eventually became comprehensive. In fact, this happens with almost all autocracies: after building their forms of government, they move on to "patching holes" and to defense, that is, to the policy of retaining power.

So, it was in 2006 that significant restrictions on passive suffrage for certain categories of people began to be introduced. Contrary to the clear

and unambiguous wording of Part 3 of Article 32 of the Constitution, which determines the limiting value of restrictions on voting rights, since 2006 the right to be elected to government bodies at all levels has been denied to citizens of the Russian Federation who have citizenship in another state, or a residence permit or other document confirming the right of permanent residence in a foreign country.[1] Ignoring the semantic content of a number of articles of Chapter 2 of the Basic Law of the country, the legislator in this case was guided by the simplest and most convenient logic for him—he took advantage of the right to establish by federal law removal from the rights of Russian citizens if they have citizenship of another state (Part 1 of Article 62) and throwing in for good measure residence permits. Later, such a rule became a serious constraint for citizens to occupy a variety of positions and eventually led to the mandatory notification of the state about the possession by citizens of any documents on the right to reside in the territory of other states.

Another limitation of passive suffrage was the rule on combating extremism introduced into the Law "On Basic Guarantees..." of 2002, and then into other electoral laws.[2]Citizens convicted of extremist crimes, subjected to administrative punishment for propaganda and public demonstration of Nazi paraphernalia and symbols (and subsequently for the production and distribution of extremist materials) or caught during the election campaign in calls for extremist activities were deprived of the right to be elected.[3] The same article expanded the range of restrictions on passive suffrage associated with the commission of criminal offenses. If the Constitution of the Russian Federation establishes that persons held in places of deprivation of liberty by a court

1 Art. 6, 7, 8, 9 and 10 of the Federal Law of July 25, 2006 "On Amendments to Certain Legislative Acts of the Russian Federation in Part of Clarifying the Requirements for Filling State and Municipal Positions," respectively. SZ RF. July 31, 2006. No. 31 (part I). Art. 3427.

2 Para. 1, Art. 1 of the Federal Law of December 5, 2006 "On Amendments to the Federal Law "On the Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation" and the Civil Procedure Code of the Russian Federation". SZ RF. Dec. 11, 2006. No. 50. Art. 5303.

3 Art. 7 of the Federal Law of July 24, 2007 "On Amendments to Certain Legislative Acts of the Russian Federation in Connection with the Improvement of Public Administration in the Field of Countering Extremism." SZ RF. July 30, 2007. No. 31. Art. 4008.

verdict are subject to such restrictions,[1] now citizens sentenced to imprisonment for committing grave or especially grave crimes and having an unexpunged or outstanding conviction on election day are also deprived of the right to be elected. This norm significantly and unreasonably expands the limiting constitutional restrictions on voting rights, since a conviction for serious crimes is extinguished 6 years after serving a sentence of imprisonment, and for especially serious ones after 8 years.[2]

As for crimes related to extremist activity, the Criminal Code of the Russian Federation still does not contain a clear and unambiguous concept of extremism, which makes these norms "rubber" and allows them to be used at the arbitrary discretion of law enforcement agencies. And this despite the fact that the legal uncertainty of the legislator is not acceptable in general, and in particular in the definition of such important provisions as restrictions on the electoral rights of citizens. Although at first glance it may seem that for legislative activity the requirement of legal certainty is more of a technical and legal nature and is a natural legislative risk.[3] After all, we are talking "only" about formulations and terms that are the creation of human hands, and people tend to make mistakes. Actually this is not true. The requirement of certainty follows from the very nature of the legal norm as an equal scale, an equal measure of freedom for all subjects, and forms "one of the fundamental aspects of the rule of law principle, is its necessary consequence and a condition for its implementation."

So, we're really talking about wording. But the goal of the demand for certainty is much more serious and deeper than just the perfection of texts. It lies in the fact that the law accurately fixes the requirements for the behavior of people, the scope of their possible, proper, or prohibited behavior, and describes in detail the possible (or required) options for lawful actions. *Legal certainty* is one of the most important general principles for the protection of human rights recognized by the Russian Constitutional Court and the European Court. This is a broad concept, the core of which is the predetermination and predictability of the con-

1 Part 3 Art. 32 of the Constitution of the RF.

2 Para. "g" and "d" part 3 of Art. 86 of the Criminal Code of the Russian Federation dated June 13,1996. SZ RF. June 17, 1996. No. 25. Art. 2954.

3 E.V. Malysheva. *Zakonotvorcheskiy risk: ponyatie, vidy, determinatsiya* (Law-making risk: understanding, types, and determination) Author's summary of kandidat degree dissertation. Vladimir, 2007.

ditions of activity and its legal consequences for the subjects of legal relations, and which corresponds to the responsibility of the state for failure to comply with its obligations or promises in relation to individuals (the concept of "legitimate expectations" based on the stability of legal regulation).

States bear a positive responsibility for failing to respect the principle of legal certainty. This responsibility is embodied in the void for vagueness doctrine, according to which the vagueness of a normative act entails its nullity as violating the due process clause requirement.[1] Therefore, a consistent domestic and international legal appeal from Russian restrictions on passive suffrage will most likely lead to their recognition as violating the provisions of the European Convention and to imposing on the state the obligation to cancel these restrictions.[2] So the state drives itself into a permanently growing chain of problems, not just an unconstitutional struggle against political competitors, but also a contradiction of domestic legislation with its own international obligations, the search for ways to fail to fulfill these obligations, amendments to the Constitution of dubious legitimacy, the curtailment of constitutional justice, and on and on… Nevertheless, the short-term task of preparing the legislative field for two series of regular elections was completed. Problems would come later. Their occurrence could and should have been foreseen, but there were no such specialist-visionaries in power.

The Elections of 2007–2008

The parliamentary and presidential elections of 2007 and 2008 were fairly standard for the established system. In March 2007, a new composition of the Central Election Commission took shape. It was headed by Vladimir Churov, who once worked under the leadership of Vladimir Putin in the St. Petersburg mayor's office. The former head of the CEC, Alexander Veshnyakov, had a reputation as an "internal oppositionist" and repeatedly allowed himself to criticize the government's initiatives in the field of reforming the electoral legislation. The new Central Election Commission proved to be absolutely loyal to the government: it did

1 *See* E.A. Lukyanova. *Konstitutsionnye transformatsiii politicheskiy imitatsii* (Constitutional transformations and political imitations), 129–131.

2 The European Court took up the "Kara-Murza case." *Kommersant*. June 7, 2017 // https://www.kommersant.ru/doc/3319812.

not launch a single complaint against United Russia, rejected any doubts about the legitimacy of the Duma elections, and stubbornly ignored the dominance of the "party of power" in the information space. "Everything's under control. Political results of 2007"—this is how Lenta.ru titled its report on the parliamentary elections.[1]

Elections to the State Duma of the 5th convocation were held on December 2, 2007. The level of approval of Vladimir Putin's work as president went off the scale: in December, according to the Levada Center, he was supported by 87% of respondents, although between the parliamentary elections the president's approval rating dropped to 65% in January 2005. This time, Putin personally led United Russia in the elections, topping its list.

One of the main scandals of the Duma election campaign was that the OSCE Office for Democratic Institutions and Human Rights (ODIHR) refused to send its observers to the elections, saying that the Russian authorities first delayed sending them invitations, and then delayed issuing visas. Years later, the actions of the state to block international and domestic election observation under any pretexts have become familiar and mundane. But then it was the first time and it stood out.

Changes to the electoral legislation adopted by that time cut off many potential participants from the campaign. For the first time, all 450 deputies were elected on party lists with a threshold of 7% of the vote (this decision was made at the beginning of the 2000s, but its entry into force was postponed until 2007). The formation of electoral blocs was prohibited, the minimum threshold for voter turnout and the "against all" column were abolished. Only fifteen parties met the strict requirements of the party legislation, of which only 11 took part in the elections. In 2007, "the campaign was quite banal," "there was no noteworthy campaigning," and "there were practically no parties." "The whole campaign was built on the image of Putin and trust in Putin, but, from my point of view, it was rather boring, more like a referendum on confidence in power and, perhaps, the most inconspicuous," recalls Andrey Buzin, co-chairman of the movement "Golos" (recognized as a foreign agent).[2] The campaign's main slogan was "Putin's plan is Russia's victory!" Putin was everywhere, his portraits as president were even at polling stations, where it was formally forbidden to place candidates' portraits.

1 https://lenta.ru/articles/2007/12/29/polifinal/.

2 https://m.lenta.ru/articles/2004/03/15/election/.

But one event in this "banal" and "boring" campaign should still be noted, if only because it organically fits into the concept of the regime's transition to the stage of consolidation and retention of power. We are talking about the president's speech to supporters shortly before voting day, November 21, 2007. This speech can be considered a program, since it was in it that he first announced the enemies of Russia, "entrenched" both in the international arena and within the country. "Those who oppose us do not want the implementation of our plan, because they have completely different tasks and other views on Russia. They need a weak, sick state," Vladimir Putin said. According to him, "there are those inside the country who are still feeding like jackals at foreign embassies" and "count on the support of foreign funds and governments, and not on the support of their own people." The people who "occupied high positions in the 1990s" "led Russia to mass poverty and rampant bribery" and now "teach us how to live," the president said, and "they want to take revenge and gradually restore the oligarchic regime."[1] In a follow-up to his famous Munich speech at the security conference in February of that year, in which he first used foreign policy rhetoric to consolidate power, he began to fight domestic opponents.

As a result, as planned, four parties entered the Duma: United Russia received a record 315 mandates (a constitutional majority), the Communist Party of the Russian Federation 57, the Liberal Democratic Party 40, and A Just Russia 38. And if in 2003 there was a campaign of hopes, where everyone could fantasize for himself what expectations he associated with Putin, by 2007 the campaign was already rigidly centralized in terms of content and clearly predictable in terms of results. "Authoritarian rulers seek to avoid the uncertainty of electoral outcomes inherent in elections in a democracy. Their dream is to reap the benefits of electoral legitimacy without exposing themselves to the risks of democratic uncertainty."[2]

By 2008, on the eve of the expiration of his presidential term, Putin had chosen a loyal successor, Dmitriy Medvedev.

On December 10, 2007, the leaders of United Russia, Spravedlivaya Rossia (A Just Russia),Grazhdanskaya Sila (Civil Force) and the Agrarian Party at a meeting with Vladimir Putin announced their support for

1 *Supra* note 29.

2 Iu. S. Medvedev. *Zachem avtokratam vybory? Politicheskaya nauka o roli vyborov pri avtoritarizme* (Why elections for autocrats? Political science on the role of elections in authoritarianism). *Sravnitel'naya politika*. (2020). Vol. 11, No. 4, 191.

Dmitriy Medvedev as a candidate for the future president of the Russian Federation. The head of state "entirely and completely" supported this choice. In other words, Medvedev was directly named the successor. In fact, this was the long-awaited introduction of the new head of state.

On December 1, 2007, Dmitry Medvedev announced that, if elected, he would offer Vladimir Putin the post of prime minister of the Russian Federation. The risks of "castling" for Putin, who, according to the letter of the 1993 Constitution, could be dismissed by Medvedev from the post of head of government at any moment, were obvious, and a significant part of the observers were inclined to believe that they could well be realized.

Putin nevertheless accepted these risks, pinning his hopes both on the institutional leverage of the Duma majority and on the colossal superiority of his political resources. Events showed that his strategy was justified and the risk hedging strategy worked in line with his expectations.[1]

On December 17, 2007, at the congress of United Russia, Dmitriy Medvedev was officially nominated as a presidential candidate. And there Vladimir Putin agreed to head the government after the elections.

On March 2, 2008, Dmitriy Medvedev won the presidential election with 52.5 million votes (70.28%).

April 15, 2008 Vladimir Putin at the congress of "United Russia" accepted the proposal to head the party.

On May 7, 2008, Dmitriy Medvedev took office as president.

On May 8, by his decree, he appointed Vladimir Putin Chairman of the Government of the Russian Federation.

Not a single candidate from the non-systemic opposition was admitted to the elections, and television propaganda worked for one person in full force. The usual sparring partners Gennady Zyuganov and Vladimir Zhirinovsky took part in the presidential campaign. The participation of the political strategist and freemason Andrey Bogdanov ensured a carnival element. The sparring partners fulfilled their function. Gennady Zyuganov gave the elections legitimacy in the eyes of Russians by creating a sense of choice. This role was not easy for him. He had to participate in televised debates not only with Vladimir Zhirinovsky, but also with Andrey Bogdanov. The story was scandalous. Initially, the leadership of

1 G. Golosov, From post-democracy to dictatorship: consolidation of electoral authoritarianism in Russia // https://liberal.ru/lm-ekspertiza/ot-post-demokratii-k-diktature-konsolidacziya-elektoralnogo-avtoritarizma-v-rossii.

the Communist Party of the Russian Federation categorically stated that the leader of the party would not debate in this format. However, very soon Zyuganov decided to take this difficult step and was rewarded with a rather high result. Zhirinovsky and Bogdanov also coped with their roles. The first one attracted part of the protest electorate, increasing the turnout at the same time, and the second demonstrated the presence in Russia of a politician striving to join the European Union.[1]

On March 2, Russian voters approved Dmitriy Medvedev, nominated by Vladimir Putin, as president. The result of the successor was higher than that of United Russia in the parliamentary elections in December (64.3%), but slightly lower than that of Putin in 2004 (71.31%).

The 2008 elections turned out to be even less democratic than Vladimir Putin's reapproval for a second term in 2004, or even the first Operation Successor in 2000. To paraphrase Alexander I, that "everything will be like under his grandfather," the successor never yielded and clearly did not intend to yield. Medvedev's keynote speeches differed little from Putin's pre-election speeches of the 2000 model. Based on previous experience, one could easily assume that liberal promises (to support independent media, remove obstacles to business, guarantee equality of all before the law) would certainly come true in exactly the opposite way, but strict precepts (to defend national interests in foreign policy, strengthen institutions of power from top to bottom, not to sacrifice order for the sake of freedom) would be implemented in a literal sense. And even in appearance, gestures and gait, the successor tried to resemble his predecessor.[2]

1 *Preemnik RF. Dmitriy Medvedev stal prezidentom bez vyborov* (Successor of the RF. Dmitriy Medvedev became president without elections). Gazeta.ru Dec. 10, 2007 //https://www.gazeta.ru/politics/2007/12/10_a_2410821.shtml.

2 *Tandemokratiya* (Tandem democracy). *Kommersant Vlast'*. March 10, 2008 // https://www.kommersant.ru/doc/864737.

Chapter 3.
Transformation of the political regime and electoral legislation in Russia in 2008–2019. Retention of power

Electoral Authoritarianism: Consolidation

Part two. Retention of power. Here is how Grigory Golosov characterizes this period. The quote is long, but we need it for a refined analysis:

> A little theory is needed here. By their very nature, all electoral authoritarian regimes in their pure form, which is available in Russia, are personal dictatorships. Their leaders do not come to power as a result of a military coup, nor by inheritance, and not by party line. They win elections, and often these first elections are relatively free. However, they cannot cede power in the same way, because the authoritarian degeneration of the regime eliminates this possibility, turning the electoral process into an empty fiction. At the same time, the leader has absolutely no institutional incentives to transfer power to someone else. He can always and almost always wants to rule forever, until, so to speak, "death do us part."
>
> It took Russia some time to verify this pattern on its own experience. The first bell sounded in 2011, when the "castling" suddenly ended, and in order to stop the public reaction and leave it without political consequences, it took unprecedented falsifications in the Duma elections. They upset the citizens, which led to mass demonstrations. However, the initial reaction of the authorities was not unequivocal. The crackdown on the agitated citizens did not really unfold until the following spring, but at first the regime tried to smooth things over in a manner common to electoral authoritarianism, that is, with partial and inconsistent liberalization.
>
> After that, its other side, or rather, the true nature of personal dictatorship, took over. A significant role in this was played by the foreign policy events of 2014, after which Putin was finally convinced (I think without sufficient grounds) that he deserved the eternal gratitude of the Russian people and the same eternal hatred of the Western powers not only for him personally, but also for Russia in general. The well-known thought of Vyacheslav Volodin

that Putin is Russia was expressed by an experienced courtier, but, I think, was born in a different head.
In particular, one of the responses to the difficulties that arose in 2011/early 2012 was a return to a mixed-member parallel system in almost the same form in which it was practiced in 1993–2003. This led to the expected results, confirming the conformity of this system with the primary task of authoritarian consolidation—the preservation of political monopoly. In the 2016 elections, despite the extremely favorable political context for the authorities, United Russia received only a little more than 50% of the votes on the party list, and only winning in the vast majority of single-mandate constituencies allowed the executive branch to consolidate the balance of parliamentary forces necessary for an unhindered implementation of the 2020 constitutional reform.1

Analyzing the legislation, we are forced to slightly shift the chronology of the transformation of Russian authoritarianism. As already mentioned, we marked the turning point from "the beginning of authoritarianism" to "the consolidation of authoritarianism" as dating from 2006. We also stated that the entire main consolidation base was laid already in 2008–2011. Another question is that on the surface this became noticeable only starting from the end of 2011 as a result of the "castling" itself, and the peak occurred in the period after the Crimean events of 2014. In fact, it seems that by 2008–2009, the contrast of the anti-democratic policy pursued in the country, compared to the 1990s, even if the 90s were "reckless" in the still hazy awareness of Russians, resulted in a decrease in the ratings of political leaders and the party in power. Political scientists define it as a crisis of the political system. And this is true, since the deeply unprofessional model under construction called "managed democracy," which had not yet fully manifested itself in the state of the economy, significantly hampered development. There were two ways out of this crisis—democratic and authoritarian. And the authorities even hesitated for a moment—this can be seen from the legislation and judicial practice. But then, with confident steps, they moved towards the consolidation of political and economic authoritarianism.

1 G. Golosov, *Ot post-demokratii k diktature .Konsolidatsiya elektoral'nogo avtoritarizma v Rossii* (From post-democracy to dictatorship. Consolidation of electoral authoritarianism in Russia), in *Novaya Real'nost': Kreml' i Golem* (New Reality: The Kremlin and the Golem). *Chto govoryat itogi vyborov o sotsial'no-politicheskoy situatsii v Rossii* (What do the election results say about the socio-political situation in Russia),Ed. K. Rogov. Moscow.: Liberal Mission Foundation (2021), 98–112 // https://liberal.ru/wp-content/uploads/2021/11/kreml-i-golem.pdf.

The Medvedev period. Tandemocracy

Everyone who says that during Medvedev's four years they managed to "at least breathe a little," everyone who even for a minute assumed that Medvedev could stay for a second term, were and are wrong. In fact, everything that happened during the four years of Dmitriy Medvedev's rule confirms that the regime had entered the stage of retaining power. The "castling" itself is the first and main proof of this. Medvedev merely occupied the position of temporary locum tenens (placeholder), continuing to prepare and equip a base for strengthening the autocracy. Two weeks before the 2008 presidential election, Vladimir Putin, at a press conference in the Kremlin, summed up his two presidential terms in his usual laconic form: "I am not ashamed in front of the citizens who voted for me twice, electing me to the post of President of the Russian Federation. All these eight years I worked hard like a slave in the galleys, from morning to night, and did it with full dedication of strength." Citizens, including those who instantly came up with and spread the hashtag *#крабнагалерах* (#galley crab) on the Internet, did not have to say goodbye to Putin for a day.[1] He continued to lead the country.

Putin took the first steps towards reformatting the system for new tasks immediately after the elections. On March 3, he asked Medvedev to start developing a new structure of executive power and, without waiting for the inauguration, to take over the preparation of meetings of the Presidium of the State Council, which is one of the president's exclusive prerogatives. To do this, Putin had to sign on the same day a special unprecedented Decree No. 295 "On the status of the newly elected and not inaugurated President of the Russian Federation,"[2] by which he ordered his administration "to ensure the activities of the newly elected and not inaugurated President of the Russian Federation," and the Federal Security Service "to provide the newly elected president with state protection" and to provide him with "the allocation of an official residence." Well, at least it became clear how before the beginning of May 2008 (before the inauguration) Dmitriy Medvedev's position was called. He was a newly elected president, but not yet in office.

1 *No potom, kak vidite, vtyanulsia* (But then, as you see, got used to it). *Kommersant*, March 29, 2020 //https://www.kommersant.ru/doc/4302515.

2 SZ RF. Mar. 10, 2008. No. 10 (Part. II). Art. 905.

What significant events, testifying to the consolidation of authoritarianism, marked the time of Medvedev? There are several of them, but they are all illustrative.

External expansion and expansion of geopolitical claims. On August 8, 2008, the war in South Ossetia began. The President gave the order to bring in troops and conduct an operation to "force Georgia to peace." The result of the five-day operation was the destruction of the main objects of the military infrastructure of the Georgian army and the ships of the Georgian combat fleet in the port of Poti. Two weeks later, on August 26, after corresponding requests from Tskhinvali and Sukhumi, the president announced that Moscow would recognize the independence of South Ossetia and Abkhazia.

The rise of the army "from its knees." Building up military potential. In 2008, a budget was adopted in which defense spending increased by 27%. A large organizational transformation of the army began, aimed at increasing the combat readiness of units and formations and the financial rehabilitation of the Ministry of Defense.

The final defeat of the "Club of Governors." In September 2010, something that seemed impossible happened: Dmitriy Medvedev dismissed Moscow Mayor Yuri Luzhkov with the wording that he had lost confidence. Thus, he solved one of the most difficult political tasks for the federal center—he eliminated the independent and ambitious heavyweight mayor from the capital and replaced him with a loyal official from Vladimir Putin's team.

Consistent extra-constitutional expansion (spreading in all directions) of presidential powers to the detriment of the powers of other state bodies and local self-government bodies. The right to dissolve regional parliaments and even greater subordination of the executive authorities was added to the presidential powers that already existed. For example, the amendment to the Law "On the Government" (Article 32), which directly subordinated to the president all law enforcement agencies, the Ministry of Foreign Affairs and the Ministry of Justice, in fact, taking into account presidential decrees and sectoral legislation, turned into direct subordination to him, bypassing the government, of not just six, but of twenty executive bodies' authorities (5 ministries, 12 federal services and 3 federal agencies).

Gradual narrowing of the powers of Parliament. First of all, the budget, even to the extent that the parliament itself ceased to create a draft state

budget.[1] Now it just delegates its representatives to a special commission. Its role had been reduced to the obedient approval of the main financial document of the state dictated from above. In addition, a law on parliamentary investigation was adopted, which completely neutralized this important tool of the system of checks and balances.

Amending the Constitution. Extension of presidential terms. Along with the consent to the "castling," this event is the most important sign of the transition from the seizure to the retention of power. Amendments were proposed by Medvedev in his Address to the Federal Assembly on November 5, 2008 and consisted in increasing the terms of office of the President of Russia from 4 to 6 years, and of the State Duma from 4 to 5 years, as well as the creation of an institution of annual reports of the Government to the State Duma. On November 21, 2008, the State Duma approved the amendments in the third reading. The decision was supported by 392 deputies (from the United Russia, Just Russia and LDPR factions), 57 communist deputies voted against, and there were no abstentions. On December 16, 2008, the threshold of two thirds of the regional parliaments required for the amendments to enter into force was overcome, that is, approval occurred in more than 56 subjects. By December 18, 2008, the parliaments of all 83 regions of the country approved the amendments to the Constitution, and they entered into force upon official publication on December 31, 2008.

Here the Russian regime was not original. As is well known, in the early 1990s, constitutions were adopted in all CIS countries that established a certain term for holding the position of president (usually 5 or 4 years) and a limit on holding the presidential position by one person (for no more than two consecutive terms). In a number of states there was also a restriction on the age of a presidential candidate. However, very quickly initiatives arose in many countries, and then the practice of extending presidential powers, as a result of which the presidents who were in office received the right to run for a third or even subsequent terms, or these terms were simply significantly increased.

At the same time, similar constitutional and extra-constitutional mechanisms were used, namely:

- recognition of the first term as "zero", since it began before the adoption of the current constitution, and permission to run

1 E. Lukyanova. *Printsipial'no rossiyskiy printsipat. Konstitutsionnye riski* (Principally Russian principate. Constitutional risks). Moscow, Kuchkove pole (2015), 218–220.

for a third term, or for a second (Leonid Kuchma—Ukraine,[1] Islam Karimov—Uzbekistan, Emomali Rahmon—Tajikistan, Askar Akaev—Kyrgyzstan);
- Elimination by referendum of an amendment to the Constitution on limitation of successive terms (Alexander Lukashenko—Belarus, Nursultan Nazarbayev—Kazakhstan, Ilham Aliyev—Azerbaijan);
- personal lifetime presidency—as an exception—without amending the Constitution (Saparmurat Niyazov—Turkmenistan);
- an increase in the presidential term by amending the Constitution with the automatic extension of the powers of the incumbent president (Nazarbayev—Kazakhstan, Karimov—Uzbekistan). When the Belarusian constitution of 1996 was adopted, the powers of Lukashenko, elected in 1994, were "nullified" and extended for two years in accordance with transitional provisions. In Russia, in 2008, the terms of the constitutional powers of the President and the State Duma were increased to 6 and 5 years, respectively;
- removal of the upper limit on the age of a presidential candidate (Boris Yeltsin—Russia, Nazarbayev—Kazakhstan, Rahmon—Tajikistan).

Various combinations of these methods were also used (for example, Niyazov first delayed the application of the two-term presidential term, and then was declared president for life). As a result of this artificial extension of powers, some presidents received the right to stay in power for more than 20 years, counting from the time of the USSR (Nazarbayev and Karimov).In Russia, taking into account the possibility of a "tandem" with the chairman of the government, even without resetting to zero, the same president can theoretically be in power indefinitely. That is, there are constitutional transformations in order to retain power.[2]

One of the outwardly apparent paradoxes of Medvedev's presidency is that, with all the hopes for "liberal signals," it accounts for a very significant number of opposition demonstrations—for example, a mass protest against migrants on Manezhnaya Square in Moscow on December 11, 2010 or the beginning of the campaign "Strategies 31," in which

1 Leonid Kuchma did not use the decision of the Constitutional Court which gave him a right to stand for election for a third term.

2 See E. Lukyanova and I. Shablinskiy, *Avtoritarizm i demokratiya* (Authoritarianism and democracy) Moscow, Mysl' (2019), 311–314.

left-wing nationalist Eduard Limonov stood hand in hand with human rights activist Lyudmila Alekseeva. Some of these actions (for example, almost all demonstrations of the same "Strategy 31") were extremely harshly dispersed in Moscow before the change of mayor. The first mass rallies demanding the resignation of Vladimir Putin were held in several cities in early 2010. In March, an open appeal by several oppositionists, human rights activists and cultural figures, "Putin must go!" was published on the Internet. According to the authors of the letter, as long as Vladimir Putin remained in power, "essential reforms" were impossible in Russia. In June 2010, Boris Nemtsov and Vladimir Milov published a brochure "Putin. Results. 10 Years," which focused on corruption, depopulation, growing social inequality, emerging stagnation in the economy and the difficult state of affairs in the North Caucasus. From the autumn of 2010 to the spring of 2011, several rallies were held in Moscow as part of the "Putin must go!" campaign launched by the non-systemic opposition. In March 2011, another report came out in mass circulation: "Putin. Corruption" which was actually an investigation into the enrichment of the Prime Minister's inner circle.

Protest activity in Moscow reached one of its peaks in December 2011, after the publication of the results of voting in the elections to the State Duma of the 6th convocation. Numerous reports of electoral fraud in Moscow brought thousands to the streets. A whole series of rallies and marches was launched, which did not stop until the inauguration of Vladimir Putin in May 2012. Until the change of the mayor of Moscow, all these actions were suppressed very harshly. And it was during this period that the term "police state" came into use.[1]

In fact, there is no paradox. The transition from "capture" to "holding" occurred naturally and reasonably as socio-political tension in the country grew, the population gradually realized the high level of corruption in the course being pursued, and the desire to change it became more and more clearly formed. However, the more corrupt the regime, the stronger its defensive instincts. Power combined with property has a much higher incentive to hold both positions at all costs.

As a response to the crisis of legitimacy, in December 2012, Dmitriy Medvedev announced *a reform of the political system*. Under the external

1 L. Nikitinskiy, *Mentovskoe gosudarstvo kak vid. Doklad* (The police state as a type. A Report). Published on the site of the Union of Journalists of Russia. 2009 // https://web.archive.org/web/20090714123738/http://www.ruj.ru/authors/nikitinskiy/090319-1.htm.

cover of some liberalization of the party system, this reform assumed a tightening of the centralized vertical of power, further curtailment of federalism and the introduction of additional filters of political competition, cutting off uncoordinated strong players from the electoral process.

Changes in the electoral legislation and political regime in 2008 — early 2012

In parallel, the transformation of the electoral legislation continued, in preparation for the next parliamentary and presidential elections.

A significant change in 2009 was the amendments to the Laws "On Basic Guarantees…" and "On Elections of Deputies…". The institution of the electoral pledge was excluded, which had made it possible to avoid the time-consuming and costly procedure of collecting signatures in support of the nomination of a list of candidates.[1]

The legislator also made adjustments to the provisions on the so-called "floating threshold." Previously, electoral associations that had received 7% or more of the votes were allowed to distribute seats. At the same time, mandates had to be distributed between at least two lists of candidates who received at least 60% of the votes of the total number of voters who took part in the voting, otherwise parties with less than 7% of the votes were also allowed to be distributed. These provisions generally remained unchanged, but were supplemented by a rule on granting one or two mandates to the lists of candidates who received from 5 to 6% or from 6 to 7% of the vote, respectively. Such electoral associations received mandates before they began to be distributed among the lists that had passed the threshold.[2]

It seems to be a good amendment, which made it possible to introduce at least a few new bright colors into the gloomy palette of the political landscape of the State Duma, discolored by an excessively high threshold. But at the same time, representatives of associations that received less than 5% of the votes did not appear in the deputy corps. The threshold continued to fulfill its main function of preventing parties

1 Art. 2, 4 and 5 of the Federal Law of Feb. 9, 2009 "On amendments to separate legislative acts of the Russian Federation in connection with cancellation of electoral pledges during elections." SZ RF. Feb. 16, 2009. № 7. Art. 771.

2 Federal law of May 12, 2009 "On amendments to separate legislative acts of the Russian Federation in connection with the increase in the representation of voters in the State Duma of the Federal Assembly of the Russian Federation."

with less voter support from entering parliament. And although one or two mandates with a total number of deputy corps of 450 people would hardly play any significant role in decision-making, several million voters can stand behind the figure of 5% of the vote, and their representation in the legislative body is important in any case.

A number of additional restrictions were placed on the conduct of election campaigning. Starting in 2006, airtime provided to registered candidates and electoral associations was prohibited from being used for campaigning against other candidates or electoral associations.[1] That is, in order to avoid any criticism of the authorities during the election campaign, a kind of artificial political sterility was created, which guarantees the impossibility of a normal political discussion with a discussion of candidates' programs. Everyone could speak only about himself, without questioning the positions and assertions of his competitors.

A serious limitation of the principle of equal opportunities for electoral participants during election campaigning was the introduction in 2009 of another norm into the legislation: free airtime and free print space were no longer provided to political parties whose federal list of candidates received less than 3% of votes in previous elections. Such political parties could receive a share of airtime or print space for election campaigning only on a paid basis,[2] which put them in deliberately unequal conditions compared to other political parties.

By 2009, the European Court of Human Rights (ECtHR) communicated the complaint of the Republican Party of Russia, and it became clear that consideration of the issue of clearly exceeded limits of state interference in the activities of political parties could not be avoided. Therefore, the parliament tried *a priori* to correct the situation—a gradual reduction in the requirements for the minimum membership in political parties began. From January 1, 2010 to January 1, 2012, the minimum number was reduced to 45,000 people (minimum 450 in more than half of the regional branches, minimum 200 in all others), and from January

1 Subpara. "v" paragraph 9 of Art. 1 of the Federal Law of December 5, 2006 "On Amendments to the Federal Law "On the Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation" and the Civil Procedure Code of the Russian Federation." SZ RF. Dec. 11, 2006. No. 50. Art. 5303.

2 Art. 1 of the Federal Law of July 19, 2009 "On Amendments to the Legislative Acts of the Russian Federation on Elections and Referenda in the Part of Providing Airtime and Print Space for Election Campaigning." SZ RF. July 20, 2009. No. 29. Art. 3640.

1, 2012 to 40,000 people (respectively, at least 400 persons in half the regional branches and 150 people in all the rest).[1] All these measures were illogical and, as already mentioned, were a chaotic measure in the run-up to the consideration of the case of the Republican Party in the ECtHR. On April 12, 2011, the decision was delivered (final full text published in September 2011), and, as expected, it placed on Russia positive obligations of a general nature to fundamentally change the legislation on parties.

Considering the liquidation of the Republican Party of Russia due to failure to comply with the minimum size and regional representativeness requirements, the European Court noted that requirements for the minimum number of members of parties were established in a number of states, but Russian requirements were the highest in Europe. The national legislation establishing these requirements had changed several times over the past few years, which, based on international practice, could be perceived as *an attempt to manipulate the electoral legislation in favor of the ruling party*. According to the ECtHR, a measure such as the liquidation of a party can be applied to political parties that use illegal or undemocratic methods, incite violence or pursue policies aimed at destroying democracy. The applicant, an all-Russian political party (Republican), which had never defended regional or separatist interests, one of the goals of which was to ensure the unity of the country and the peaceful coexistence of its multinational population, and which had never been accused of trying to undermine the territorial integrity of Russia, was liquidated only on formal grounds of non-compliance with the minimum size and regional representativeness requirements. The European Court considered that the liquidation of the party was disproportionate to the legitimate aims indicated by the representatives of the authorities. There had therefore been a violation of Article 11 of the Convention.[2] That is, the legislation on political parties in Russia was recognized as violating human rights.

As already mentioned, as a result, the decision of the Supreme Court of the Russian Federation on the liquidation of the Republican Party was canceled, and the registration of the party was restored. The deci-

1 Federal Law of April 28, 2009 "On Amendments to the Federal Law "On Political Parties" in connection with the gradual reduction of the minimum number of members of political parties". SZ RF. May 4, 2009. No. 18 (part I). Art. 2155.

2 *Case of Republican Party of Russia v. Russia* (App. № 12976/07) https://hudoc.echr.coe.int/eng#{"itemid":["001-104495"]}.

sion of the ECtHR coincided with the beginning of the crisis of legitimacy, so the answer to this decision was the reform of the political system. Its contours were announced in December 2012, but under the guise of implementing the decision of the ECtHR, the reform of party legislation was quite elegantly built into the list of measures aimed at strengthening the authoritarian system.

The 2011–2012 elections

Between the regular elections of the State Duma and the President, the time was exactly three months. Considering the ratings of the ruling party tending down, in May 2011, at the United Russia party conference in Volgograd, Vladimir Putin voiced the idea of creating the so-called All-Russian Popular Front, a kind of unofficial bloc not provided for by law of various public organizations that were allowed to hold primaries instead of the party. Director of the Center for Humanitarian Research and Counseling "Current Moment" political scientist Sergey Komaritsyn immediately renamed the newly minted formation a united front of bureaucracy, since bureaucracy can only give rise to a bureaucratic structure.[1] That is, the Front of the bureaucracy against the people. Vitaly Tretyakov called it an "oxymoron"—a term from ancient stylistics, denoting a deliberate combination of conflicting concepts such as "merry sadness."[2] Naturally, the eternal comrades-in-arms of any ruling party were the first to announce their desire to join the new structure: Ekaterina Lakhova, chairman of the Women's Union of Russia, Valery Ryazansky, head of the Union of Pensioners, and Valentina Ivanova, chairman of the All-Russian Pedagogical Assembly. Then very respectable organizations such as the Russian Union of Industrialists and Entrepreneurs, Federation of Independent Trade Unions of Russia (FNPR), Delovaya Rossiya and others joined in. And then it started… In full accordance with the initiator's wish for a "bright political palette of participants," very exotic entities began to join the front, such as the "Association of Cossacks of non-traditional places of residence," the "Beaten-up Roads of Pskov" movement, and the community of independent volunteer initiatives "Pomogay-ka!"

On September 24, 2011, at Luzhniki Stadium, on the second day of the United Russia congress, the decision was announced: Putin was go-

1 http://www.dela.ru/articles/front-burokratii/.

2 V.T. Tret'yakov. *Tseli neyasny, zadachi ne opredeleny* (Goals are unclear, tasks are not determined). *Izvestiya*, May 11, 2011.

ing to run for a third presidential term, and the non-partisan Dmitriy Medvedev would head the party list in the State Duma elections.

It is this "castling" that political scientists consider the central event of the election campaign to the Duma, which ended with a vote on December 4, and which predetermined all subsequent developments. And these events consisted of a sharp mobilization of the protest electorate, a surge of civic activity and mass protests against the election results. Some people suddenly realized that what was next was a political dead end, and they had a desire to have their say in this situation. There was an understanding that the opposition was not ideal, but it should be voted for as opposed to the ruling party. The castling politically mobilized the upper middle class and the middle class to vote "no."

"Before the events of September 24, it was assumed that the campaign would be of a regional nature, and the government was not ready for a sharply negative reaction from a large part of society to castling. The castling determined the entire campaign, evoking different emotions in the usually apolitical voter: fatigue, delight, irritation, joy... But the main thing is that there was a sharp increase in power fatigue among an entire segment of society," says Mikhail Vinogradov, director of the Petersburg Politics Foundation. It was the castling that became an inexplicable milestone event, a line beyond which, for unclear reasons, the mechanisms of "managed democracy" ceased to work, Gleb Pavlovsky testifies.[1]

In addition, in February 2011, on the air of the Finam FM radio station, the creator of the anti-corruption project Rospil, Aleksey Navalny, called the United Russia party a "party of crooks and thieves," citing the presence in the party of major officials and businessmen involved in corruption and criminal cases. The "Party of Crooks and Thieves" meme became widespread on the Internet, especially during the election campaign (moreover, it still works now, ten years later). That is, the question of the honesty of the parliamentary elections on December 4, 2011, which eventually turned into mass protests of "angry citizens," reached the public agenda long before voting day, because then, due to the tightening of electoral and party legislation in the country, by the beginning of the year only seven parties were registered, and party reform had not yet taken place. For the first time, the Duma was elected not for four, but

1 *Ot maya do dekabria. Kak dumskaya kampaniya privela k massovym protestam v dekabre 2011* (From May to December. How the Duma campaign led to mass protests in Dec. 2011 //https://www.gazeta.ru/politics/2012/12/04_a_4878805.shtml.

for five years. Cooling public support for the regime, coupled with AlekseyNavalny's "vote for any other party" campaign, nearly led to United Russia losing a simple majority in the Duma.

The main message of the opposition was a signal to come to the polls and vote, which corresponded to the mood of the voters, annoyed by the castling on September 24th. There was also a call to come to the elections and ensure observer oversight over them, which would convince voters that the elections were not entirely valid. The Just Russia party turned out to be the beneficiary of this strategy, and Yabloko also received many additional votes, since of the proposed parties they caused the least rejection among the middle class, although the middle class also voted for the Communist Party. For the most part, the voters didn't care who exactly would get into the Duma and how many votes which party would have, the main thing was that as a result of such a strategy, people realized that the elections were rigged.

Indeed, the 2011 elections were accompanied by numerous scandals, administrative pressure and fraud. At that time, the level of fraud was recorded as "unprecedented." The falsifications were expressed in the overestimation of the turnout, the stuffing of ballots, the rewriting of protocols, and in administrative coercion. A special term appeared—electoral sultanates—territories that give extremely high results in terms of turnout and percentage of votes cast for the ruling party and candidates from power. Of the data processed by electoral statisticians, almost half of the votes for the ruling party turned out to be anomalous: out of a total of 32.3 million votes for United Russia, only 17.1 million turned out to be "normal," and 15.2 million were "abnormal" (anomalous voting—these are votes for the winner, which, from the point of view of statistical regularities, should not exist and the appearance of which can only be explained by stuffing and adding to vote totals).[1]

But even with all the falsifications, in the 2011 elections, United Russia, compared to the 2007 elections, lost about 13 million votes. In a third of the regions, the party won less than 40% of the vote. Yabloko

1 It can be seen that the votes for all parties, except for United Russia, behave in a similar way with changes in turnout, and the distribution of United Russia votes up to about a turnout of 50% follows the general trend, and then deviates from it. At the same time, in contrast to the previous elections, the proportions between the votes cast for parties that are alternatives to United Russia significantly depend on the turnout. *See also*: S. Shpilkin, *Matematika Vyborov* (Election Mathematics) (2011). *Troytskiy variant* (Trinity variant). December 20, 2011 // https://trv-science.ru/2011/12/matematika-vyborov-2011/.

won just over 3% of the vote and received state funding, while A Just Russia and the Communist Party of the Russian Federation increased their representation in the Duma, gaining 13.2% and 19.2% of the vote, respectively.

It was at the same time that a mass movement of voters for public observation of the elections was formed and strengthened to oppose falsifications. On December 24, 2011, in his video address to the protesters on Sakharov Avenue, journalist Leonid Parfenov expressed the idea of uniting voters to ensure fair presidential elections. This statement provoked the emergence of a number of public organizations that were engaged in the formation and training of observers. Less than a month later, Leonid Parfenov, together with 14 other famous people (including writer Boris Akunin, journalist Sergei Parkhomenko, writer Dmitriy Bykov, and doctor Elizaveta Glinka), decided to establish the "League of Voters." A week later, Aleksey Navalny's Rosvybory project appeared, on the website of which 16,000 volunteers registered, most of whom became observers in Moscow and St. Petersburg. Citizen Observer, the Golos association (later a Movement, recognized as a foreign agent), the Grakon project (civil control) and others also trained their observers.

In the 2012 presidential election, five candidates were nominated by political parties. Also, at least 12 more people informed the CEC about their intention to nominate their candidacy (later, only 10 of them submitted the documents necessary to acquire the status of a nominated candidate). In the event, some of the nominated candidates for one reason or another were denied registration. As a result, five candidates were officially registered for participation in the elections: four representatives from parliamentary parties and one self-nominee (Mikhail Prokhorov). The Yabloko party and its candidate, Grigory Yavlinsky, were denied registration due to the "high percentage of defects" in the collected signatures.

It was then, in late 2011 and early 2012, that Vladimir Putin faced mass protests for the first time in any of his election campaigns. Preparations for the elections took place to the accompaniment of large-scale rallies, provoked by the dishonest results, in the opinion of their participants, of the Duma campaign. The first major rally took place on December 10, 2011 on Bolotnaya Square under the slogan "For Fair Elections." Vladimir Putin responded to the public demand in a peculiar way, calling his opponents "bandarlogs" ["monkey people," the name of the monkeys in Kipling's *A Jungle Book*], and compared the symbol of the protesters—

a white ribbon—with "contraceptives." In response, on December 24, 2011, new actions took place on Sakharov Avenue and on February 4 on Bolotnaya Square. They became more and more crowded and more and more anti-Putin. From a certain moment, the slogan "For fair elections" was replaced by the slogan "Not a single vote for Putin."

The authorities responded with a series of rallies across the country. Two of these were also held in Moscow—on Poklonnaya Hill and in Luzhniki. They were even more numerous than the opposition, however, observers claimed that the participants in these events were brought from all over the country and not all of them were volunteers. This is how the terms for public events as either "rallies (*mitingi*)" or "*putingi*" appeared among the people.

The March 2012 elections were the first campaign in which the question of credibility of the results was almost more important than the election campaign itself. On December 5, 2011, Vladimir Putin said that the attacks on the Duma elections are "of a secondary nature," while the "main goal" is the presidential election. And "in order to cut the ground from under the feet of those who want to delegitimize power," the prime minister proposed his own way to make the elections transparent—to put webcams at all polling stations (of which there are about 95,000 in Russia) to broadcast the election process. The project (its cost for the budget was estimated at 13 billion rubles, and for the executing company Rostelecom, at 25 billion rubles) had to be implemented from scratch: in the previous Duma elections, only 742 webcams worked, and a third of the polling stations were completely without Internet connection.

The Ministry of Communications and the CEC formally coped with the task. The video monitoring system covered 91,400 election commissions. Each polling station had two cameras, one of which covered the general territory, and the second broadcast what was happening near the ballot boxes. Thus, a total of 182,800 cameras were installed. Anyone could track the process by registering on the Web Elections 2012 website. The total length of the video recorded then exceeded 260 million minutes, which would be enough to watch for more than 500 years. True, it was possible to obtain a video recording only upon a special application sent to the election commission. There were no special sanctions for violating the procedure for working with webcams, and a court, in the case of cases of election violations, could, at its discretion, accept or not accept recordings as evidence. After the elections, the webcams

were planned to be used for other purposes, for example, during the Unified State Examination.[1]

In addition, 690,000 observers—Russian and international, from candidates and from non-governmental organizations—observed the course of the elections and the counting of votes.

According to official data from the Central Election Commission, Putin won 63.6% of the vote in the first round. But the "League of Voters" had its own view on the results of the presidential elections. It was voiced by political scientist Dmitriy Oreshkin at a press conference at ITAR-TASS: "Vladimir Putin gets 53%, not 63.6%, that is, a 10% difference." Recognizing Putin's victory in the first round, the league nonetheless declared non-recognition of the elections and issued a memorandum: "The elections on March 4 were not equal, fair and honest." Against the background of widespread violations, the league considered it impossible to recognize the results of the presidential election in Russia: voting by special lists of people working in enterprises that operated around the clock and voting by absentee ballots aroused suspicion. The violations referred to by the League were recorded by observers who submitted 4,500 reports from polling stations. The Human Rights Council of Russia also adopted a statement in which it indicated that it "does not consider the electoral event held in Russia on March 4, 2012 to be the election of the President of the Russian Federation and refuses to recognize its results as legitimate."[2]

As a result of the presidential elections, the headquarters of four candidates went to court over election violations. It is curious that Vladimir Putin's observers also turned to the prosecutor's office regarding the facts of the "stuffing" recorded by webcams. According to a representative of the headquarters of Mikhail Prokhorov, 4,783 complaints were received by the headquarters, and 2,280 people declared their readiness to take part in the appeal. The Communist Party of the Russian Federation received about 3,500 complaints, and the regional branches of the party filed more than 30 lawsuits in Moscow, Rostov, Nizhny Novgorod, Tver and Bryansk regions. Most of the lawsuits were based on discrepancies between the copies of the protocols and the of-

1 *2012 god vyshel novym. Samye yarkie moment prezidentskoy izbiratel'noy kampanii* (The year 2012 turned out new. The brightest moments of the presidential election campaign). *Kommersant*. March 2, 2012 // https://www.kommersant.ru/doc/1884095.

2 *Vybory 2012: otsenki, tsifry, i podkody* (Elections 2012: assessments, numbers, and approaches) // https://www.vesti.ru/article/1996796.

ficial data.[1] However, the Supreme Court refused to consider citizens' applications for the cancellation of the results of the presidential elections in the Russian Federation. Among others, the collective complaint of the members of the public association "Russia will be legal" was rejected, which had asked to ban the inauguration of Vladimir Putin until the process was completed.[2]

On May 6, 2012, the "March of Millions" took place in Moscow. Then, on the eve of the inauguration of newly elected President Vladimir Putin, the marchers demanded fair elections. The opposition rally ended with clashes between demonstrators and police. Numerous detentions of people followed and the initiation of the so-called "Bolotnoy" criminal case, in which almost thirty people ended up in the defendants' dock.[3]

Thus, the Duma and presidential elections of 2011–2012 convincingly showed that the key to the consolidation of an authoritarian regime is the creation of institutional conditions that ensure a political monopoly, regardless of the political context and voters' preferences. And the falsifications undertaken to prevent this outcome became the source of a large-scale political crisis that prompted the authorities to revise a number of previously adopted institutional decisions. In particular, one of the responses to the difficulties that arose in 2011—early 2012 was a return to a mixed-member parallel system in almost the same form in which it was practiced in 1993–2003. This led to the expected results, confirming the conformity of this system with the primary task of authoritarian consolidation—the preservation of political monopoly. Almost every step in the evolution of the Russian authoritarian political regime had become, if not an unequivocal "escape from freedom," then at least a movement away from it.

1 *Itogi vyborov prezidenta podvodyat k sudam* (The results of the elections for president lead to the courts). *Kommersant*. March 20, 2012 // https://www.kommersant.ru/doc/1896617.

2 *Verkhovniy Sud otkazalsya otlozhit' inauguratsiu Vladimira Putina* (The Supreme Court refused to delay the inauguration of Vladimir Putin), *Kommersant,* May 3, 2012. // https://www.kommersant.ru/doc/1927915.

3 *Bolotnye khroniki. Kliuchevye moment samogo gromkogo politicheskogo protsessa* (Bolotnye chronicles. Key moments in the most sensational political trial). Lenta.ru. May 6, 2014 // https://lenta.ru/articles/2014/05/06/bolotnaya/.

Transformation of the political regime and legislation of Russia in 2012–2019. Authoritarianism forced to consolidate

According to some media reports, on December 10, 2011, protests took place in 99 Russian cities. Data on the scale of online protest activity in 42 cities where the actions took place suggest that in general, at least (the lower limit) 200 thousand people came out to rallies against election fraud on December 10, and a third of this number was provided by the Moscow rally on Bolotnaya Square. The protest obviously swept the whole country, and this could not but disturb the authorities. They needed to strengthen their positions.

On December 22, 2011, in his last presidential address to the Federal Assembly, announced on the eve of a new opposition rally, Dmitriy Medvedev launched a political reform.[1] The President ignored the demands of the protesters regarding the cancellation of the results of the December 4 elections, but announced his intention to liberalize the political system. The announced reform included proposals for a sharp liberalization of party legislation (reducing the minimum number of members for party registration, liberalizing the access of parties and candidates to parliamentary and presidential elections, abolishing and reducing the number of voter signatures required), changing the procedure for forming the lower house of parliament, returning direct elections of governors and changing the procedure for the formation of the Federation Council.

The first two points of this program looked like a direct response to the requirements of Bolotnaya Square and were formulated in the most concrete way. The relevant amendments to the laws were soon sent to the Duma and finally adopted in April-May 2012.

First of all, amendments were made to the Law "On Political Parties." Now the state had gone for a sharp, 80-fold reduction in the requirements for the minimum membership of parties: from 40 thousand people to 500, with regional branches in only half of the subjects of the Federation.[2] The logical result of the reform was a very rapid multiple increase in the number of registered political parties in 2012–2013:

1 Message of the President to the Federal Assembly. *Rossiyskaya gazeta*. Dec. 23, 2011. Federal issue No. 290 (5666) // https://rg.ru/2011/12/22/stenogramma.html.

2 Subparas. "a" and "b" paragraph 1 of Art. 1 of the Federal Law of April 2, 2012 "On Amendments to the Federal Law "On Political Parties"." SZ RF. April 9, 2012. No. 15. Art. 1721.

from 7 to 58,[1] and the same number were in the process of registration within a year after the adoption of the law.[2] Thus, the warnings about the futility of artificial construction of the party system from above were confirmed and were eventually accepted.[3] Everything returned to normal, only with a ten-year delay.

Since 2014, the growth in the number of newly registered parties has noticeably slowed down and was reduced to zero by the middle of the second half of the 2010s, and since 2019 the number of parties has begun to decline rapidly due to the fact that, according to the law, a party is subject to liquidation if for seven years in a row it does not participate in elections. Under the letter of the law, participation in elections means participation in the elections of the President of Russia, and/or elections to the State Duma, and/or elections of heads of at least 10% of the number of constituent entities of the Russian Federation, and/or parliamentary elections of at least 20% of the constituent entities of the Russian Federation (according to party lists), and/or elections to local governments in most municipalities (according to party lists). But all this would be later, and by 2018, 67 political organizations were registered in Russia, ready to take part in election campaigns. In the Duma they joked

1 Information on the number of political parties eligible to take part in elections was formerly published on the Internet on the website of the Ministry of Justice of the Russian Federation.

2 Information about the current organizing committees for the creation of political parties was formerly published on the Internet on the website of the Ministry of Justice of the Russian Federation.

3 The analysis shows that the electoral and party system in Russia was built in the 2000s as an element of the general policy of the center in relation to the regions and was aimed at reducing the dependence of the federal center on regional elites. However, in practice, it turned out to be impossible to solve this problem—legislative manipulations only changed the techniques of struggle between the elites used in the regions, while in many respects disfiguring the party-political system in the country as a whole. One can also state something else: in Russia today there are actually no parties in the traditional sense of the word; the key reason for this isthe impossibility of normal party development in the absence of full-fledged institutions of parliamentarism and separation of powers, added to by multiple restrictions and prohibitions on the political activity of citizens. As a result, manipulations with the legislation on parties and elections, as well as the transition from a majoritarian to a proportional electoral system, do not form the motivation for party building, but only create conditions for the dominance of a general institutional imitation. *See* Kynev A., *Elections of Parliaments of Russian Regions 2003–2009: The First Cycle of Implementation of the Proportional Electoral System,* 32.

that "if we reach out to the 51 political parties allowed to participate in the elections, then the ballot for the KOIB (optical scan voting system for processing ballots.—*Note by E. N. Poroshin*) may be 1.70 meters long." At least this is how the chairman of the Committee on Constitutional Legislation and State Building of the State Duma V.N. Pligin characterized it.

Another significant innovation of the year was the abolition of the collection of signatures by political parties when nominating candidates for elections at all levels (except for the elections of the President of the Russian Federation).[1] Previously, such benefits were granted only to parties admitted to the distribution of mandates in the last elections to the State Duma or having their representatives in one third of the legislative assemblies of the constituent entities of the Federation.

The second stage of the reform began after Vladimir Putin was elected president for a third term. The main events of this stage can be considered the legislative formalization of the final version of the procedure for gubernatorial elections, the strengthening of control over the activities of regional administrations by the presidential administration, and the adoption of a new mechanism for the formation of the Federation Council.

First of all, the discussion was about *the return of the elections of heads of subjects of the Federation*. Although the issue of a return to direct gubernatorial elections was not mentioned among the demands of the Bolotnaya rally, the abolition of gubernatorial elections in 2005 remained the most negatively perceived element of Putin's political reforms in the 2000s. Fifty-five to 65% of the population continued to favor a return to electivity throughout this time. The election of governors was returned. The relevant law was adopted in May 2012.[2]

But not everything is as simple as it seems. On April 5, 2012, at a meeting with a number of deputies, Dmitriy Medvedev announced

1 Federal Law of May 2, 2012 "On Amendments to Certain Legislative Acts of the Russian Federation in Connection with the Exemption of Political Parties from the Collection of Voter Signatures in the Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation, to State Authorities of the Subjects of the Russian Federation and Local Self-Government Bodies." SZ RF. May 7, 2012. No. 19. Art. 2275.

2 Federal Law of May 2, 2012 "On Amendments to 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 to Participate in a Referendum of Citizens of the Russian Federation"." SZ RF. May 7, 2012. No. 19. Art. 2274.

the idea of introducing a "municipal filter," which significantly changed the concept of the law on the election of governors. In the end, electivity was limited to two filters—presidential and municipal. The presidential filter, spelled out rather vaguely in the law, was more of a safety net than a systemic mechanism, and only secured the president's participation in the process of approving candidates for governor. But the municipal filter, which assumes that a candidate for governor must enlist the support of 5 to 10% of municipal deputies, was designed to play a key role in ensuring the actual "closedness" of the elections. Due to the weakness of the municipal level of power and its economic dependence on the regional administration, the municipal deputy corps is completely controlled and managed. Thus, it is the current head of the regional administration who receives the keys to admit candidates to the gubernatorial elections. At the same time, in the event of a split in the regional elite, and if the federal center is interested in doing so, this mechanism makes it possible to create threats for the incumbent governor by obtaining the registration of his rival. As a result, the governor turned out to be responsible for maintaining a high level of integration of the regional elite, blocking significant threats to his victory and ensuring the necessary results of both gubernatorial and other elections. That is, nuances were built into the outwardly democratic reform that neutralized almost all of its democratic potential. The devil is always in the details. Moreover, a year later, the election of governors was supplemented with a clause on the possibility, by decision of the subject of the Federation itself, to return to the previously existing order—the appointment of governors by the legislative assembly of the region on the proposal of the President of Russia.[1]

Council of the Federation. A similar situation happened with the Federation Council. In December 2012, the procedure for its formation was "improved." We have already said that the constitutional formula on the formation of the Federation Council was flawed from the very beginning—it only says that it is "formed," and the procedure for "formation" is determined by law. As a result, new rules introduced in 2012 marked the fourth attempt to address this issue in 20 years. Each of them reflected the tendencies of state building at the corresponding stage. Only the first, transitional composition of the upper house was formed by direct elections. Then, since 1996, the elected head of the executive branch

1 Federal Law No. 30-FZ of April 2, 2013 "On Amendments to Certain Legislative Acts of the Russian Federation."

and the speaker of the regional parliament became ex officio members of the Federation Council, on the condition that the governors were elected. This was the result of the compromise reached between the President and Parliament. The reform of the early 2000s assumed that each of the branches of power would delegate its representative to the Federation Council (so the governors were removed from making federal decisions), which led to a sharp devaluation of the chamber's political influence. After the cancellation of the gubernatorial elections, the situation became completely absurd: the governor appointed by the president appointed his representative to the Federation Council, which has enormous constitutional powers and is designed to serve as a counterbalance to both the lower house and the executive branch, in particular, to guarantee the independence of the courts and the prosecutor's office.

The crisis of legitimacy, which manifested itself in the events of 2011–2012, once again put the central question on the agenda: who is the subject of the political will of the region—the population directly or the authorities? The proposed new decision reflected the general tendencies of authoritarian correction—now the governors had to go to the polls together with three candidates for members of the Federation Council. That is, the inhabitants of the region in the process of voting for a candidate for governor were, as it were, endowed with the right to choose candidates for senators, but at the same time they did not elect them.[1] Moreover, the final choice of two of the three candidates remained with the governor after his election. This formula, admirable in its manipulativeness, manifested a desire to increase the legitimacy of the authorities, but at the same time to prevent a real redistribution of powers and an increase in the real competitiveness of electoral procedures.

The second most important innovation was the reduction to a minimum of the grounds on which a member of the upper house could be recalled. Against the backdrop of the absence of an imperative mandate, such an amendment actually deprived both the population and the regional authorities of formal mechanisms for controlling their representative in the upper house.

But even this authoritarian power was not enough to control the Federation Council. In 2014, the Constitution was amended to add to

1 Federal Law No. 229-FZ of December 3, 2012 "On the Procedure for Forming the Federation Council of the Federal Assembly of the Russian Federation". SZ RF. Dec. 12, 2012. No. 50 (part 4). Art. 6952.

the representatives of the subjects 10% of members to be directly appointed to the chamber by the President.[1]

Finally, the third stage of the reform took place in the second half of 2013 to early 2014 and consisted in *returning from a proportional to a mixed system of elections* to the Duma and regional legislative assemblies, which reduces the role of parties in elections, and revision of the most important part of the liberalization innovations of the first stage of the reform—free access of parties and candidates to elections. The corresponding bill, which provides for the election of half of the deputies in single-mandate districts, was introduced by Vladimir Putin in March 2013.

To be fair, the claim of a full return to pre-2005 regulation is not entirely true. Taking into account the entire amount of changes that had accumulated in the Russian electoral legislation since the previous use of the mixed-member system, the return to it did not fundamentally change the situation by expanding political competition in elections: the ban on electoral blocs, and the abolition of the electoral pledge,and the abolition of voting "against all" and of the threshold for voter turnout remained. All other restrictions on passive suffrage remained in effect. Moreover, the new electoral law reintroduced provisions on the collection of signatures for candidates from parties that did not receive 3% of the vote in the previous Duma elections.

As is known from the theory and practice of electoral systems, the majoritarian system increases the representation of the leading party and reduces the representation of smaller parties. Although theoretically, given the high barriers to entry for political parties, the single-seat system expands the opportunities for independent candidates or opposition representatives to enter parliament. However, the key parameter here is the threshold of access to elections for "single-members." This parameter of the reform became known only at the last stage of

1 Art. 95 part 2. "The Federation Council includes: two representatives from each subject of the Russian Federation—one from the legislative (representative) and executive bodies of state power; representatives of the Russian Federation appointed by the President of the Russian Federation, whose number is not more than ten percent of the number of members of the Federation Council—representatives from the legislative (representative) and executive bodies of state power of the constituent entities of the Russian Federation. See: Law of the Russian Federation on the amendment to the Constitution of the Russian Federation of July 21, 2014 No. 11-FKZ "On the Federation Council of the Federal Assembly of the Russian Federation." SZ RF. July 28, 2014. No. 30 (Part I). Art. 4202.

its discussion and turned out to be an order of magnitude higher than the threshold for parties: in order to participate in the elections, a candidate must collect 3% of the signatures of the residents of the district in which he intends to run, if he does not belong to a party already represented in the legislative body. And this is the most powerful prohibitive threshold for independent and opposition candidates. At the same time, this procedure strengthens the positions of parties that have already entered the legislature previously (their representatives, who are exempted from collecting signatures, find themselves in a privileged position), and also increases the political weight of regional elites and regional administrations, which are able to influence candidates' access to elections by single-member constituencies, and to send their deputies to the lower house of parliament.

So, it seems that everything has been built and tested in practice—electoral authoritarianism, formalized in the norms of the electoral law, has been tested under extreme conditions of a crisis of legitimacy and has proved its effectiveness. After that, almost all the mechanisms were "twisted" and brought to a good level of combat readiness. If something else remains to be corrected in the electoral legislation, because there is no limit to perfection, it is only precious little.

Indeed, outside the framework of the reform of the political system in the period 2012–2019, few changes were made regarding the organization and conduct of elections. The government took up other issues, the solution of which, in its opinion, should have contributed to the stability of its political and economic positions. Two groups of these questions were addressed to two different categories of the population—television consumers and dissenters. Foreign policy expansion, expansion of territories, military power and valiant actions of the authorities in the ring of hostile powers and the idealization of the past (the Great Patriotic War and the achievements of the USSR) were all intended for the first ones. The fate of the dissenters was less enviable. They were subjected to "a tightening of the screws"—the restriction of constitutional rights and freedoms. Freedom of speech, the right to receive and disseminate information, freedom of expression, increased responsibility for holding public events, limiting international exchange, and assigning special statuses that complicate their work. All this, one way or another, eventually affected their electoral opportunities. A wide drag-net of so-called cannibalistic laws were preemptively aimed into the future,

in order to play their part, if necessary, in restricting the electoral and other rights of citizens.

You can, of course, try to define the ongoing processes differently and say that the reserves of the electoral legislation for the purpose of retaining power have run out. Manipulations and electoral techniques alone could not save those in power. Tougher measures were needed to further limit political competition and fight the opposition.

Nevertheless, some amendments to the electoral legislation took place during this period as well. At the beginning of the work of the Duma of the sixth convocation, elected in December 2011, the adopted laws were still affected by the new tactics of the Presidential Administration in relation to the elections that were adopted in early 2012: an attempt to abandon direct falsifications on voting day and during the vote count. The rather close interaction of the head of the Human Rights Council (2004–2010) Ella Pamfilova, with the leaders of the ideological bloc of the Presidential Administration probably influenced the adoption of small improvements in the electoral legislation.

For example, the provision on preliminary submission of a list of observers was excluded from the law on presidential elections, the right of observers to conduct video recording was more clearly defined (from the place established by the chairman of the precinct commission), and criminal liability was introduced for illegal issuance or receipt of a ballot (Laws No. 103-FZ and 104-FZ). Observers were given the right to film. True, at the same time, the law did not say anything about such a right for members of commissions with a decisive and advisory vote and about the right to videotape in higher commissions.[1] And liberalization practically ended there.

Adopted in 2012 under the pressure of a crisis of legitimacy and the requirements of international standards, the norms regarding the liberalization of the activities of political parties were compensated by tough anti-liberal amendments. The Law "On Basic Guarantees…" was amended to deprive of the passive electoral right persons who had ever been sentenced to imprisonment for grave and especially grave crimes, regardless of the statute of limitations. Thus, retroactively, an additional (and lifelong) punishment was introduced for people who had long ago redeemed their guilt, including those who had a cancelled criminal record. This legislative innovation so clearly contradicted

1 A. Buzin, *Kto i kak menyaet izbiratel'noe zakonodatels'tvo* (Who and how is changing electoral legislation) // https://www.golosinfo.org/articles/144252

the Constitution of Russia that on October 10, 2013 it was cancelled by the Constitutional Court of the Russian Federation, which considered the life restriction inconsistent with the Constitution and suggested that the legislator, firstly, limit the term for depriving a citizen of the passive electoral right, and secondly, to differentiate this term depending on the gravity of the crime.[1] However, a few months later, the same norm, only in a somewhat relaxed form, was re-adopted. According to Federal Law No. 19-FZ of February 21, 2014, persons sentenced to imprisonment for committing grave and especially grave crimes were deprived of their passive suffrage for 10 and 15 years from the day the conviction was expunged or cancelled, respectively. That is, a certain life restriction was nevertheless established: now the candidate is required to indicate in the documents on his nomination information regarding any conviction, even expunged or cancelled.[2] Meanwhile, in many cases it was about sentences under the so-called "economic" articles, which in Russian practice are often used as a way to fight for the redistribution of property.

In 2012, instead of two single voting days, in March and October, the legislator left only one, in September. It was convenient for the authorities. First, a single voting day was easier and cheaper for the authorities to centrally control and, conversely, more difficult for observers. Secondly, most of the election campaign now began to take place during the summer holidays and the garden season, which made it very difficult for non-system candidates to campaign. Thirdly, with the abolition of the turnout threshold, the high turnout of the active electorate turned out to be unprofitable, and in this regard, the single early September voting day fully corresponded to these aspirations: the interest of voters in the elections was naturally reduced. A.V. Kynev directly calls this amendment "a bet on low turnout. And indeed, from that time low turnout elections begin, when one can count on the arrival of an administratively dependent and conformist-minded electorate to the polling stations."[3]

1 Decision of the Constitutional Court of the Russian Federation dated Oct. 10, 2013 No. 20-P.

2 Federal Law No. 19-FZ dated February 21, 2014 "On Amendments to Certain Legislative Acts of the Russian Federation."

3 A.V. Kynev, Gos. Duma RF VII sozyva: mezhdu "spyashchim potentsialom" i partiynoy distsiplinoy(The State Duma of the Russian Federation of the VII convocation: between the "sleeping potential" and party discipline),*Politia*. 2017. No. 4 (87), 65–81

In addition, at the same time, the term of office of precinct election commissions, which had previously been formed once for a specific campaign, was extended to 5 years. Thus, the composition of the commissions became more stably controlled.[1]

In 2013, another set of restrictions on the passive electoral right of entrepreneurs was introduced de facto. In accordance with Federal Law No. 102-FZ dated May 7, 2013, during elections to federal government bodies, government bodies of constituent entities of the Federation, elections of heads of municipal districts and heads of urban districts, by the time of their registration, candidates had to close accounts (or deposits) in foreign banks located outside of Russia, stop storing cash and valuables there, and stop using foreign financial instruments. That is, contrary to elementary logic, it was necessary to get rid of these assets not after the election (although even this cuts off a large part of entrepreneurs, because it is difficult to imagine how you can run a big business without having accounts abroad), but before the elections, without having any guarantee to win them. In state propaganda, these restrictions were called the "nationalization" of the property of the elite, but in reality it was an attempt to put up a barrier for independent people with their own resources, able to succeed without relying on administrative resources and without the consent of officials.[2]

Six months before the 2016 Duma elections, a rule was introduced into the legislation that a party or candidate appointing observers must, in advance, three days before voting day (subsequently before the first voting day), provide their list to the territorial election commission(TEC) indicating who by name and in what area will be the observer.[3] This rule was established simultaneously with the prohibition to remove observ-

// http://politeia.ru/files/articles/rus/Politeia-2017-4(87)-65-81.pdf

1 Federal Law No. 157-FZ of October 2, 2012 "On Amendments to the Federal Law "On Political Parties" and the Federal Law "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation."

2 *See* N. S. Grudinin, *Gos. Duma Fed. Sobr. RF kak organ narodnogo predstavitel'stva: voprosy teorii i praktika* (The State Duma of the Federal Assembly of the Russian Federation as a body of people's representation: questions of theory and practice). Abstract of dissert. for cand. of legal sciences. Moscow(2015).

3 Federal Law No. 29-FZ of February 15, 2016 "On Amending the Federal Law "On the Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation" and Article 33 of the Federal Law "On Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation" regarding the activities of observers. SZ RF. Feb. 15, 2016. No. 7. Art. 917.

ers from the polling station except by a court decision—apparently, to compensate for the concessions to observers, since in the previous elections the removals were massive and widespread. In fact, the requirement to provide lists prevented the "carousel of observers," when an observer removed from the polling station changed places with a remote observer from another polling station. The amendment to the Law "On Basic Guarantees…" was formulated in such a way that the requirement to provide lists should have been established in a special law on specific elections. It was introduced into the Law "On the Elections of Deputies…", it was also introduced into the regional laws, but not into the Law "On the Elections of the President of the Russian Federation." Therefore, the old order of appointment remained in the presidential elections, when an observer can come with an assignment right on the voting day or quickly change the polling station if there is another assignment.

But these are all "little things." Here is how Alexander Kynev assesses that time: "The period of the final consolidation of the regime at the turn of the 2010–2020s does not look like a continuation and development of old trends, but, on the contrary, like a change in the vector—manipulative mechanisms play an ever smaller independent role and require more and more support by means of instruments of violence. As a result, the regime is forced to forfeit the advantages that electoral authoritarianism can gain from its ability to hedge risks under conditions of "managed competition" and a relatively plausible imitation of democratic procedures. 'Information authoritarianism' is evolving towards conventional dictatorship."[1] And dictatorship is violence, restriction of the right to information and control.

Moreover, the internal political tension was complicated by the internal economic situation. In the second half of 2012, a sharp slowdown in economic growth began in the country, and from mid-2013, statistics had already recorded signs of economic stagnation. It is important to note that a sharp slowdown in growth in 2012–2013 took place against the backdrop of persisting ultra-high (near absolute highs) oil prices. This circumstance demonstrated that high oil prices were no longer sufficient to sustain economic growth. This changed the perceptions of society, of the ruling group, and of the political and business elites about the prospects for the Russian economy and the resources available to maintain social stability. The situation worsened many times over after

1 *Novaya Real'nost': Kreml' i golem*, *supra* note 1, 21.

the annexation of Crimea and the application of international economic sanctions against Russia, so there were more and more reasons for defense in order to retain power, and fewer and fewer methods of manipulating the situation.

And, accordingly, there were more and more repressive laws and laws with vague wording, which in one situation or another could be arbitrarily interpreted and used against the opposition and freedom of speech. Later, this is exactly what happened. It is unlikely that anyone in 2012 could have imagined that the Law on NGOs-foreign agents would magically turn into media-foreign agents and foreign agent-individuals, that on the basis of legislation on combating terrorism and extremism, organizations involved in the fight against corruption would be recognized as extremist, that members of these organizations and those who sympathize with them would be limited in their voting rights, and that children playing computer games would receive real prison terms for terrorism.

The Dumas of the 6th and 7th convocations competed fiercely in creating "cannibalistic" laws, and yet the 6th Duma succeeded more, although the 7th Duma became, perhaps, more bloodthirsty in essence. Especially since 2020. The 6th Duma toughened penalties for participation in public events three times: the Law on increasing fines for rallies and the Law on expanding liability for public events with the introduction of the so-called "Dadin" article 212.1 in the Criminal Code of the Russian Federation.[1] It was this Duma that became the creator of the laws on NGO-foreign agents and on undesirable organizations.[2]It also authored a whole block of laws on the restriction of media rights, freedom of speech and control over information on the Internet: the Law on bloggers with an audience of more than 3 thousand equated them to media; the Law on

1 Federal Law No. 65-FZ of June 8, 2012 "On Amendments to the Code of the Russian Federation on Rallies, Demonstrations, Marches and Pickets." SZ RF. June 11, 2012. No. 24. Art. 3082; Federal Law No. 258-FZ of July 21, 2014 "On Amendments to Certain Legislative Acts of the Russian Federation in Part of Improving Legislation on Public Events." SZ RF. July 28, 2014. No. 30 (part I). Art. 4259.

2 Federal Law No. 121-FZ of July 20, 2012 "On Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of the Activities of Non-Commercial Organizations Performing the Functions of a Foreign Agent." SZ RF. July 23, 2012. No. 30. Art. 4172; Federal Law No. 129-FZ dated May 23, 2015 "On Amendments to Certain Legislative Acts of the Russian Federation." SZ RF. May 25, 2015. No. 21. Art. 2981. The Law amended Federal Law No. 272-FZ dated December 28, 2012 "On Measures of Influence…."

the Restriction of Foreign Participation in the Media; the famous "Yarovaya package" (the unofficial name of a package of amendments to legislation, some of which oblige to store correspondence, phone calls and outgoing traffic of all Russian users, and also provide this data at the request of the special services); the Law on blocking extremist websites; the Gay Propaganda Prohibition Act; the Child Protection Against Pornography Act.[1]And still more, on her conscience is the Law on "scoundrels" (Law of Dima Yakovlev); the Law on the Protection of the Feelings of Believers; the law on the expansion of the elements of treason and the Law on the introduction into the Criminal Code of the act of calling for violation of territorial integrity.[2] On the conscience of the 7th

1 Federal Law No. 97-FZ dated May 5, 2014 "On Amendments to the Federal Law "On Information, Information Technologies and Information Protection" and Certain Legislative Acts of the Russian Federation on Regulating Information Exchange Using Information and Telecommunication Networks." SZ RF. May 12, 2014. No. 19. Art. 2302. Canceled in 2017; Federal Law No. 305-FZ of October 14, 2014 "On Amendments to the Law of the Russian Federation "On Mass Media"." SZ RF. Oct. 20, 2014. No. 42. Art. 5613; Federal Law No. 374-FZ of July 6, 2016 "On Amendments to the Federal Law "On Combating Terrorism" and Certain Legislative Acts of the Russian Federation in the Part of Establishing Additional Measures to Counter Terrorism and Ensuring Public Safety." SZ RF. July 11, 2016. No. 28. Art. 4558; Federal Law No. 375-FZ dated July 6, 2016 "On Amendments to the Criminal Code of the Russian Federation and the Code of Criminal Procedure of the Russian Federation in terms of establishing additional measures to counter terrorism and ensure public safety." SZ RF. July 11, 2016. No. 28. Art. 4559; Federal Law No. 398-FZ dated December 28, 2013 "On Amendments to the Federal Law "On Information, Information Technologies and Information Protection"". SZ RF. Dec. 30, 2013. No. 52 (part I). Art. 6963; Federal Law No. 135-FZ of June 29, 2013 "On Amendments to Article 5 of the Federal Law "On the Protection of Children from Information Harmful to Their Health and Development" and certain legislative acts of the Russian Federation in order to protect children from information that promotes the denial of traditional family values." SZ RF, July 1, 2013. No. 26. Art. 3208; Federal Law No. 139-FZ of July 28, 2012 "On Amendments to the Federal Law "On the Protection of Children from Information Harmful to Their Health and Development" and Certain Legislative Acts of the Russian Federation." SZ RF. July 30, 2012. No. 31. Art. 4328.

2 Federal Law No. 136-FZ of June 29, 2013 "On Amendments to Article 148 of the Criminal Code of the Russian Federation and Certain Legislative Acts of the Russian Federation in order to Counteract Offending the Religious Beliefs and Feelings of Citizens." SZ RF. July 1, 2013. No. 26. Art. 3209; Federal Law No. 272-FZ dated Dec. 28, 2012 "On Measures to Influence Persons Involved in Violations of Fundamental Human Rights and Freedoms, Rights and Freedoms of Citizens of the Russian Federation." SZ RF. Dec. 31, 2012. No. 53 (part 1). Art. 7597; Federal Law No. 190-FZ dated November 12, 2012 "On Amending the Criminal Code of the Rus-

Duma up until the end of 2019: the Law on foreign agent media; the Law on insulting the authorities; the Fake law; The Law on the Sovereign Internet and the Law on Individuals Performing the Functions of Foreign Agents-Media.[1] And in 2020, a completely different story begins…

The Elections of 2016–2018

In the 2016 elections, despite the extremely favorable legal context for the authorities, United Russia received only a little more than 50% of the votes on the party list, and only winning in the vast majority of single-member constituencies, as intended by the reform, allowed the executive branch to fix the balance of parliamentary forces necessary for the unhindered implementation of any legislative exercises of the president and the executive power.

Ella Pamfilova, who came to the Central Election Commission in March 2016, promised to change the attitude of citizens towards elections, increasing the transparency and competitiveness of voting. To achieve this goal, she made a lot of adjustments to the electoral process: she expanded the list of observers and interaction with human rights activists, and introduced a number of technical innovations—in addition to CCTV cameras, optical scan voting system ballot boxes (KOIBs)

sian Federation and Article 151 of the Code of Criminal Procedure of the Russian Federation." SZ RF. Nov. 19. 2012. No. 47. Art. 6401; Federal Law No. 433-FZ dated December 28, 2013 "On Amendments to the Criminal Code of the Russian Federation." SZ RF. Dec. 30, 2013. No. 52 (Part I). Art. 6998.

1 Federal Law No. 327-FZ of November 25, 2017 "On Amendments to Articles 10.4 and 15.3 of the Federal Law "On Information, Information Technologies and Information Protection" and Article 6 of the Law of the Russian Federation "On Mass Media"." SZ RF. Nov. 27, 2017. No. 48. Art. 7051; Federal Law No. 30-FZ of March 18, 2019 "On Amendments to the Federal Law "On Information, Information Technologies and Information Protection"." SZ RF. March 25, 2019. No. 12. Art. 1220; Federal Law No. 31-FZ of March 18, 2019 "On Amendments to Article 15.3 of the Federal Law "On Information, Information Technologies and Information Protection"." SZ RF. March 25, 2019. No. 12. Art. 1221; Federal Law No. 90-FZ of May 1, 2019 "On Amendments to the Federal Law "On Communications" and the Federal Law "On Information, Information Technologies and Information Protection"." SZ RF. May 6, 2019. No. 18. Art. 2214; Federal Law No. 426-FZ of December 2, 2019 "On Amendments to the Law of the Russian Federation "On the Mass Media" and the Federal Law "On Information, Information Technologies and Information Protection"." SZ RF. Dec. 9, 2019 (Part V). No. 49. Art. 6985.

appeared that automatically scan votes and eliminate errors of members of the counting board.

Due to the fact that there was only one unitary day of voting left, the elections to the State Duma of the 7th convocation were held three months before the end of the Duma's term of office. The reduction of the term was not without scandal—the Federation Council appealed to the Constitutional Court of the Russian Federation. The court considered the appeal in record time, just a week: on June 24, the senators sent a request to the court, on June 29 it held a public hearing and two days later announced the decision. As a rule, months pass from the receipt of a complaint to the Constitutional Court of the Russian Federation until the announcement of a decision. In the request, the senators asked the high judges to clarify whether holding elections to the State Duma several months before the expiration of the five-year period specified in the Constitution would not be a violation.

The Constitutional Court of the Russian Federation came to the conclusion that deviation from the deadline established by the Constitution is still allowed in a number of cases, for example, when the Duma is dissolved by the president, martial law is introduced, or a repeat election is called. And the law does not exclude a discrepancy between the real and the statutory period for achieving constitutionally significant goals, the judges concluded. Such a goal could be to postpone the election date to a single voting day, the Constitutional Court believed. Such a decision could lead to positive results: voter turnout would increase, budget savings would be achieved. In other words, if you can't, but really want to, then you can.[1] As a result, the deputies of the 6th convocation who did not get into the new State Duma received payments for the early termination of their powers, for which the budget allocated about 460 million rubles. No one refused, although the former deputies from United Russia had promised that they would not take money for shortening the term,[2] with the result that the taxpayers paid twice for the three-month maintenance of the old and new convocations.

1 https://www.rbc.ru/politics/01/07/2015/5593965c9a7947424ff00fba.

2 *Byvshie deputaty Gosdumy poluchat kompensatsii vopreki sobstvennym obeshchaniyam* (Former deputies of the Gos. Duma receive compensation despite their own promises),*Novaya gazeta*, Oct. 19, 2016 r. // https://novayagazeta.ru/news/2016/10/19/125879-byvshie-deputaty-gosdumy-poluchat-kompensatsii-vopreki-sobstvennym-obeschaniyam.

Fourteen parties took part in the September 18 elections. For the first time since 2003, elections to the lower house of parliament were again held under a mixed-member system. The intrigue was provided by the struggle between the Liberal Democratic Party and the Communist Party for second place. The legislative increase in the number of signatures required for the registration of candidates and lists of candidates (by three times for candidates in single-member constituencies and by 50,000 for the federal list of candidates) had fully fulfilled its task of limiting political competition—for the first time in the history of elections not a single list was registered on the basis of signatures of voters. Only 14 party lists were registered, exempt from such a requirement.

"More honest and more boring" was how experts assessed the results of the 2016 election campaign. The Duma election campaign passed without loud scandals, although there was a sharp increase in the number of complaints filed with the CEC.

The final voter turnout was a record low—47.8% against 60.2% in the last Duma elections. In absolute terms, almost 57.5 million voters did not turn out to vote, which is comparable to the population of Italy (60.7 million) and exceeds the population of such countries as Ukraine (42.5 million), Spain (46.4 million), and South Africa (about 55 million). The non-recognition of the elections due to low turnout was announced by the chairman of the Yabloko party, Emilia Slabunova. Despite the fact that the same four parties made it to the lower house on the lists as five years earlier, this time, due to low turnout, each of them was supported by several million people less. The leadership of United Russia, for example, was now supported by 28.4 million people instead of the previous 32.4 million.[1]

United Russia received more than 54% of the votes on party lists in the elections, and its candidates won in 203 out of 225 single-mandate constituencies (United Russia did not nominate anyone in 19 constituencies). In total, this provided the ruling party with a constitutional majority (300 people) with a margin of 343 deputies. The party took revenge for the 2011 elections, after which it had only a simple majority (238 deputies). In fact, the result of 2003 and 2007 was repeated, when United Russia gained control of the lower house of parliament.

1 *Chto nuzhno znat' ob itogakh vyborov v Gosdumu* (What you should know about the results of the elections to the Duma). *Kommersant*, Sept. 23, 2016 // https://www.kommersant.ru/doc/3095089.

Specialists conducted a comparative analysis of the turnout and results of three parliamentary elections under electoral authoritarianism, and this is what they came up with. During the "elections" of 2007, 2011, and 2016, the official voter turnout was overestimated compared to the actual results by 12–16 million people, which ranged from 11 to almost 15% of all voters and from 25 to 32% of voters who actually took part in the voting.

Almost all of the stuffed ballots (corrected protocols)—from 98 to more than 100%—were counted in favor of United Russia (ER). Exceeding the additions by 100% meant that not only additional ballots (votes), but also part of the ballots (votes) already cast for other political parties were transferred (added to the actual number) to United Russia.

According to Andrey Illarionov, the number of votes added to United Russia amounted to almost half (44.4%) of the actual number of those who voted for United Russia in 2007; almost 90% of those who actually voted for United Russia in 2011, and more than 3/4 (77.4%) of those who actually supported United Russia in 2016. According to other experts, the votes that were added to the actual number were 15–20 percentage points. But anyway, it's a lot.

Cleansing falsified data from official CEC data (the falsified almost all in favor of United Russia) makes it possible to obtain a more realistic picture of the political preferences of Russian citizens, as well as its dynamics. From 2007 to 2016, the actual number of voters who took part in the voting decreased from 56 million to 40 million; actual turnout decreased from 51% to 36.5%; the number of voters who voted for United Russia fell by half—from 31 to 16 million people; or from 56 to 40% of the actual turnout; the relative amount of United Russia supporters in the total number of voters also fell by half—from 28 to 14%.

Thus, the results of the "elections" of 2016 characterize four very different figures: if the proportion of deputies of United Russia among all deputies of the State Duma is 76%, and the officially announced support for United Russia is 54% of those who took part in the vote, then the actual support of the United Russia among citizens who actually voted is only 40%, and the real support for United Russia among all voters in the country is only 14%.

The presidential election campaign of 2018 was in many ways a milestone. The fact is that it has completed a certain cycle of evolution of the electoral system, marking its transition to a new state.

In the 2016 Duma elections, apparently, the decision was made to move voting manipulation away from large cities with malicious monitors and move them to regions and rural areas where the elections are not monitored as closely. The result, in conditions of very low real turnout, was the picture of "two-humped Russia," when half of the votes of the ruling party on the federal list were given(in fact, mostly "drawn in") by polling stations covering only 28% of registered voters.

For the presidential elections, such a configuration of the final results, which contradicted the concept of popular support, obviously did not fit, and the CEC and the presidential administration, apparently, decided to shift the focus of influence from the election protocols to the voters themselves, despite the much greater laboriousness of such an approach. The combination of agitation and administrative pressure achieved the almost unbelievable: the real turnout (which can be estimated from the position of the main peak of the distribution of votes on the graph) exceeded the figures for all federal elections since 2000 (about 62%). The new mechanism for voting at the place of residence, which managed to attract two and a half times more voters than the previous version with absentee ballots,[1]probably played a significant role—and played one not so much through the voluntary attraction of voters, but through new opportunities to pressure vulnerable groups (state employees, parents of schoolchildren, etc.). As a result, the distribution of votes in the main peak turned out to be very similar to 2012 (with a shift towards an increase in turnout by about 2%, despite the more "boring" list of candidates), and the "tail" of excess votes was smaller than in 2012.

1 Six months before the presidential elections (on a single day of voting in 2017), they tested the Mobile Voter system, which has since gradually replaced absentee ballot voting. Instead of receiving a paper absentee ballot from the commission, the voter submits an application for voting at the place of residence either at the election commission, or at the multi-functional center(MFC), or through the public services portal. On the basis of an application, a voter is excluded from the list of voters in the "native" precinct and included in the precinct at the location on the voting day. Communication goes through the voter register to the government automated system "Vybory." It is believed that the "Mobile voter" prevents the "tour voting," when one or more voters voted with absentee ballots, which were not confiscated from them, in several polling stations, visiting up to ten of them in a day. However, Mobile Voter has its drawbacks. For example, there is no complete protection against malicious manipulation of lists. The most well-known case is the mass attachment of voters from St. Petersburg to polling stations in the Altai Territory in the presidential elections in 2018. But this system still increases turnout.

During the 2018 presidential election campaign, the presidential administration managed to achieve a never-before-set goal: to achieve a high turnout and a high result even given a slight decrease in the level of mass fraud on the day of counting. As a result, direct falsifications amounted to about 8.6 million votes, returning almost to the level of 2004, and the record turnout after 2000 was achieved by a complex impact directly on voters—both propagandistic and administrative. This seems to be a step in a new direction: if the electoral fraud of the Churov style completely excluded voters from the process of achieving the desired result, then the new approach involves their maximum active participation in carefully controlled conditions.[1]

Compared to the 2012 elections, the requirements for the nature of documents for nomination and registration have become more complicated: there are requirements for filing a notice of the absence of accounts in foreign banks and of reports of foreign real estate, and of-foreign financial obligations and major transactions for the last three years.[2] But the number of signatures in support of the nomination has decreased: in the 2012 elections, self-nominated candidates collected 2 million signatures, and in the 2018 elections, only 300,000, and party nominees 100,000.

Initially, more than forty participants were announced, including many self-nominated candidates. Eleven candidates, including Aleksey Navalny, were denied registration by the CEC. It is not for nothing that criminal cases of various kinds were initiated against politically active people during the previous years, and the legislator constantly corrected the legislation to limit the passive suffrage of persons with a criminal record! One candidate (Natalya Lisitsyna) did not have enough signatures after they were verified. Six declared candidates did not submit final documents (read—they could not collect signatures). Eleven candidates withdrew from the elections (including in one case where the Social

1 S. Shpil'kin, *Khvosty i piki. Istoriya anomal'nogo golosovaniya v Rossii*. In the collection "*Anatomiya triumfa. Kak ustroeny prezidentskie vybory v Rossii*" ("Anatomy of Triumph. How presidential elections are constructed in Russia") /Compiled by K. Rogov. Inliberty. April 27, 2018 r. // https://www.inliberty.ru/article/regime-shpilkin/.

2 Transactions involving the acquisition of real estate, vehicles, or securities within the three years prior to the date of the election, if the amount of the transaction exceeds the total income of the candidate and his/her spouse for the previous three years.

Democratic Party withdrew its participation, having recalled its candidate).

As a result, those eight candidates whom Vladimir Putin could defeat with a crushing score were admitted to the elections. In fact, these were no longer elections, but a renewal of legitimacy. During this "update" Putin was supported by 56.4 million people, or 76.7% of voters. Thus, he won 10.6 million more votes than in the last elections in 2012, setting two records at once, in absolute and percentage terms. The second place, according to a tradition that has not been violated even once since 1991, was taken by a candidate from the Communist Party. Crimea and Sevastopol participated in the presidential elections in Russia for the first time and immediately got into the rating of the subjects most integrated into the Russian Federation: more than 90% of voters voted for candidate Putin in these regions. It is curious that the locomotive of the last elections—Chechnya—dropped to fourth place (from 99.76% to 91.44%).

The first year of the new political cycle was marked by major changes in the political and social situation, as well as in the strategies and policies of the Kremlin. In general, this strategy can be defined as "digging in"—preparing for a long-term confrontation with external and internal challenges in the context of the "constitutional transition" of 2024. It is no coincidence that the Liberal Mission Foundation called its analytical report on this period "The Fortress Grows into the Ground."

The response to the tightening of external pressure and the decrease in domestic support was the further expansion of "power practices" in domestic politics. A new strategy of super-centralism in the Kremlin's relations with the regions was actively developed: over the past two years, the most massive rotation of the governor corps in the history of new Russia has been carried out, and the proportion of "Varangians" appointed by the federal elite to gubernatorial posts is also unprecedentedly high in this rotation. Regional policy is rapidly being "sovietised."

It can be said that power and repressive politicians began to play no less a role, and perhaps even a greater one in maintaining the stability of the regime than "Putin's popularity" and the effectiveness of propaganda. In the field of political repression, the main trends of the year were increased pressure on the youth environment and the expansion of repressive control over the Internet; in the sphere of counter-elite repression, there is a tendency to defiantly toughen punishments and further "sovereignization" of the regime for business.

Chapter 4. Transformation of the political regime and legislation in 2020–2021. Destination. Transition to dictatorship

Constitutional coup

The twentieth year of the twenty-first century will be remembered by Russian constitutionalists for a long time, and not only by them. The citizens had not yet recovered after the long New Year's holidays, when on January 15, Vladimir Putin addressed the Federal Assembly[1] with a message initiating constitutional reform, although he had repeatedly opposed any changes to the Constitution over the course of a number of years. He had said that he would not allow this "under any circumstances," rightly fearing that once the mechanism of introducing amendments to the country's Basic Law was launched, it would be difficult to stop. Moreover, changes in the Constitution might lead to an "unstable situation." But, apparently, the situation of the upcoming transition in the conditions of the deterioration of the economic situation, the growing social tension and the decrease in the ratings of the authorities required immediate actions to create institutional and legislative support for the regime. Lawyers call such situations defensive constitutionalism.[2]

On the same day, January 15, 2020, a working group was formed urgently, one not provided for by any norms, for the preparation of proposals for introducing amendments to the Constitution, consisting of 75 people, which, however, everyone called the constitutional commission for some reason. Some members of this "commission" read the Consti-

1 http://www.kremlin.ru/events/president/news/62582.

2 E.A. Lukyanova, *Identichnost' i transformatsiya sovremennogo prava* (Identity and transformation of modern law). *Sravnitel'noe konstitutsionnoe obozrenie* (Comparative constitutional review). (2020). No. 3 (136), 130–148.

tution of Russia for the first time.[1] On January 23, the Duma adopted the draft submitted by the president in its first reading. After this, during a period of less than two months, the project was corrected and refined. As a result, by the second reading, the text of the original bill almost doubled in length, and the volume of the new version of the Constitution increased by approximately 50%. There were finally 206 amendments (205 plus one about "zeroing out"), which affected forty-one articles of the Constitution, from the 3rd to the 8th chapter. All the amendments were considered together as one, which categorically contradicted the procedure of introducing amendments to the Constitution. As a result, in just four days (March 10, 11, 12, and 13), the amendments were wholesale approved by both chambers of the parliament and all 85 legislative assemblies of the Federation subjects.

On March 16, the Constitutional Court of the Russian Federation, having no authority to do so, but favourably considering the appeal of the President, confirmed the conformity of the amendments to the Constitution. At the same time, it abstained from considering their merits. Specialist in constitutional law Olga Kryazhkova believes that the court's decision to "zero out" or nullify the term of the president is political: "If it is approached from the point of view of the values of a democratic legal state (Article 1 of the Constitution), the answer is obvious: such an amendment cannot be introduced, since it will go against the constitutional idea of changeability of power." Law professor Ilya Shablinskiy claims that there are no grounds for zeroing out or "nullification" of the president's terms: "If the Constitutional Court must evaluate the amendment on nullification of terms even before it enters into force, then the court does not have such powers and rights either in the Constitution nor in the law of the Constitutional Court. But if we speak about the court evaluating this amendment after it takes effect, then the court probably has to take account of its decision of 1998. How will it be able to nullify Putin's four terms if it admitted that Yeltsin was elected for a second term in 1996, although he was elected for his first term under the already repealed Constitution of the RSFSR? From a constitutional and legal point of view, all this looks completely ridiculous and, to put it mildly, strange." But at the same time, in his opinion, due to the depen-

1 *Isinbaeva poobeshchala prochest' i izuchit' Konstitutsiyu SSSR* (Isinbayeva promised to read and study the Constitution of the USSR) // https://rsport.ria.ru/20200214/1564786640.html.

dence of the Constitutional Court on the president, there was no chance that the judges would strike down the amendment on zeroing out terms.[1]

The Venice Commission of the Council of Europe had many complaints about such a constitutional reform, as it reported in its official opinion. As such, the amendments continue to be examined by the commission. But one thing is already clear: most of them, including the most famous, the so-called "zeroing out" amendment about presidential terms, do not correlate in any way with the unchangeable chapters of the Constitution; moreover, the amendments contradict those chapters and block their operation. At a minimum, they significantly change the system of separation of powers in Russia.

Given the nature and scope of the amendments to the Constitution, the proper legal form for their introduction could only be in the form of a new Constitution. The Constitutional Amendment Law is not what it claims to be: it passes off a large number of heterogeneous amendments, some of which intrude into the scope of the provisions of the unchangeable parts, as one amendment. In addition, the law establishes an *ad hoc* procedure for the adoption of amendments, which is a mix of the procedures for adopting one amendment and the procedure for adopting a new Constitution, but as a result does not correspond to any of the ways prescribed in the current Constitution to amend it. The law also defines in the most general form the rules of "all-Russian voting," which do not correspond to the forms of establishing the people's will described in the Constitution. As a result, the amendments cannot be considered properly adopted in terms of the requirements of the current Constitution of Russia.[2] "Zeroing out" along with "self-isolation" became the word of 2020, according to the A. S. Pushkin State Institute of the Russian Language.[3]

1 *Popravlennomu verit'. Novaya Konstitutsiya priobrela okonchatel'niy vid* (Believe in the corrected. The new Constitution has acquired its final form). *Kommersant*, March 10, 2020 // https://www.kommersant.ru/doc/4283946.

2 Kryazhkova O. *Pravovoy illiuzion: mozhno li schitat' novuyu konstitutsiyu prinyatoy v nadlezhashchey protsedure?* (Legal illusion: can the new constitution be considered adopted under proper procedure?)—In the collection *Novaya (ne)legitimnost': kak prokhodilo i chto prineslo Rossii perepisivanie konstitutsii* (New (il)legitimacy: how the rewriting of the constitution took place and what it brought Russia) / ed. K. Rogov. — Moscow: Liberal Mission Foundation (2020), 24 // https://liberal.ru/wp-content/uploads/2020/08/Novaya_nelegitimnost.pdf.

3 *Ispravivshemu verit'. Kak i dlia kogo Vladimir Putin pravil Konstitutsiyu* (Believe the corrector. How and for whom Vladimir Putin ruled the Constitution). *Kommersant*, Dec. 30,

Here is a brief description of what happened as described by Vladimir Pastukhov:

> After a quarter of a century of exhausting struggle, political power devoured financial power, in connection with which even the appearance of any restrictions on its autocracy disappeared. The simulacrum of the Constitution once again ceased to fit into the style of the era, and in 2020 it was rewritten for new tasks. Today in Russia there is a simulacrum of a Military Constitution. In fact, it is the shortest constitution in the world. Its text can be reduced to just one article: "For the sake of victory over the enemy of power, everything is possible." Old man Carl Schmitt[1] is turning over in his grave and trying to dictate a statement to Dissernet about plagiarism.

And what did the amendments not contain! Contrary to the statement in the message about the increase in the role and importance of the parliament, this increase did not happen. On the other hand, we saw even greater centralization to the detriment of federalism, another expansion of presidential powers, an increase in the dependence of the judiciary, a decrease in the role of constitutional justice and the "murder" of constitutional courts of the subjects of the Federation, the virtual elimination of local self-government, another restriction of passive suffrage and a violation of the equality of citizens in access to government service.[2] Not to mention any other, useless and extremely harmful ideological inclusions that have nothing to do with the original constitutional model and its idea. Everything that should have been removed or improved was left intact—for example, say, part 3 of article 80 on the president's determination of the foundations of the country's domestic and foreign policy. Not an article, but the dream of a post-Soviet autocrat—it is not for nothing that many countries that were once part

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2020 // https://www.kommersant.ru/doc/4637586.

1 Carl Schmitt is a German philosopher known as the "Crowned Lawyer of the Third Reich." In the writings of the late Weimar period, Schmitt's proclaimed goal of defending the Weimar Constitution is barely distinguishable from a revision of the Constitution towards more authoritarian views. *See* K. Schmitt, *Gosudarstvo i politicheskaya forma* (State and political form)(Moscow) State Univ. Publishing House, Higher School of Economics (2010).

2 See *Dekonstruktsia konstitutsii: chto nuzhno i chto ne nuzhno menyat' v rossiyskom Osnovnom Zakone* (Deconstruction of the Constitution: what should and should not be changed in the Russian Basic Law). Series "Liberal Mission—Expertise." Issue 8 / ed. K. Rogov. Moscow: Liberal Mission Foundation (2020) // https://liberal.ru/wp-content/uploads/legacy/files/articles/7489/Dekonstrukciya_Konstitucii___chto_nuzhno_i_chto_ne_nuzhno_menyat_v_rossijskom_Osnovnom_Zakone.pdf.

of the USSR reproduced it in their constitutions. Among the amendments of 2020, there is not one that would be really necessary. But there are a lot which openly violate the provisions of the unchangeable chapters 1 and 2 of the Constitution. So far, they have not dared to officially remove some of the foundations of the constitutional order from the text of the Constitution, although proposals to remove the ban on the establishment of a state ideology and the primacy of international law have already been repeatedly offered. But they made such changes to other chapters that blatantly contradict a number of norms from the two unchangeable chapters. The result was an indelible disfigurement of the text of the Basic Law according to which the country will continue to live. And the Constitution as a symbol is now forever separated from the Constitution as a text. For ten years now, they have been using it as a fetish, ignoring the real content. All this was very reminiscent of a scene from the wonderful film "The Very Same Munchausen." The baron's hometown was getting ready to celebrate the anniversary of his death. The appearance of a living Munchausen brought confusion, culminating in the brilliant phrase: "Tomorrow is the anniversary of your death. Are you trying to ruin our holiday?" Ekaterina Mishina, a brilliant constitutionalist, wrote about all this on social networks. It is obvious that, despite the talk about strengthening the parliament, the next president, whatever his name, will benefit more from the reform than will anyone else.

Two amendments caused particularly great public response. First and foremost, of course, was the "zeroing out" amendment, which completed yet another fork in the trajectory of Russian authoritarianism when it came time to decide how Putin would retain power beyond his last term. It seems that it was after long and unsuccessful attempts to achieve what was desired by uniting with Belarus that it was decided to carry out a constitutional reform, hiding the "zeroing" amendment at the very end of the procedure with its submission by a single deputy, and not coming from the president himself. Of course, a more natural option for electoral authoritarianism would be with Putin at the head of an all-powerful State Council and a politically weak successor in the role of president, much like Nursultan Nazarbayev did in Kazakhstan. But in the end, Putin apparently considered this option too risky, and his fears were soon confirmed by the latest events in Kazakhstan. Therefore, we got what was to be expected—the "zeroing out." Putin may now re-

main in power until 2036, and the element of personal dictatorship in the Russian political regime is dramatically increased.[1]

To be fair, the President of Russia was not at all original in making such a decision. The manipulation of constitutional norms in order to extend the time spent in the presidential office is a well-known phenomenon. Back in the first half of the 20th century, it was called *continuismo*. The use of the Spanish word is due to the fact that it is in Latin American countries that early became electoral democracies with predominantly presidential systems that the problem of limiting presidential terms has long been one of the central constitutional and political issues. In total, according to the estimates of a modern researcher, since 1945 there have been 129 episodes of this kind of "prolongation" in the world. But if in the 20th century the countries of Latin America were the champions in *continuismo*, then in the last 30 years about 70% of all cases have been in the countries of the former USSR and Africa. In countries where the regime becomes non-competitive, the logics of the political and constitutional processes of movement towards dictatorship are firmly intertwined. If the presidential side manages to take control of a reliable majority in parliament, the relative autonomy of the prime minister assumed by the constitutional construction turns into a fiction, and the president becomes de facto both the head of state and the head of the executive branch. In the absence of powerful resistance in the elites or on the streets, this allows him to carry out a further expansion of presidential powers—first de facto, and then constitutionally.[2]

The second amendment, which caused heated debate, concerns Article 79 of the Constitution. The amendment introduced to this article establishes a rule according to which "decisions of international bodies adopted on the basis of the provisions of international treaties of the Russian Federation in an interpretation that contradicts the Constitution of the Russian Federation shall not be enforceable in the Russian Federation." It received the popular name "amendment on the priority of Russian law over international law." The idea was also not new: back in

1 G. Golosov. *Zakat elektoral'nogo avtoritarizma. Kak Putin prevratilsya iz garanta rezhima v ego glavnuiu ugrozu* (The sunset of electoral authoritarianism. How Putin changed from the guarantor of the regime into its main threat)*The Insider*. Feb. 7, 2021 // https://theins.ru/opinions/grigorii-golosov/239433.

2 Rogov K. *Rezhim prodleniya: constituismo po-rossiyskii konstruirovannoe bol'shintsvo* (Extension mode: constituismo the Russian way and the constructed majority). In *New (il)legitimacy, supra* note 5.

2010, the chairman of the Constitutional Court of Russia, Valery Zorkin, personally advanced it in his extremely controversial (to put it mildly) article "The Limit of Compliance,"[1] which caused sharp criticism from scholars. He openly suggested using the Constitution as a defense mechanism against decisions of the European Court of Human Rights (ECtHR): "When certain decisions of the Strasbourg Court are dubious from the point of view of the essence of the European Convention on Human Rights itself and, moreover, directly affect national sovereignty, and fundamental constitutional principles, Russia has the right to develop a defense mechanism against such decisions. It is through the prism of the Constitution that the problem of the correlation between the decisions of the Constitutional Court and the ECtHR should be resolved. If we are forced by external "direction" of the legal situation in the country, which ignores the historical, cultural, and social situation, then such "directors" must be corrected. Sometimes in the most decisive way." After 10 years, his proposal gained constitutional recognition. The amendment was perceived as a complete refusal by Russia to comply with its international treaties. The Russian establishment, including the president, had to make excuses for a long time and assure the Russian and international audience that this was not so, that such regulation can only be used in exceptional cases. Nevertheless, by virtue of this amendment, the Constitution can be used as a fly swatter, with which the Russian leadership will brush off its international obligations when it suits it.

And only one amendment—the removal of the word "in a row" from the article on the terms of presidential powers—not only did not cause controversy among anyone, but was actively supported by experts. One day, the time will come when this amendment will limit the possibility of personalistic retention of the presidency and this will give the system greater institutional stability: the president would be strong, but replaceable, and all other institutions will balance each other. Provided that, of course, that time comes under the current Constitution.

Formally, it was quite enough for the authorities to approve the amendments by the chambers of parliament and a certain number of the highest legislative bodies of the subjects. But the level of trust in the federal representative bodies by this time was already so low that it seemed insufficient. To further legitimize the amendments, it was decided to hold another public action—to approve them by a popular

1 V.D. Zor'kin. *Predelustupchivosti*. Rossiyskayagazeta, Oct. 29, 2010 // https://rg.ru/2010/10/29/zorkin.html.

vote, which is not provided for by any rules for amending the Constitution, which is not a referendum or a "plebiscite," as some commentators called it. This is in the nature of a one-time artifact, a parody of direct democracy like the yes-yes-no-yes referendum of 1991, only outside the strict rules of the referendum. Overlapping in time with the peak of the COVID-19 pandemic, this vote played a very peculiar role in realizing the calculations that the authorities relied on when announcing the constitutional reform.

As Vladimir Putin rightly assumed in his time, the introduction of amendments to the Constitution, reinforced by the campaign for their popular approval, opened a Pandora's box and led to a serious destabilization of the domestic political situation. Paradoxically, the interest of the population in the Constitution increased many times over, the discussion about the amendments swept the whole country, and their true nature, which the authorities did not want to advertise too much or tried to gloss over, came out in all their authoritarian glory. As evidenced by the available data of public opinion polls, in its attitude to the constitutional amendments, society turned out to be split into two equal groups, supporters and opponents. At the same time, the group of opponents of the amendments was dominated by the younger and middle aged, while supporters were mainly concentrated in the older age group (over 55). Such data not only undermines the legitimacy of the voting results and constitutional reform, but also the very foundations of Vladimir Putin's legitimacy as a plebiscitic leader. The resulting split and decline in support forced the Kremlin, among other things, to put pressure on sociological centers in order to limit public awareness of these trends in public opinion.[1]

As a result, instead of strong constitutional pillars of the regime, a very shaky structure resulted, which in itself strengthened and stabilized little, so it had to change its qualitative state. If the legal props do not work well, the only thing left to do is to rely on violence and repression to hold on to power.

Constitutional authoritarianism, constitutional dictatorship, authoritarian legalism, presidential principate?

We are forced to state that this is the very case when lawyers who operate with definitions are practically powerless in accurately diagnosing

1 *New (il)legitimacy*, *supra* note 5, 53.

the state that the Russian political regime reached by 2020. Experts define it in different ways. "Now we should talk about the regime as *constitutional authoritarianism, even a constitutional dictatorship*," writes Andrey Medushevsky.[1] He also uses the term "authoritarian legalism." Grigory Golosov calls this period "the decline of electoral authoritarianism" and affirms the transition from post-democracy to dictatorship.[2] Kirill Rogov calls the new regime a "presidential principate" or dictatorship.[3] Sociologist Sergei Erofeev has the same opinion, congratulating Russians on the new system, stating that in 2021 Russia has moved from electoral authoritarianism to a full-fledged dictatorship.[4]

In fact, there is no clear definition of dictatorship in political science, with the exception of the widely known Leninist definition of the dictatorship of the proletariat, learned by heart by several generations, in which two essential features are named: reliance on violence and power unbound by any laws.[5] A clear definition of such regimes is very far away, according to famous American political scientist Jennifer Ghandi. What cases can be qualified as "democracy?" What variants should be described as "dictatorships?" When confronted with the brutality of Jo-

1 *Kak razgrom oppozitsii vedet stranu k konstitutsionnomu krizisu. Interv'iu s pravovedom Andreem Medushevskim* (How the defeat of the opposition leads the country to a constitutional crisis. Interview with jurist Andrei Medushevsky). *Novaya Gazeta*, November 7, 2021 // https://novayagazeta.ru/articles/2021/11/07/zorkin-na-dvukh-stuliakh.

2 G. Golosov, *op.cit*. note 9; G. Golosov, *Ot post-demokratii k diktature. Konsolidatsiya elektoral'nogo avtoritarizma v Rossii* (From post-democracy to dictatorship. Consolidation of electoral authoritarianism in Russia) // https://liberal.ru/lm-ekspertiza/ot-post-demokratii-k-diktature-konsolidacziya-elektoralnogo-avtoritarizma-v-rossii.

3 New (il)legitimacy, *supra* note 5, 19.

4 S. Erofeev. *S novym stroem! V 2021 godu Rossiya pereshla ot elektoral'nogo avtoritarizma k polnotsennoy diktature* (With a new system! In 2021, Russia has moved from electoral authoritarianism to a full-fledged dictatorship). The Insider. January 10, 2022 // https://theins.ru/opinions/sergei-erofeev/247593.

5 "The revolutionary dictatorship of the proletariat is power won and maintained by the violence of the proletariat against the bourgeoisie, power not bound by any laws. And this simple truth, a truth that is as clear as daylight for every conscious worker (representative of the masses, and not the upper layer of the petty-bourgeois bastards bribed by the capitalists, which are the social-imperialists of all countries), this obvious truth for every representative of the exploited, fighting for their own liberation, this truth, indisputable for every Marxist, has to be "won back by war" from the most learned Mr. Kautsky!" See V. I. Lenin, *Proletarskaya revoliutsiya i renegat Kautskiy* (The Proletarian Revolution and the Renegade Kautsky). Collected works, Vol. 37, 245.

seph Stalin or Pol Pot, the second question seems to be easily answered: no one will dispute the labeling of their regimes as dictatorships. All dictatorships are, of course, autocracies. In addition, dictators are very resourceful in how they organize their own rule. Decision-making can be concentrated in a wide variety of institutions, including but not limited to juntas, politburos, and family councils.[1] Therefore, from an institutional point of view, all definitions here will not be accurate.

The historical path of dictatorships is long. The institution, which originated in ancient Rome, originally carried positive connotations: it was understood as a set of effective means by which the political system coped with internal and external threats. In difficult times, the elites put forward a man capable of taking decisive action to restore the political *status quo*. After resolving existing problems, the dictator, having fulfilled his mission, left the stage.

The opposition between democracy and dictatorship is a phenomenon of the 20th century. According to Kelsen, "it is more expedient to single out not three, but only two types of constitutions: democratic and autocratic."[2] In any case, all dictatorships turn out to be regimes where there are no competitive elections, no rule of law, no political and civil rights, and no regular renewal of power. The fundamental point is that they gain power bypassing the "competitive struggle for popular votes."

The variety of dictatorships based on external characteristics should not obscure the main difference inherent in all dictatorships and which separates them from democracies—the absence of competitive elections. Although dictatorships have other features as well. For example, an oppressive and despotic form of government, established by force or intimidation, allowing one person or group to monopolize political power without constitutional restrictions, thereby destroying representative government, the political rights of citizens, and any organized opposition.[3]

For example, the regime of Alexander Lukashenko, who lost the presidential elections in Belarus in 2020, but continues to remain in power, is given a clear definition—a "closed dictatorship." Unlike an authoritarian

1 J. Gandhi, *Diktatury i ikh instituty: osobiy mir. Neprikosnovenniy zapas. Debaty o politike i kul'ture* (Dictatorships and their institutions: a special world. Aninviolable stock. Debates on politics and culture). No. 108 NZ 4/2016.

2 H. Kelsen,*General Theory of Law and State*. Cambridge, Mass., Harvard University Press (1945), 284.

3 Ghandi, *op.cit*., note 18.

regime, a closed dictatorship does not need to play imitation, it is possible to throw off all the masks and maintain power solely by force; no one doubts the nature of the regime. But in this exclusive bet on strength lies the vulnerability of the dictator. The phrase attributed to Napoleon, "You can do anything with bayonets, you just can't sit on them," describing the instability of regimes based on bare power, is only partly true, as modern political science shows. Closed dictatorships that have dismantled the institution of elections, which include both military junta regimes and regimes built around a single tyrant, indeed live shorter lives than other types of autocracies. But the problem is that the fall of a closed dictatorship almost never leads to democratization—it is simply replaced by another dictatorship. This is due to two processes occurring in regimes of this type.

Over time, the dictator, in fact, becomes a hostage to the power elites, who, with the growth of powers, acquire greater independence and political ambitions. A clash with the interests and ambitions of the dictator and his entourage can lead to conflict and an attempted coup. Then one regime is replaced by another without changing its essence. An alternative "soft coup" scenario is realized when a dictator, driven by the constant need to increase the level of repression due to the actions of dissenters, gives more and more powers and resources to the security forces. Then a one-time coup d'état does not occur, but over time, key decisions are made by representatives of the power elites already without the dictator himself. In such a situation, the dictator acts as a screen for the actions of the security forces.

Guarantees against prosecution for committed violence are provided only by the preservation of the nature of the current regime. And even if the dictator under whom these crimes were committed did not stay in power, the incentives for maintaining the status quo and prolonging the life of the regime in its new version are extremely high among representatives of law enforcement agencies with such accumulations of wealth.[1]

Russia's experience shows that as authoritarianism consolidates, the differences between post-democratic regimes and other types of authoritarian regimes, many of which were highly repressive from

1 M. Komin, *Ne posledniy diktator: kaki zmenilsya rezhim Lukashenko za god posle vyborov* (Not the last dictator: how Lukashenko's regime has changed in the year after the elections), *Forbes*. August 11, 2021 // https://www.forbes.ru/obshchestvo/437003-ne-posledniy-diktator-kak-izmenilsya-rezhim-lukashenko-za-god-posle-vyborov.

the outset, are gradually leveling out. Accordingly, electoral authoritarianism not only gradually loses its outward resemblance to democracy, but also increasingly demonstrates the dynamics of development inherent in autocracies (including dictatorships) as such. Lawyers, who are very fond of definitions, still want to highlight some features that are generally characteristic of dictatorships as a special kind of autocracy. And these signs, it seems, consist in the degree of repressiveness (cannibalistic character) of the regime and complete disregard for the law. Although the limit of the level of repressiveness after which we can confidently state the onset of a state of dictatorship is still difficult to measure. Lukashenko clearly and instantaneously exceeded this level. In Russia, the growth of repressiveness and state legal nihilism occurred gradually.

A lawyer by training, Vladimir Putin first used the word "dictatorship" publicly before he was president in February 2000 in an "open letter to voters." He spoke of the "dictatorship of the law." This previously unknown formula puzzled jurists, although it was immediately clear that this was a kind of generic, Russified palliative to the rule of law.[1] That is, from the very beginning, Putin went even further than the Soviet interpretation of socialist legality and *the rule of law*. In the official documents of perestroika, the rights and freedoms of citizens were proclaimed as the most important element of a socialist legal state, but they were placed in a firm framework of certain socio-political boundaries—they were limited to permission granted by laws and a "commitment to socialist ideals," since "the Soviet political system, open to all the best from world democratic experience, is a system based on its own socialist values."[2] According to the authors of perestroika, "the process of creating a state of law is, first of all, the process of ensuring the rule of law."[3] "In the conditions of the democratic and legal state to which we aspire,

1 L. Nikitinsky, *Paradigm agrazhdanskoy voiny* (A Paradigm of Civil War), *Novaya Gazeta*, February 15, 2022 // https://novayagazeta.ru/articles/2022/02/15/paradigma-grazhdanskoi-voiny.

2 See A.I. Lukyanov. *S'ezd, obshchestvo, vlast' sovietov* (Congress, Society, Power of Soviets). *Izvestia*, June 24, 1989; E.A. Shevardnadze, Speech at the Plenum of the Central Committee of the Communist Party of Georgia on April 14, 1989,*Izvestia*, Nov. 5, 1989.

3 M.S. Gorbachev, *Sotsialisticheskaya ideya i revoliutsionnaya perestroyka* (Socialist idea and revolutionary perestroika). Moscow, Politizdat (1989), 24–25.

there cannot and should not be any other way of political action than reliance on the law."[1]

The dictatorship of law is an even more sophisticated concept, bearing in mind the path that the Russian government has taken since 2000, through the formation of a dependent and completely controlled parliament, which produces on stamped paper with incredible speed any words and rules that are ordered to be unconditionally followed. The law has become just one of the tools that has no value of its own, which the state is free to remake for current needs, and the "dictatorship" over the past 23 years has clarified its meaning that the court is a superfluous link here. Therefore, from a legal point of view, the established regime is still a dictatorship, consisting in state coercion in the enforcement of arbitrarily changing regulation of a non-legal nature, but having the appearance of law.

All right, then. The model of a closed corrupt dictatorship was brilliantly and humorously described by Arkady and Boris Strugatsky back in 1965 in the story "Monday Starts on Saturday." One of the mediocre scientists, contrary to the warnings of his colleagues, tried to conduct an experiment on the artificial cloning of a giant spirit. The experiment led to a cataclysm, when the model planned by the failed experimenter (a completely unsatisfied cadaver) tried to "consume all the material values that it could reach, pupate, collapse space and stop time." And the experimenter still could not understand that the true giant of the spirit does not consume so much as it thinks and feels. Isn't it familiar? State corruption, confiscation of other people's property, the iron curtain, political loneliness, stagnation, underdevelopment, degradation…

After the constitutional coup, "Putin has become not so much a guarantor of the regime's survival as a long-term threat to it. In fact, having abandoned the liberal-democratic shell, the personal dictatorship is increasingly based on the power apparatus. At the same time, Putin does not at all take into account either the risks arising from this situation, which in the future may be resolved by establishing the direct power of the security forces, or the dissatisfaction of part of the ruling class with the dominance of people from security forces in the economic life of the country."[2]

1 M.S. Gorbachev, Speech at the end of the work of the 1st session of the Supreme Soviet of the USSR. *Izvestiya*, Aug. 5, 1989.

2 Golosov, *op.cit.*, note 9.

Transformation of the electoral legislation 2020–2021

Two major votes took place in two years, at a time when the Russian political regime had to finally shed its imitation democratic veils and move into a state of dictatorship: the All-Russian vote on amendments to the Constitution and the elections to the State Duma. Both, from the point of view of achieving results, are incredibly important for retaining power in new conditions and with new methods. Both occurredin the context of quarantine restrictions and a gradual decline in the ratings of the authorities. Both could not be lost in any case. Chronologically, voting on the amendments was the first, and this turned out to be extremely convenient for the Duma elections following it, since the legal basis for the all-Russian vote was extremely advantageous for the authorities, which meant that it was possible to introduce and test new rules without any problems. The conduct of voting was established by the Law "On Amending the Constitution,"[1] which was adopted in March 2020 and according to which the voting method and procedure were completely "at the mercy" of the CEC. Unlike elections, where the main changes must be formalized by law, it was pure discretion.

There are eight main changes in the electoral legislation, some of which were transferred to the law from the CEC documents.

1. *Remote electronic voting* (Russ. abbr. DEG) and other new methods of voting. Initially, the remote electronic voting experiment was exclusively Moscow-based, initiated by the Moscow Public Chamber and tested in the Moscow City Duma elections in 2019. Remote voting was supposed to be held in three single-mandate constituencies using the portal of public services of the city of Moscow and specially developed software based on blockchain technology. The federal law became the legal basis for electronic voting, which, however, did not contain a sufficient amount of regulation, describing only the general contours of the experiment, and left the detailed regulation to the regional legislator.[2]

1 Law of the Russian Federation on the amendment to the Constitution of the Russian Federation dated March 14, 2020 No. 1-FKZ "On improving the regulation of certain issues of the organization and functioning of public authorities," *Rossiyskaya gazeta*, Mar. 16, 2020 Federal issue #55 (8109).

2 Federal Law No. 103-FZ dated May 29, 2019 "On Conducting an Experiment on the Organization and Implementation of Remote Electronic Voting in the Elections of Deputies of the Moscow City Duma of the Seventh Convocation." SZ RF. June 3, 2019. No. 22. Art. 2659; Law of the City of Moscow No. 18 dated May 22, 2019 "On

The voting software was developed in an extreme rush. This resulted in the system not being properly prepared and tested by election day. During all test launches of the system, critical errors occurred, which also happened on election day, when the system was unavailable for several hours, which led to ambiguous results for one of the constituencies and to a high-profile scandal. Ex-candidate for the Moscow City Duma Roman Yuneman complained to the Constitutional Court of the Russian Federation about the rules of remote electronic voting that were in force in Moscow during the 2019 elections.[1]

The idea of remote electronic voting itself is, of course, promising and important, but the proposed method of its implementation does not protect the rights of all election participants: there are no guaranteed ways to control that the voter personally votes without any coercion; how is the secrecy of the vote maintained; how is the accuracy of the vote countensured? Is the impossibility of its falsification ensured? In general, the proposed procedure is not completely transparent and is lacking in exercise of oversight by observers. Moreover, given the complexity of the software, one of the departments of the Moscow City Hall was actually involved in the organization and conduct of elections at electronic polling stations, which means that there were grounds to assume that the executive authorities interfered in the process, which categorically contradicts the requirements of the electoral legislation.[2] However, despite all the criticisms of the remote voting system, after the Moscow elections, it was proposed to continue the experiment and extend it to several regions.

During the all-Russian voting on amendments to the Constitution, remote electronic voting was held in Moscow and the Nizhny Novgorod

conducting an experiment on organizing and implementing remote electronic voting in the elections of deputies of the Moscow City Duma of the seventh convocation" / Bulletin of the Mayor and the Government of Moscow. No. 30, May 30, 2019.

1 *Kandidat iz Chertanovo doshel do Konst. Suda* (The candidate from Chertanovo reached the Constitutional Court. Roman Yuneman challenged the rules of electronic voting in the elections to the Moscow City Duma in 2019). *Kommersant*. Jan. 11, 2022 // https://www.kommersant.ru/doc/5157134.

2 *Yuneman: Tret' vremeni sistema elektronnogo golosovaniya ne rabotala* (Yuneman: A third of the time the electronic voting system did not work) / GOLOS, December 12, 2019 // https://www.golosinfo.org/articles/143975; Electronic voting in the elections to the Moscow City Duma in 2019. Hybrid administrative resource in the service of the executive branch / Report of the working group of R. Yuneman. URL: https://drive.google.com/file/d/1L9U2ssdjw_nRJMjBIzebhPDppfoWZgmJ/view.

region; the number of votes cast electronically was 964,000 (about 15% of registered voters) and 129,000 (about 5% of registered voters) respectively. In Moscow, electronic voting, having significantly increased the overall turnout, only slightly increased the "Yes" result in non-rigged polling stations, while lowering the overall official result, while in Nizhny Novgorod it had little effect on turnout and lowered the final result given the traditional mass falsifications in ordinary voting "on paper."

In the 2021 parliamentary elections, all the problems and shortcomings of remote electronic voting manifested themselves in full force, in fact, completely changing the results of voting in single-mandate constituencies in Moscow, which radically undermined confidence in the system for a long time, up to and includingthe appearance of a firm demand for its complete abolition.

2. *The possibility of postponing voting.* The first important change was the granting to election commissions of the right to postpone voting under the pretext (in case) of the introduction of a high alert or state of emergency in the territory where the elections are held.[1] The new rules, quite obviously, were adopted "based on" the pandemic, complete with a large set of amendments to the legislation on protecting the population from emergencies. It would seem that the changes are quite justified: how to hold elections in an epidemic? However, amendments to the Constitution had already been voted...

A rehearsal for the postponement of the vote took place in 2020. Initially, when Vladimir Putin came up with the initiative to amend the Constitution, the vote was scheduled for April 22. But Prime Minister Mikhail Mishustin and Moscow Mayor Sergei Sobyanin were able to convince the president to move it to a later date. The peak of the incidence of infection was expected at the end of April. As a result, on March 25, Putin addressed the nation and postponed the voting date. However, he did not wait for the pandemic to end completely and issued a decree on June 1 that scheduled the vote for July 1. On the same day, CEC head Ella Pamfilova said that voting "would be even safer than taking part in other events already permitted," and even safer "than going to the store."

Prior to the amendment on the possibility to postpone voting, only the holding of elections could be postponed, and even then, subject to

1 Art. 10.1 of the Federal Law of June 12, 2002 No. 67-FZ (as amended on April 30, 2021) "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation". SZ RF. June 17, 2002. No. 24. Art. 2253. Hereinafter Law No. 67-FZ.

the introduction of a state of emergency, and not an emergency situation. The procedure for introducing the state of emergency is regulated by the law of the same name: a decree of the President of the Russian Federation is issued, approved by the Federation Council of the Russian Federation, and the total period for introducing the regime is strictly limited to 30 days for the whole country and 60 days for certain areas.[1] Unlike the state of emergency, the operation of a high alert regime is not limited by a deadline (in most regions such a regime had been in effect for more than a year), and the act on its introduction is adopted by the head of the subject of the Federation without any formal confirmation by the legislative assembly.

The amendment allows regional election commissions and the Central Election Commission to postpone voting at elections of any level, including federal, at their discretion, on the basis of acts of governors on the introduction of a high alert regime. The existence of such an act is the only specific condition for postponement. Everything else is within the scope of discretion of the election commissions. By the way, the solution to the issue of changing the timing of the election campaign caused by the postponement is also referred there—the election commission is not bound by any requirements in this case.

3. *New ways to vote.* Multi-day voting. First, the changes also affected the voting procedure. So, for 2020, an experiment on voting at digital polling stations in Moscow was extended.[2] To put it simply, such a change allows a resident of the region in which "by-elections" of deputies of the State Duma of the Russian Federation or regional elections are held to vote while in Moscow. For voters who have moved to the capital but retained their residence registration in another region, this really provides an opportunity to take part in the elections.

In May 2020, a law was passed expanding opportunities to vote early or outside the polling station. It is worth recalling that early voting is assessed by many experts as carrying an increased risk of violations and falsifications. More than once there were proposals to completely aban-

1 Art. 4, 7 and 9 of the Federal Constitutional Law of May 30, 2001 No. 3-FKZ (as amended on July 3, 2016) "On the state of emergency." SZ RF. June 4, 2001. No. 23. Art. 2277.

2 Federal Law No. 151-FZ dated May 23, 2020 "On the extension for 2020 of the experiment on voting at digital polling stations at by-elections of deputies of the State Duma of the Federal Assembly of the Russian Federation of the VII convocation and elections to state authorities of the constituent entities of the Russian Federation."

don it in favor of "home-based" voting and the possibility of changing the polling station through the "Mobile Voter" service. Ella Pamfilova, Chairperson of the Central Election Commission, herself spoke about the great falsification risks of early voting.[1] Now it is possible to organize early voting when using absentee ballots—previously either one or the other was allowed. Secondly, early voting has been introduced in places where there are no voting premises and transport links are difficult. Thirdly, it became possible to conduct voting both on the main day and ahead of schedule, in the grounds surrounding a building and in other places suitable for this. The list of grounds for "at home" voting, which previously included only illness and disability, is now open. Finally, the option of conducting remote electronic or postal voting appeared at elections at all levels.[2] Some of these innovations were borrowed from the procedure for holding the All-Russian vote to approve amendments to the Constitution, but even there the variability in the methods and forms of voting was less.

Two months later, in July 2021, the legislator granted the election commissions organizing elections the right to decide on holding multi-day voting.[3] As we understand, multi-day voting (popularly, "voting on stumps") also migrated to the electoral legislation from the all-Russian voting on amendments, which, according to the decision of the Central Election Commission, lasted for seven whole days. The result of the experiment was recognized as successful and recommended for further implementation. We are talking about the "basic" voting, and not about early voting. Now, if necessary, you can gain more votes in any form and in any way: for example, in holding multi-day voting in the local area, in the workshop, at work, that is, any time and place it is convenient. "Multiple days of voting led to a significant reduction in the protection of citizens' rights to free expression of will," says Stanislav Andreychuk, member of the board of the Golos movement (recognized as a foreign agent). "Firstly, it is very poorly controlled. Six months ago, CEC Chairwoman Pamfilova publicly stated that home-based and early voting created a lot of opportunities for coercion and falsification, and now the CEC itself has opened the door for this."

1 See: https://regnum.ru/news/polit/2870569.html.

2 Para. 14 Art. 64, paras. 1 and 16 of Art. 65, paras. 1 and 18 of Art. 66 of Law No. 67-FZ.

3 Para. 63.1 of Law No. 67-FZ.

All of these amendments gave the election commissions almost unlimited powers to determine the voting procedure: it can be stretched out over several days, held not only indoors, but also outdoors, preceded by early voting in one format or another. Such latitude of discretion is clearly excessive—too many variables are made dependent on the will of the election commission, and not on the provisions of the law. In practice, this also led to a significant complication of the conditions for observation: it is simply impossible to ensure effective public oversight in several places at the same time, and even for several days without using administrative resources.

4. *New rules for collecting signatures.* Amendments were also made to the procedure for collecting signatures required for registration of candidates and party lists. Briefly, they can be described as one step forward and three steps back.

Let's start with the step forward. Now it is possible to collect signatures through the State Services portal. The undoubted advantage of such a collection method is that the electronic signature is extremely difficult to reject during verification. But it is precisely at the stage of verifying signatures that in the overwhelming majority of cases a significant part of opposition candidates is cut off. However, a step back was immediately taken, since the norm turned out to be half-hearted: no more than 50% of signatures can be collected through the portal, the rest must be on paper. And even then, provided that the decision on the electronic collection is embodied in a regional law.[1] In 2020, such amendments were adopted only in the Perm Territory, Chuvashia and the Chelyabinsk Region.[2]

Another step back was the new rule for filling out the signature sheet. If earlier the hand of the signatory voter only needed to fill in the date of signing and put the signature itself, and the collector could accurately and legibly write down the rest, now the voter himself must enter his full name on the sheet.[3] As practice shows, the election commissions and the specialists of the Ministry of Internal Affairs involved in the verification sometimes make gross mistakes, comparing the entries in

1 Para. 16.1–16.9, Art. 37 of Law No. 67-FZ.

2 *TsIK: Sbor podpisey na vyborakh v Gosdumu cherez gosuslugi ne planiruetsya* (CEC: Collection of signatures in the elections to the State Duma through public services is not planned) // *Rossiyskaya Gazeta*. Dec. 09, 2020 // https://rg.ru/2020/12/09/cik-sbor-podpisej-na-vyborah-v-gosdumu-cherez-gosuslugi-ne-planiruetsia.html.

3 Para. 11, Art. 38 of Law No. 67-FZ.

the sheets with the data from the State Automated System (GAS) "Vybory" and the databases of the Ministry of Internal Affairs. Not to mention the handwriting specialists working according to a secret methodology, who are capable of finding "coincidences" of handwriting among thousands of signatures in a matter of hours and, most importantly, without making a mistake.

However, the most significant deterioration in the procedure for registration by signatures was the reduction in the level of acceptable "defects." Until 2020, a candidate could turn in signatures with a 10% margin (that is, turn in 110% of the signatures required for registration), of which up to 10% of signatures from the number of verified ones could be rejected without refusal of registration. Now, no more than 5%.[1] For comparison, before 2005 this figure was 25%. It should be borne in mind that among the signatures there is always a little "defect," five to seven percent. These are the costs of the "field conditions" of collecting: filling out a sheet while holding up the paper, and often outside, banal slips of the pen and blots from a trembling hand. Exactly for this reason, signatures are surrendered with a margin. Now the limit of "defect" is not enough even for such mistakes. The current practice of verifying signatures is very poor. At almost every stage of it, a signature can be invalidated, and for almost any reason, which is practically impossible to successfully challenge in court. With 5% of acceptable "defect," the issue of registering a candidate or a party list finally moved into the category of political, not legal. And no 50% of signatures through the State Services can help in this situation.

5. *New electoral qualifications.* As we have already said, the history of non-constitutional qualifications for passive suffrage in Russian legislation dates back to 2006, and the qualifications for a criminal record occupy a special position in it. Apart from age and citizenship, the Russian Constitution before the 2020 changes, in principle, contained only two general restrictions on the right to be elected: being in places of deprivation of liberty and being declared legally incompetent—in both cases by a court decision that had entered into force.[2] These restrictions are contained in the 2nd, unchangeable chapter of the Constitution—on the rights and freedoms of man and citizen. For starters, in 2006 the op-

1 Para. 23, Art. 38 of Law No. 67-FZ.

2 Part 3 Art. 32 of the Constitution of the Russian Federation (adopted by popular vote on 12/12/1993 with amendments approved during the nationwide vote on 07/01/2020).

portunity to run for office was closed to persons sentenced to imprisonment and having an unexpunged or outstanding conviction for grave and especially grave crimes, as well as for extremism. Then, 10 years for those convicted of serious crimes and 15 years for especially serious ones were added on top of the terms of a criminal record.[1] The total term of restriction, therefore, includes the deprivation of liberty itself, the term of a criminal record and an additional term under the electoral law, and can reach 50 years.

The amendments adopted in May 2020 expanded the list of crimes that lead to the deprivation of the right to run by adding *50 articles* (!) of the Criminal Code of medium-gravity offenses to it. The scheme is the same: the term of conviction to imprisonment (even conditional or suspended) is up to 5 years, then up to 3 years of a criminal record and 5 years "on top," according to the election law. Total: up to 13 years.

Apparently, in order to limit the political competition of the opposition, it has become problematic to prosecute only under grave or especially grave articles. It took an expansion of the field for legal arbitrariness for political purposes. In the list of offenses, you can find a whole galaxy of offenses of fraud, misappropriation with embezzlement, "fake" news, "Dadin's" article 212.1 (repeated violation of the law on public events) and much more. But there is not a single offense about violations in public procurement and other crimes of medium gravity committed by officials.

The main problem of the new qualifications is their deliberate unconstitutionality and disproportion. They do not correspond in any way with the constitutional provisions on the right to participate in the management of state affairs, neither formally nor in meaning. Suffrage is the basis of popular representation and one of the markers of the political regime. Restriction of the right to run for election is permissible only in exceptional cases, if there are convincing grounds to believe that otherwise it is impossible to form a legitimate composition of the elected body. A conviction for crimes of average gravity cannot be such a basis—it does not indicate a sufficient public danger caused by the person. An attempt to decide for the voter in this way the question of whether this or that candidate is worthy of an elective office, almost certainly means another attempt to limit political competition, and not to allow oppo-

1 Para. 3.2, Art. 4, Law No. 67-FZ.

nents to run for election. And the less heavy the offenses that go into the bans, the more obvious this goal becomes.

6. *Candidates are foreign agents.* In April 2021, such concepts as candidates who are foreign agents and candidates affiliated with foreign agents "crept" into the electoral legislation.[1]

The term "foreign agent" in our legislation appeared in 2012 and initially referred only to non-profit organizations.[2] A whole dissertation could be devoted to a detailed description of all the flaws in this design. We will only say that the criteria for recognition as a foreign agent are endless, up to the almost complete freedom of discretion of the Ministry of Justice. In 2017, it became possible to classify the media as foreign agents, and in 2019, "individuals recognized as media and as performing the functions of a foreign agent" appeared.[3]

In December 2020, simply natural persons-foreign agents appeared, without any references to the media.[4] The criteria for recognition as such are just as vague: participation in political activity, which can be defined as anything, in the interests and with support (even intangible) from a foreign source.[5] It is these persons included in the special list that will be recognized as "foreign agent candidates."

1 Para. 35.1 and 35.2, Art. 2, Law No. 67-FZ.

2 Paras. 4–6, Art. 2 of the Federal Law of January 12, 1996 No. 7-FZ (as amended on December 30, 2020) "On Non-Commercial Organizations." SZ RF. Jan. 1, 1996. No. 3. Art. 145.

3 Art. 6 of the Law of the RF of Dec. 27, 1991 No. 2124-1 (as amended on Dec. 30, 2020) "On the Mass Media."*Rossiyskaya gazeta*, No. 32. Feb. 8, 1992.

4 Art. 2 of the Fed. Law of Dec. 28, 2012 No. 272-FZ (as amended on Dec. 30, 2020) "On measures to influence persons involved in violations of fundamental human rights and freedoms, rights and freedoms of citizens of the Russian Federation." SZ RF. Dec. 31, 2012. No. 53 (part 1). Art. 7597.

5 In accordance with the law (paragraph 2, part 1, article 2.1 of Law No. 272-FZ), any activity is recognized as political (in the field of law enforcement, law and order, legislative regulation of human and civil rights and freedoms, etc.) with the aim of influencing for the development and implementation of state policy, the formation of state bodies, local self-government bodies, their decisions and actions and carried out in the forms provided for in this article (assemblies, rallies, picketing, public opinion polls, etc.). It is impossible to derive an exhaustive list of forms of political activity from the text of this norm. In fact, any activity to defend not only other people's, but also one's own interests, can lead to the assignment of this status, including by expressing a personal opinion about the situation in the country, the laws being adopted, and the actions of the authorities for the sole reason that the person carrying it out receives any support whatsoever from a foreign source

As for candidates affiliated with foreign agents, they include members of governing bodies, founders, members and participants of NGO-foreign agents, including unregistered public associations, leaders and founders of media outlets-foreign agents, as well as persons who carried out political activities and received funding from any foreign agents.

It is fundamentally important to note that the affiliation criteria have a two-year retroactive effect—now it will no longer be possible to "disown" a foreign agent. According to the position of the Constitutional Court, giving retroactive effect to a law in relations between the state and the individual is permissible only when it favors the interests of the individual.[1] Here, on the contrary, the rights of the individual are infringed. A citizen undergoes negative consequences (and the recognition of affiliation with a foreign agent, of course, entails such consequences) for actions that were lawful at the time of their commission, for which he could not have expected such consequences—the law simply did not yet contain them. And a citizen could not in any way foresee them, no matter how conscientious and law-abiding he was. It is impossible to get rid of the received status and related restrictions otherwise than after waiting two years. Such a norm is openly discriminatory, and its adoption on the eve of the start of the federal campaign left no time for challenging it in the Constitutional Court of the Russian Federation. And even if such a challenge is mounted later and succeeds, the damage in this election will already be done.

The stigma of a foreign agent, designed to scare off voters, must be indicated by the candidate during nomination, entered into the signature lists (under the threat of invalidating all signatures collected on the sheet) and included in all campaign materials, devoting at least 15% of the area or volume of the material to it, or making it "clearly audible." This information must also be placed on stands at polling stations and included in the text of the ballot.[2] The set of requirements is even greater than in the case of a criminal record—that, at least, does not need to be indicated in campaign materials. Apparently, foreign agents are more socially dangerous for the legislator than persons convicted of especially grave crimes.

(the only exception is activities in the field of science, culture, art, and healthcare).

1 Decision of the Const. Ct. of the RF of July 2, 2015 No. 1539-O.

2 Para. 2.1 and 7 Art. 33, para. 9 of Art. 37, para. 9.4 of Art. 48, para. 6 of Art. 52, para. 4 of Art. 61, para. 7.1 of Art. 63 of Law No. 67-FZ.

The requirements to indicate the status of a foreign agent candidate, as well as the very fact of the existence of such a status, are aimed at limiting political competition. The issue of recognition as an agent or a person affiliated with one is a matter of political discretion of the law enforcer under conditions of extreme legal uncertainty of the law. In fact, for a politician or activist, even a symbolic transfer from a foreign source received two years ago would put them at risk.

7. *Extrajudicial blocking of sites and the abolition of the "day of silence."* Another important block concerns the election campaign. In March 2021, the Central Election Commission, regional and territorial election commissions received the right to apply to Roskomnadzor with a request to suppress the dissemination of campaign materials on the Internet that were produced or distributed in violation of the requirements of the law.[1] In fact, we are talking about the right of electoral commissions to demand extrajudicial blocking of sites or individual Internet pages, the content of which the electoral commission regards as illegal campaigning. At the same time, the electoral legislation still does not contain a full-fledged special regulation of campaigning on the Internet. It is subject to the general rules on campaign materials, including the need to indicate its circulation on the website and submit its printout to the election commission in advance. Yes, yes, the circulation of the Internet page—CEC Secretary M.V. Grishina confirmed this in her response to a request in August 2020.[2] Taking into account the fact that the definition of campaigning given in the law does not always make it possible to unequivocally separate it from informing (which does not have the goal of inducing the voter to vote one way or another) and such a decision is often subjective in nature, it is likely that we will face a wave of blocking of websites, pages in social networks, and possibly pages of online media—anything that will contain any information about opposition candidates.

Together with the out-of-court blocking of websites, the Central Election Commission was also given the amazing authority to establish the "features" of the production and distribution of campaign materials in the elections to the State Duma.[3] What kind of features the CEC

1 Para. 10.1 of Art. 21, para. 11.1 of Art. 23, para. 10 of Art. 26 of Law No. 67-FZ.

2 https://t.me/procedurki/118.

3 Para. 3.1 of Art. 62 of the Federal Law of February 22, 2014 No. 20-FZ "On Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation," SZ RF. Feb. 24, 2014. No. 8. Art. 740.

can establish is still unknown: in the norm there is only a reference to the "taking into account the requirements" of the law, which again leaves room for interpretation by the law enforcer.

Literally on the eve of the May holidays of 2021, the so-called "day of silence" was canceled—the ban on election campaigning on the day preceding voting day—during multi-day voting.[1] Campaigning was banned only for the day(s) of voting itself and the Saturday before voting day, if there is such a day. The latter, however, now seems unlikely: too many opportunities open up for the organizers of the elections with a three-day declaration of the will of the people. On the one hand, the cancellation of the "day of silence" during multi-day voting looks like a technical change—on the day of voting, it is impossible to campaign anyway. However, nothing prevented the establishment of such a ban on the eve of the day the multi-day voting began. After all, its main idea is to give the voter at least a day to make a well-considered and balanced decision without constant information pressure. Of course, the ban is actively violated, especially when campaigning on the Internet, but its complete abolition seems premature.

8. *Other prohibitions and restrictions.* There were other changes as well. For example, along with the "day of silence" amendment, the possibility of appealing against a refusal to register a candidate to a higher commission was canceled; now this can only be done through the courts.[2] To summarize: 2021 turned out to be a very "fruitful" year for all sorts of prohibitions, restrictions and additional bureaucracy, which fully corresponds to the new state of the political regime.

Right after the start of the trial to recognize Aleksey Navalny's Anti-Corruption Foundation (Russ. abbr. FBK) as an extremist organization, on May 4, a bill was submitted to the Duma proposing the introduction of a ban on running for elections to the State Duma by persons "involved in the activities" of an extremist or terrorist organization. Naturally, it was accepted. As planned. The prohibition is formulated as vaguely as possible:"involvement" can be expressed, among other things, in financing (for example, in sending donations), in advisory and other assistance. The latter can generally include any interaction with "extremists."

The term of the ban is 5 years for the organization's founders and leaders from the moment the organization is recognized as extremist, and 3

1 Paras. 1–3, Art. 49, Law No. 67-FZ.

2 Para. 3.3, Art. 22; para. 7.1, Art. 75; para. 6.1, Art. 76, Law No. 67-FZ.

years for all "involved." But the main thing is that this ban, like the rules on foreign agent candidates, is retroactive. For the founders and leaders of the organization, it comes into force 3 years before the court decision, for those "involved"—1 year. In other words, a citizen cannot nominate himself due to a donation sent a year ago to an organization that has only now been recognized as extremist. There is no way for a citizen to predict such a development of events. At the time of the action, he does not violate anything, but a year later he turns out to be an accomplice of "extremists," who has been deprived of his political rights.

Apparently, it makes no sense to say that such a ban is unconstitutional in more than one way. Article 54 of the Constitution expressly prohibits the retroactive effect of a law establishing liability. And deprivation of suffrage, of course, is a form of liability. It is no less obvious that this law is directly aimed at excluding a number of opposition candidates from the political struggle and, thereby, at limiting competition during the campaign.

In parallel, the Duma of the 7th convocation continued its "cannibalistic" traditions. In addition to the electoral innovations, a number of repressive laws were adopted during 2021 that expand the authorities' capabilities in the fight against political opposition in order to preserve the regime, namely: the law on unregistered foreign agent public associations, the law on protection from censorship of social networks, the law on deprivation of freedom for online defamation and the Veterans Insults Act. All these innovations very quickly began to be used for their intended purpose.[1]

By 2022, the entire seemingly chaotically accumulated set of normative acts indirectly arising from constitutional amendments and multiplied by arbitrary law enforcement practice, has led to "confrontational mobilization." Spy mania and the search for agents of foreign influence,

1 Federal Law No. 481-FZ of Dec. 30, 2020 "On Amendments to Certain Legislative Acts of the Russian Federation Regarding the Establishment of Additional Measures to Counter Threats to National Security." SZ RF. Jan. 4, 2021. No. 1 (part I). Art. 20; Federal Law No. 482-FZ of December 30, 2020 "On Amendments to the Federal Law "On Measures to Influence Persons Involved in Violations of Fundamental Human Rights and Freedoms, Rights and Freedoms of Citizens of the Russian Federation." SZ RF. Jan. 4, 2021. No. 1 (part I). Art. 21; Federal Law No. 538-FZ of Dec. 30, 2020 "On Amendments to Article 128.1 of the Criminal Code of the Russian Federation." SZ RF. Jan. 4, 2021. No. 1 (part I). Art. 77; Federal Law No. 59-FZ dated Apr. 5, 2021 "On Amendments to Article 354.1 of the Criminal Code of the Russian Federation." SZ RF. Apr. 12, 2021. No. 15 (part I). Art. 2426.

as in Soviet times, have again become mechanisms for regulating political and public life and artificially narrowing the scope of the discussion about the paths of the country's development. From the point of view of the confrontation, curricula began to be rewritten, and scientific cooperation programs and historical narratives were revised. In all universities of the country, the positions of vice-rectors for security have appeared and there has been a mass dismissal of teachers who present an independent point of view.

A confrontational foreign policy has become the most important factor in legitimizing the irremovability of power and the tasks of "internal control" associated with it, which are acquiring ever harsher forms. The most important feature of the official Russian foreign policy discourse has become the securitization of identity issues, that is, their politicization and elevation to the rank of issues of national security. Foreign policy has become a tool for constructing a national identity for the Russian elite.

Experts identify three main myths of this identity. The first is about the exclusivity of Russia: its existence on the periphery of the European value and cultural universe is interpreted not as inferiority, but as an advantage and evidence of exclusivity. The second is the myth of historical continuity: it is the myth of an unchanging and unchangeable Russia, traveling through time, separate from the rest of the world, from Grand Duke Vladimir to Vladimir Putin. For foreign policy, it is important here that national interests and strategy in such a discourse were predetermined many centuries ago, and changes are possible only at the tactical level. The third myth, and the most important one for foreign policy, involves opposing Russia not to individual countries, but to the West as a whole. The all-encompassing imaginary "West" is perceived as a force attempting to change Russia's unique, millennium-old identity.[1]

However, everything makes perfect sense. These are the inevitable trends in the development of the legislation of authoritarian regimes, which begin with seemingly not too dangerous selective engineering, and end with the laws of isolation and war.

1 *Znamya konfrontatsii. Za chto i pochemu Rossiya voiuet s Zapadom?* (The banner of confrontation. For what and why is Russia at war with the West?) Ed. K. Rogov. Moscow, Liberal Mission Foundation (2021), 11–12 // https://liberal.ru/wp-content/uploads/2021/10/znamya-konfrontaczii.-za-chto-i-pochemu-rossiya-voyuet-s-za-padom-2.pdf.

Voting and the elections of 2020–2021. All-Russian vote for amendments to the Constitution

The initiative to conduct an all-Russian vote on amendments to the Constitution and "zeroing" belonged personally to the President of Russia and it was established by presidential decree. This vote was the most unusual electoral procedure in the recent history of the country. It was regulated not by federal electoral legislation, but by a special law "On the Amendment to the Constitution," which was adopted in March 2020. Under this law, the voting procedure was completely determined by the Central Election Commission.

The CEC decided that the voting should go on for seven whole days, from June 25 to July 1; all this time, citizens could come to the precinct election commission and cast their vote without any additional declarations and messages. In addition, the CEC simplified the conduct of voting outside the polling stations: no good reason was required to invite members of the precinct electoral commission to their home, courtyard or enterprise. Members of electoral committees organized voting outside the usual voting premises at the request of authorized representatives of residences and heads of enterprises. At the same time, July 1 was considered the day of the plebiscite, and the period from June 25 to 30 was called "voting before voting day." The formal reason for holding the vote in such an original form was the pandemic.

And although the CEC, before the law on amendments came into force, and before the election commissions were given the appropriate powers and resources, had no legal grounds for preparing for voting, nonetheless a few months before its adoption, on January 25, 2020, one of the Telegram channels announced a leak of information from a closed meeting in the CEC, where voting was already being actively discussed. The meeting was held by means of video-conferencing. In addition to the leadership of the CEC, members of its leadership team and other employees who had access to such events, and representatives of regional election commissions were connected to it. They were instructed to analyze the readiness of their regions to organize voting and report back on January 27. CEC Secretary Maya Grishina said that given the lack of detailed regulation of the procedure in the law, CEC acts could be used. Deputy Chairman of the CEC Nikolai Bulaev in his speech said that the adoption of the law on amendments was expected in mid-February (it was adopted in March). By this time, the commissions of the regions should receive the information materials necessary

for voting ("brand books," poster layouts, etc.), paid for by funds from regional and municipal budgets.[1]

At the same time, the "constitutional commission" continued to fill the law on amendments with its initiatives. For example, pediatrician Leonid Roshal introduced an amendment about high-quality and affordable medicine, and actor Vladimir Mashkov one about the inalienability of Russian territories. By the second reading, the draft included references to God, marriage as the union of a man and a woman, and the Russian language as the language of the dominant nation, as well as norms on the protection of historical truth, a responsible attitude towards animals, education of ecological culture, etc. These proposals, along with those contained in the presidential draft amendments on the regular indexation of pensions and a minimum wage not lower than the subsistence minimum became the basis of a campaign in support of the reform.

The constitutional reform in general and the possibility of Putin's lifelong presidency divided the citizens of Russia roughly in half. In a March 2020 poll by the Levada Center, it is noteworthy that among the 47% who opposed "zeroing," the share of strong opponents was 30%, and in June it rose to 33%. In parallel, from 23% to 31%, the share of strong supporters of "zeroing" also increased, so that 64% of respondents were in extreme positions ("definitely yes" and "definitely no"), while 33% were "moderate" ("rather yes" and "rather no"). This is a clear picture of political polarization. Indeed, as sociological data show, supporters and opponents of the amendments formed comparable-sized groups on the eve of the vote. In sociological surveys, the share of the former varied in the range of 40 to 51%, and the latter, 30 to 45%, with an average gap of about 9 percentage points (the gap narrowed markedly in the June polls), but this gap may be related to the regime's opponents being less willing to report their opinions to pollsters.

Under such conditions, the Kremlin had to go to great lengths to turn the picture of social division into a demonstration of universal approval of "zeroing" and the accompanying constitutional innovations. In addition to manipulating the amendment process, the Kremlin used the extreme situation of the COVID-19 pandemic to violate the electoral

1 *Ispravivshemu verit'*, *supra* note 6.

standards and election oversight mechanisms that had been in place for the previous decade and which had allowed limiting the scope of fraud.[1]

The Communist Party of the Russian Federation was the only party that did not support the amendments to the Constitution proposed by Vladimir Putin, including those that reset to zero his presidential term. During the third reading in the Duma, the Communists abstained from voting for the amendments. Against the background of the all-Russian voting campaign on the amendments, they became more active and, on the eve of the Duma elections, proposed their agenda. This was an excellent opportunity to start the campaign well in advance. The Communists proposed holding a "popular referendum" on their changes to the Constitution. To be included in it:

> a provision on the state-forming role of the Russian people in the multinational family of equal peoples of Russia; to nationalize natural resources and guarantee the payment to citizens of a share of income from the trade in minerals; to fix the retirement age of 60 years for men, and 55 years for women; to fix the annual indexation of pensions, social payments and scholarships at the inflation rate for the previous year; to set the minimum wage and pension not lower than the subsistence minimum; to freeze payments for housing and communal services at the level of 10% of the total family income; to consolidate the concepts of "parliamentary inquiry," "parliamentary control" and "parliamentary investigation;" to give the State Duma the right to independently initiate the issue of confidence in the government and its individual members; to establish the election of members of the Federation Council, governors and mayors of cities by direct secret ballot without any "filters;" to make elective the positions of justices of the peace, and district and city judges; to equate electoral fraud with an attack on the foundations of the constitutional order; to indicate that the most important function of the Bank of Russia is to ensure economic growth; and to secure for local governments the right to a larger share of tax revenues. In addition, the Communists proposed to adopt a law on the Constitutional Assembly and to simplify the procedure for holding a referendum.2

Naturally, the matter did not move beyond a PR campaign. The current Russian legislation on the referendum, as we have already said, does not in any way provide for such uncoordinated escapades, especially

1 *Novaya (ne)legitimnost'*, *supra* note 5, 59.

2 *KPRF namerevaetsya provesti "narodniy referendum" po svoim popravkam k Konstitutsii* (The Communist Party of the RF intends to hold a "people's referendum" on its amendments to the Constitution). *Kommersant*, June 04, 2020 // https://www.kommersant.ru/doc/4366228.

since a referendum cannot be held a year before the next parliamentary elections, and the communists, of course, knew this.

Voting on changing the Constitution of Russia took place during the week from June 25 to July 1. 77.92% voted in favor of amending the Basic Law of the country, and 21.27% voted against. The turnout in the all-Russian voting was 65%. The amendments to the Constitution received the greatest support in Chechnya, Crimea and Tuva, where over 90% of the voters voted for them. The only protest region was the Nenets Autonomous Okrug, where more than half of the inhabitants opposed the amendments. On July 1, 185,000 police and National Guard officers were on duty at polling stations across the country, who did not find any serious violations. The results exceeded the expectations of the presidential administration, where they were considered a "triumph."

Most of the closed cities of the Armed Forces of the Ministry of Defense of the Russian Federation showed protest voting results on the Constitution. In nine regions, the level of support for the amendments in closed territorial entities (Russ. abbr. ZATOs) turned out to be the lowest of all municipalities. In other regions, with rare exceptions, closed cities were in second, third, and fourth place in terms of the number of votes against the amendments. In particular, the amendments were not very actively supported in ZATOs where strategic missile forces and submarines with nuclear missiles are based.[1]

One of the main results of the "all-Russian vote" was the actual demolition of the generally accepted practices of monitoring the voting process, which had held back the scale of fraud in previous elections. The access of observers was initially limited at the level of the "law on the amendment," and in practice it was also prevented by the public chambers, which were illegally vested with the right to send observers instead of political parties. The second factor that reduced the possibility of observation was the many days of early voting and, in particular, voting outside the voting premises (so-called voting "on stumps"). Numerous testimonies indicate that it was there that mass ballot stuffing

1 In seven regions, it was the cities of the missile forces that showed the most protest voting results: these are Svobodny (Sverdlovsk region), Pervomaisky (Kirov region), Znamensk (Astrakhan region), Komarovsky (Orenburg region), Svetly (Saratov region), Sibirsky (Altai Territory), and Solnechniy (Krasnoyarsk Territory). In some of these ZATOs, the results were far from the average for the region, for example, in Znamensk, 57.4% voted for the amendments, and 41.59% voted against, while in the Astrakhan region 86.73% voted for, and 12.73% against. In Komarovsky, the amendments were supported by 51.83%, while 47.46% were against.

took place. Finally, another mechanism for distorting the will of voters was the practice of forcing people to vote at their place of work. In general, the Central Election Commission grossly exceeded its powers and violated the "law on the amendment" that established the voting rules, as it did not have the right to expand the timing and forms of voting. As a result, four fifths of all votes were received as part of the "early voting," which should have been declared invalid, and it is not possible to establish the real voting results.[1]

Statistical analysis of official results indicates a radical change in electoral practices in Russia: if in the previous 12 years the share of anomalous votes (falsifications) identified by statistical methods fluctuated between 14–23% of the total number of votes, then the special voting regime in 2020 led to the rise of this figure to 37%. That is, minus the anomalous votes (falsifications), its real result is in the region of 65% of the votes "for" with a turnout of about 43% instead of the officially announced 78% "for" with a turnout of 68% (the same results are visible not only in numerous separate polling stations, but also in entire regions where large-scale falsifications did not take place—for example, in the Khabarovsk Territory). The group of regions with an ultra-high level of falsifications (over 25% of the vote) increased to 46—more than half of the total. For the first time since 2011, the practice of large-scale fraud was resumed in Moscow.[2]

Therefore, the legitimacy of the new constitutional regime of the "presidential principate" or dictatorship does not look fully secured, which necessarily forces the authorities to increase repressive measures, put pressure on elites and civil activists, expand forms of social control and channels of information, and also search for various ways to support the declining popularity of Vladimir Putin.

The Elections of 2021

An obedient and dependent parliament is very necessary for any autocratic regime. A thrice obedient and many times dependent parliament is especially needed by autocracies in the conditions of the inevitable impending transition. Even when they try to postpone this transition by any means.

1 *Novaya (ne)legitimnost'*, *supra* note 5, 46.

2 *S. Shpil'kin, Khvost' vertit kometoy: masshtaby i geografiya "popravochnogo" golosovaniya 2020 goda* (The tail twirls like a comet: the scope and geography of the "amendment" vote in 2020), in *Novaya (ne)legitimnost'*, *supra* note 5, 46.

For the co-opted elites, getting such a parliament is a top priority. Therefore, starting from the presidential elections of 2018, this top priority could be "tasted and smelled" by the specialists, and was even quite tangible. When journalists asked a question about some momentary event, asking why and what for, in a number of cases the answer was the same: it was preparations for the 2021 parliamentary elections. Meanwhile, the situation in the country was slowly heating up. The government's ratings had steadily declined. The Internet and the refrigerator were becoming more and more powerful than the television. An "unbeaten" generation grew up, which wanted to participate in government and skillfully stand up for itself. These are those important social changes that, as a rule, creep into modern times unnoticed and quietly, because our eyes are not yet accustomed to distinguishing them. Such changes are very harmful for an authoritarian state, and the authorities begin to react to them. In their own way. The way power acts. Sometimes crookedly, deviously, and roughly.

The most noticeable feature of the Duma elections held in the fall of 2021 was not the intrigue over the distribution of deputy mandates, but the unprecedented repressive campaign of the authorities against the structures of the Anti-Corruption Foundation (FBK), independent candidates, and the media. After the January rallies for the freedom of Navalny, thousands of people across Russia were detained, and an unusually large number received administrative arrest: in Moscow, all special detention centers were overflowing, paddy wagons with detainees stood in line for many hours. For a year and a half, protest rallies had practically not been coordinated, formally due to the coronavirus pandemic. Since spring, dozens of activists and politicians had left Russia, including former FBK employees who feared for their freedom. Former State Duma deputy Dmitry Gudkov was going to be nominated for parliament again, but left the country after a search and initiation of a false criminal case. By the national voting day of 2021, the non-systemic opposition was in a very purged state. The Kremlin's opponents pinned their plans on the campaign, and many of Aleksey Navalny's associates, for example, were going to be nominated as candidates. But in June, the court recognized the politician's organizations as extremist, and the State Duma, literally in the last months of the work of the 7th convocation, passed a law prohibiting those who were associated with extremist organizations from running, even before the organizations received such status.

Under such conditions, "Smart Voting" became practically the only way for the opposition to express dissatisfaction, and this turned out to

be the most dangerous for the authorities. By 2021, serious prerequisites were created for the decline in support for United Russia in the electorate to be compensated for by the administrative mobilization of loyal voters. However, the effectiveness of such compensation is due to a decrease in incentives to participate in elections for those sectors of the electorate whose political interest is not compatible with support of the dominant party. It is clear that the turnout of such voters is stimulated to a decisive extent by the presence of parties and candidates who would be seen as opposition outside the control of the authorities ("plausible opposition"). The exclusion of such opposition is carried out by controlling the field of political alternatives.

In general, the authorities managed to achieve almost complete control over this field, but the achieved result could be neutralized by the "Smart Voting" strategy developed by Navalny and his supporters. The strategy was based on the assumption that voting by opposition-minded voters in single-member constituencies could tip the balance in favor of candidates opposed to United Russia's candidates, and thereby reduce its level of representation. The 2019–2020 elections showed that the main goal of such a strategy is achievable, although not universally and on a rather modest scale. However, in addition to the main goal, the strategy pursues two others, the achievement of which could cause United Russia no less serious damage. "Smart Voting" creates a fairly clear incentive for opposition-minded voters to show up to vote. An increase in the turnout of the protest electorate can become an effective counterbalance to the system of administrative mobilization: it is obvious that if a voter is motivated by the desire to vote against the United Russia candidate in the district, then he will not vote for the list of the dominant party either. Thus, the consequences may also affect the results of voting on the party-list part.

The high level of protest sentiment makes voting in majoritarian districts, which brought the "party of power" 60% of its seats in the Duma, vulnerable. With a low turnout, the victory of an administrative candidate is ensured on average by the same 32–33% of those who voted, which is 12–13% of all potential voters. At the same time, the "second" candidate receives, as a rule, 8–9% of the votes. Such ratios fully explain the bitterness with which the authorities fought against the Smart Voting project, and the danger potentially posed to them by any form of coalition voting in single-member districts. An increase of 4–5% of constituency voters for an opposition candidate can have a tipping effect.

The analysis shows that the fundamental reason for the Kremlin's repressive turn is precisely the loss of a reliable majority, which undermines the effectiveness and security of those techniques of electoral manipulation that the regime has relied on since the mid-2000s. And if earlier the Kremlin could oppose the "hipster" opposition of megacities with the image of "the true Russia"—the "conservative majority" and the "real people"—now this construction looks less and less convincing. It seems that now two majorities are emerging more and more: a conservative one and a protest one. And while Navalny is in prison, this emerging majority is actively looking for their leader-defender, some kind of "people's Navalny."[1] To neutralize such risks, the authorities rely much more than ever before on the direct suppression of political opponents. Starting with the dramatic events around the poisoning of Aleksey Navalny.

The regions did not take any active steps to prepare for the Duma campaign, waiting for specific instructions from the center. And these directives arrived. At a seminar for vice-governors in the Moscow region in February 2021, representatives of the presidential administration said that in the fall elections to the State Duma, the Kremlin would be satisfied with a turnout of 45% and 45% of the vote for United Russia. Although for certain regions KPI may be lower: for example, for Moscow, 35%. It was also explained at the seminar that it is necessary to mobilize your supporters, and not just everyone, since among state employees the approval of the authorities is also falling: teachers, for example, are tired of "remote work," therefore it makes sense to involve only those groups of the population where support for the authorities is high. In other words, the Kremlin in the 2021 elections would not count on large-scale administrative mobilization, hence the low turnout KPI.[2]

Six months before the autumn elections to the State Duma, the Petersburg Politics Foundation described three possible scenarios. So far, according to experts, the authorities were preparing the country for the "Fortress" plan—with maximum control over the campaign and obtaining a constitutional majority for United Russia. However, the negativity in society might tilt the scales towards the "Wind of Change" scenario, in which United Russia would retain a simple majority, and one of the small parties would enter the Duma. The authors of the report

1 *Zor'kin na dvukh stul'yakh*, *supra* note 13.

2 *Luchshe men'she, da tishe* (Less is better, and quieter), *Kommersant*. Jan. 22, 2021 // https://www.kommersant.ru/doc/4654936.

considered the scenario that would allow the loss of even a simple majority by United Russia to be the least likely, although this option would satisfy all parties: the opposition would be happy with the failure of United Russia, and the authorities would be able to control the parliament through a coalition of the party in power with weaker partners. As we can see, the Fortress plan won from among the proposed scenarios.[1]

The elections to the State Duma never became the de facto main political event of 2021. Many either were not aware of the upcoming vote, or did not attach much importance to it. In addition, recent political protests and discussions around them were perceived as something more "interesting, dramatic and real." Another reason for the low interest in elections is the general political apathy. It was noticeable before, but 2020, which elapsed in the context of the fight against the pandemic, had noticeably strengthened it.

Assessing the credibility of the announced 2021 election results is extremely difficult. Independent international and domestic monitoring of these elections was reduced to an absolute minimum, although the Golos movement (recognized as a foreign agent) was able to generate a body of data indicating massive violations in the voting process. When analyzing the election results, it is noteworthy that the initial results, announced by the Central Election Commission late in the evening of September 19, based on the processing of data from 10% of the protocols, allocated 38.8% of the votes to the United Russia list. This was followed by the Communist Party of the Russian Federation (25.0%), the Liberal Democratic Party (9.6%), New People (7.8%), and A Just Russia (6.8%). As the protocols were further processed, the share of United Russia increased significantly and came close to 50%, and the indicators of A Just Russia also improved, while the shares of votes for the other three parties decreased noticeably.[2] And although the voting results themselves were manageable, subsequent events led to the fact that the Duma elections in the eyes of the elites began to be assessed as a "concentration of political risks."

Their most important and less noticeable result was evidence of social changes that had taken place. The results of the voting, cleared of anomalous votes (falsification), show that in reality only a third of those who came to

1 *"Veter" im v "Krepost'"* ("Wind" to those in the "Fortress". The experts analyzed possible scenarios for the Duma elections). *Kommersant*, Feb. 15, 2021 // https://www.kommersant.ru/doc/4692095.

2 Erofeev, *ibid*., note 16.

the polls (32%) voted for United Russia, and a quarter (25%) voted for the Communist Party of the Russian Federation. If there were no stuffing, the Communist Party would overtake the "United Russia" in at least a quarter of the regions.

Post-election polls not only confirm this picture (every fourth voter voted for the Communist Party of the Russian Federation), but also show that the growth of the electorate of the Communist Party was ensured by voters of younger ages, better educated, with a high social status (leaders, managers, entrepreneurs, specialists). The Communist Party of the Russian Federation has outgrown the boundaries of a niche retroparty, popular mainly among pensioners, which it was in the last elections, and has acquired the features of a mainstream party. While the United Russia electorate, on the contrary, has aged and is losing in quality (pensioners, housewives, office workers).

Having suppressed non-systemic opposition based on the urban, educated and youth strata, the regime faced new challenges from those social strata that previously looked more like a zone of its support. The success of the communists and the formation of a new platform of opposition around the Communist Party looks like the most significant and rather formidable challenge to the regime. The Communist Party of the Russian Federation is turning into the main electoral competitor of the "party of power," with a much broader social base than Navalny's projects, into a kind of "new Golem"—a "second majority." This will significantly reduce the effectiveness of the Kremlin's repressive response to the 2020–2021 crisis and will likely make economic policy more paternalistic and socially costly in the near future.

The 2021 elections have exposed the characteristics of the third era of electoral authoritarianism in Russia, writes Alexander Kynev. The first, "Surkov" era, was characterized by strategies of co-optation and forced integration into the "party of power" of various elite groups, "partization" of the legislature at all levels and building "verticals of control" of the party system and electoral processes. The "Volodin" era that came after the crisis of 2011 was characterized by the forced conservation of the party system, a return to a mixed electoral system against the background of the structural weakness of the "party of power" and "fixed matches" with the systemic opposition, which brought it "carrots" in the form of electoral sinecures.[1] These are the main conclusions of the re-

1 *Novaya Real'nost': Kreml' i Golem* (New Reality: The Kremlin and the Golem). *Chto govoryat itogi vyborov o sotsial'no-politicheskoy situatsii v Rossii* (What do the election results

port of the Liberal Mission Foundation "The New Reality: The Kremlin and the Golem. What do the election results say about the socio-political situation in Russia," summing up the results of the last election campaign in Russia to date.

But an even more terrible new reality covered the country a few months after these elections and as a result of precisely these elections. The Duma of the 8th convocation immediately approved all the president's totalitarian-imperial initiatives: the recognition of the self-proclaimed republics in the east of Ukraine, the use of armed contingents outside of Russia, and the so-called fake law, which provides for criminal liability (up to 15 years in prison) for information about the war that differs from the official version. The law on spreading fakes about the Russian army is likely to be followed by a law on spreading fakes about the Russian economy. Because, putting talk about the situation at the front aside, then the second most important front of the "special operation" is, of course, the Russian economy. "The law on fakes is an iron curtain rapidly descending on the country. It just seems like it's a law restricting information. In fact, this is a repressive law, which means it is a law on the inability of the state to organize the conventional, normal life of the country. It is this inability that repression is called upon to compensate for. And it is this inability that becomes the main principle of national life", wrote Kirill Rogov. The Fake Law resulted in the closure of all independent media. Following the media, they again came for the elections. They decided that it is necessary to abolish the institution of members of election commissions with the right to consultative vote. They remained only at the level of the Central Election Commission and the commissions of the constituent entities of the Federation—and even then, just in case, with significantly curtailed rights. Election committees of municipalities were also abolished, local elections will now be held by territorial election commissions. So, it's calmer for the authorities, more controlled, cheaper and safer.

Everything was to be expected. If for many years the goal of the state is to seize and retain power by artificially transforming institutions exclusively for these goals and objectives, and not for optimizing and improving management, as a rule, the result turns out to be just that.

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say about the socio-political situation in Russia),Ed. K. Rogov. Moscow, Liberal Mission Foundation (2021), 22 // https://liberal.ru/wp-content/uploads/2021/11/kreml-i-golem.pdf.

Chapter 5.
Classification of Amendments to the Electoral Legislation as a Marker of a Change in the Political Regime (Goals and Objectives of the Authorities)

Significance of the classification of amendments for the study of the dynamics of political regimes

We have already said that it is the electoral system and electoral legislation (its legal expression) that are the magic key that, depending on the goals and objectives of the government, opens or closes the doors of democracy. It is on the electoral legislation and on elections as a result of its implementation that the qualitative state, limits and possibilities of representative bodies depend—institutions that not only form the rules of the game, but also limit the executive power as the most potentially authoritarian. This means that it is precisely this, the electoral legislation, that ultimately determines the effectiveness of the system of separation of powers, and the configuration, essence, content and procedure for the interaction of all state institutions.

But exactly for the same reason, as we said again, electoral legislation is the main risk group when changing power priorities. The vicious authoritarian circle of looped causal relationships, when in order to be elected one must have power, and in order to have power one must be elected, requires special foolproof rules of the political game, the main one of which is the method of the organization and conduct of elections. Democracy provides freedom of choice, but does not guarantee the indispensable choice of consistently democratic leaders. An autocrat cannot allow such a situation. He only needs a victory for the sake of retaining power, and the specially designed conditions for this victory will certainly be fixed in the electoral legislation. Therefore, if the legislative blocking of the possibility of a democratic change of power begins, it is time to raise the question of the transformation of the political regime. That is, we assume that the assessment of the dynamics of the political regime should begin with an assessment of the transformation of electoral legislation and related institutions. That is the hypothesis.

We have recorded that a total of 2,630 amendments were made to the electoral legislation of Russia over the past quarter of a century. Including only since May 2021, 166 changes have been made, and the number of versions of the Law "On Basic Guarantees..." has exceeded one hundred. This is a huge, hard to perceive and, at first glance, chaotic set of norms, clarifications, and additions to them. Amendments were made gradually over a long period of time. Sometimes it seemed that they were purely tactical in nature and were due to the momentary need for a specific political alignment before the next election cycle. However, looking back and having the whole array of information before our eyes, we understand that this is not so. The whole seemingly chaotic complex of minor and major corrections fits perfectly into a precise system that allows you to see the internal logic and main goals of the political transformations.

The first task of classification is the systematization of a huge volume of material, which makes it possible to see a clearly traceable pattern behind the apparent chaos.

The second task, which naturally follows from the first one, is to determine the qualitative features of this pattern and the correlation of features with the conclusions of already conducted scholarly research to strengthen its evidence base or, conversely, to refute it.

The third task is to hypothesize that this classification can be used as a gauge for future research. We have analyzed the amendments in conditions when we already fully understood the authoritarian vector of the country's development. Our classification harmoniously coincided with the conclusions of political scientists, and then we thought: "What if we use it the other way around"? Is it possible to measure the deviations of political regimes from the democratic vector with the help of a ready-made classification of authoritarian amendments? Let's say in some country there appears an amendment from the groups we have formed. Is it a wake-up call, indicating an anti-democratic deformation of the regime, a change in the goals and objectives of the authorities, which have not yet manifested themselves clearly? We assume that such a systematic analysis according to various criteria could become a commonly used marker that would preventively, rather than *post factum*, allow revealing the hidden intentions of the authorities. Giving a classification of amendments to the electoral legislation, the adoption of which ultimately allows transforming the democratic goals of the development of the state and democratic institutions into their opposite,

we offer an additional tool for studying political and legal phenomena and processes. Moreover, if we had other material for analysis, we would be able to create an appropriate marker using this method for a reverse assessment of the transition from authoritarianism to democracy.

We put forward a hypothesis that a meaningful classification of amendments to the electoral legislation can be a marker for determining the true goals and objectives of the authorities and the corresponding transformation of the political regime. "Those who have ears, let them hear, those who have eyes, let them see"... The meaning of this ancient saying is that the truth is with us. In *The Logic of Scientific Inquiry*, Karl Popper argues that in order for a theory to be empirically validated, it must be shown to be useful in predicting future events.[1] Therefore, life and research conducted using it should prove the effectiveness of this tool, if it is in demand by someone. Today, this is especially true for post-socialist states that are still going through difficult transitional processes of adaptation to democracy and the development of democratic values. In this case, Russia is taken as a model, since its electoral system has quantitatively and qualitatively undergone the most wholesale transformation.

Let us stipulate at the outset that in addition to direct amendments to the electoral laws, there are many other ways of transforming the electoral legislation and the electoral field. For example, the interpretation of legal norms by constitutional control bodies; replacing the law with quasi-normative acts (instructions, guidelines, etc.) and making these acts mandatory; precedential decisions of courts of general jurisdiction and the creation on their basis of sustainable judicial practice; arbitrary administrative law enforcement that creates a system of business customs (common law), etc. All these methods should be the subject of a special analysis, and they will certainly be considered separately. In this case, we deliberately *limit ourselves to the content-subject classification of direct legislative amendments*.

It should also be emphasized that throughout the entire period of the Russian Constitution of 1993, we observe two multidirectional and clearly separated trends in time. The period of "defective" democracy is

1 K.P. Popper.*The Logic of Scientific Discovery*. London (1959); K. Popper. *Logika i rost nauchnogo znaniya*. Selected articles.Transl. from English, Moscow, Progress (1983); R. Inglehart., K.Welzel,*Modernizatsiya, kul'turnye izmeneniya i demokratiya* (Modernization, cultural changes and democracy). Moscow, Novoeizdatel'stvo(2011). 464 pp. (Library of the "Liberal mission" Foundation), 18.

very different from the twenty-year period of formation and consolidation of authoritarianism. If from 1993 to 2001 the opportunities for participants in the electoral process gradually expanded,[1] then from 2000–2001 we see a growing reverse process. If before 2000 the legislative framework was formed to combat fraud and other dirty election technologies, then in the course of the subsequent transformation, most of these provisions were canceled or furnished with additional clauses and conditions and thus neutralized. Moreover, special regulations were introduced, opening up scope for making it difficult to exercise oversight of the electoral process and creating prerequisites for the spread of dirty administrative practices. The first period was quite suddenly artificially interrupted by a change in the government's goal-setting. The volume of transformational material of this period is clearly insufficient for reliable conclusions about the dynamics of democratic transition. Therefore, we will analyze the amendments made to the Russian electoral legislation over the past 20 years. It was during these years that the authoritarian transition went through almost all of its stages right up to the border of a closed dictatorship (here the definitions can vary). And we believe that the existing condition is quite suitable for a full-fledged analysis.

The subject classification of the amendments made to the electoral legislation since 2000 makes it possible to group them in several areas of focus. Firstly, by the targeted impact on the competitive political environment, in which, in fact, the voters really evaluate their preferences in relation to politicians. Secondly, in terms of the impact on the transparency and credible effectiveness of elections. A finer adjustment of the researcher's vision makes it possible to see which amendments are characteristic of the stage of seizing power, and which are characteristic of an authoritarian regime during the period when it goes on the defensive (consolidation) in order to maintain positions of power. And this time adjustment is very close to the estimates of political scientists.

So, almost all amendments can be assigned to one of six main groups:

1 For example, with the adoption of the Law "On Basic Guarantees..." in 1997, the right to self-nominate candidates was established (in addition to nomination by electoral associations and directly by voters). The amendment expanded the possibility of participation in the elections of independent candidates. With the introduction of the electoral pledge in the legislation in 1999, the registration of candidates and electoral associations was significantly simplified, since the pledge was introduced as an alternative to the expensiveandlaborious procedure of collecting signatures. This opened access to the campaign to a wider range of candidates.

- amendments restricting free and equal access to elections for collective and individual participants;
- amendments limiting the equality of subjects of the electoral process;
- amendments aimed at integrating election commissions into the system of executive authorities;
- amendments neutralizing the possibility of public oversight of elections;
- amendments transforming the electoral system as a whole and the formula for the distribution of deputy mandates; and
- near-electoral amendments.

Let's consider them in more detail.

Limitation of the makeup and possibilities of collective participants in the elections

The first, most extensive, **group of amendments** concerns the legislative restriction of free and equal access to elections by narrowing the circle of participants in the electoral process. It includes several subgroups of amendments.

- The limitation of the makeup and possibilities of collective participants in the elections consisted of the following:
- limiting the participation of regional parties in federal elections, later liquidating regional and interregional parties as a struggle against competitors in a complex multipart federal state;
- a ban on electoral blocs which reduced the chances of participation in elections by small parties;
- exclusion from the list of subjects (actors) in the electoral process of all public associations except for political parties;
- new legislation on parties, a radical change in the volume of the political field and its actors, and the exclusion from the list of subjects of the electoral process of most small parties in the framework of a falsely formulated idea about the possibility of building an effective and regulated party system from above;
- the complication of the conditions and procedures for the administrative registration of political parties, which led to a sharp decrease in their numbers;
- an increase in formal requirements for parties and the strengthening of state regulation became an additional mechanism for

the state to influence "undesirable parties," which made it possible not to register them and not allow them to participate in elections;
- the subsequent forced reduction (after the decision of the ECtHR) of the requirements for the minimum membership in parties did not lift the restrictions on the participation of small parties in elections, since the ban on electoral blocs remained;
- the adoption of the Law "On Counteracting Extremist Activities" and the introduction on its basis of an extrajudicial practice of recognizing public organizations as extremist with the aim of subsequently preventing single-seat candidates associated with them from participating in elections;
- amending the Law on Non-Commercial Organizations to limit their political activity under the threat of being recognized as foreign agents.

All these restrictions were primarily implemented through the transformation of the legislation on political parties in an organic combination with the election legislation. In parallel, amendments were made to corresponding laws and laws establishing procedures and restrictions on activities of collective participants in the political process (the referendum, on public events, etc.).

Most of the changes from this group refer to the initial period of modern Russian authoritarianism, that is, to the period of its formation and seizure of power, when the autocracy formed the political system "for itself." However, amendments that complicate the registration of parties, and peculiar legal refinements such as extremist organizations, foreign agents, a very vague definition of political activity and political proactivity appeared at the stage of consolidation as a potential manoeuvre in case of a sharpening of political confrontation. And these amendments did not come into full force immediately—their legal lameness at the time of adoption did not yet fully correspond to the state of the law enforcement and judicial systems. When the system "ripened" after the amendments to the Constitution, then they flourished in full bloom.

Limitation of the extent of individual participants in elections

This is a particularly interesting position among all the groups of amendments. Remember how elegantly this task was solved in the USSR after the state abolished the function of dictatorship and class restrictions

on active suffrage? In the Constitution of the USSR of 1936, along with the proclamation of universal, equal, direct suffrage,[1] it was written: "Work in the USSR is the duty and a matter of honor of every citizen capable of working, according to the principle: 'he who does not work, does not eat'"(Article 12). And if he doesn't eat, then he can't make decisions. And he has no opportunity to nominate his own candidates, or himself to run for the Soviets. Not because it is forbidden, but simply because *only labor collectives* can nominate candidates for deputies.

In modern Russia, restrictions look less elegant. And this is understandable, since they all belong to the period when authoritarianism passed into the stage of consolidation (retention of power). Initially, they looked like a selective fight with political opponents. But for any authoritarian government, as it is artificially extended, the number of opponents increases, and qualitatively they become more sophisticated in their strategy and tactics, since the conditions for political competition become more complicated by law. The consequence of the departure from the political arena of the majority of collective participants was an increase in the activity of individual participants—strong politicians and activists who have authority among voters. To establish control over this process, the legislator took the path of direct and indirect restrictions. Direct restrictions consisted in the establishment of a number of electoral qualifications. As is well known, the Constitution provides for only two possible grounds for depriving a citizen of a passive electoral right: being in a place of deprivation of liberty pursuant to a guilty verdict of a court, and a declaration of a citizen's incompetence by a court.

But, starting from 2006, the electoral legislation began to be actively supplemented with various types of restrictions.

1. One of the grounds for deprivation of passive suffrage was the fact that *a Russian citizen has foreign citizenship* or a residence permit or a similar document giving the right to permanent residence in a foreign state (2006).[2] The amendments ignored the constitutional principles of

1 Art. 135 of the Constitution of the USSR in 1936: "Elections of deputies are universal: all citizens of the USSR who have reached the age of 18, regardless of race and nationality, gender, religion, educational level, residence, social origin, property status and past activity, have the right to participate in the elections of deputies, with the exception of persons recognized as non compos mentis in accordance with the established law."

2 Art. 6, 7, 8, 9 and 10 of the Federal Law of July 25, 2006 "On Amendments to Certain Legislative Acts of the Russian Federation in the Part of Clarifying the Require-

equality of rights and freedoms of citizens and the prohibition of restricting rights depending on whether a Russian citizen has foreign citizenship.[1] As of 2015, the Russian Federal Migration Service estimated the number of Russian citizens holding foreign citizenship or residence permits at about five million people.[2] Thus, about 2% of Russian citizens were excluded from participation in the electoral process as candidates, mostly the most politically and economically active, with a fairly high level of education and income.

2. Under the slogan of "fighting crime in power," a restriction was introduced for persons with *an unexpunged or outstanding conviction* for grave or especially grave crimes (2006).[3] Here, there is a certain correlation between the introduction of this restriction and a number of high-profile (mostly so-called "frame-up" economic) criminal cases under articles for grave and especially grave crimes, which involved opposition politicians, human rights activists, corruption fighters and other public figures. Some of these cases, in which the ECtHR found a violation of human rights established by the European Convention, are not reviewed under any pretext or are reviewed purely formally, without taking into account the comments of the ECtHR and changes in sentences.[4] Based on the fact that about 350,000 people[5] are convicted of grave and especially grave crimes every year, several million Russians have lost the right to run for office for a long time.

3. Some time later, the legislator considered the restrictions imposed only for the time until the expungement and canceling of a criminal record insufficient, and a complete ban was introduced to apply to

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ments for Filling State and Municipal Positions," respectively. SZ RF. July 31, 2006. No. 31 (Part I). Art. 3427.

1 Part 2 Art. 6, part 2, art. 62 of the Constitution of the Russian Federation.

2 http://www.rbc.ru/society/02/06/2015/556dc5c89a79472805721461 (accessed 06/05/2016). More up-to-date data has not been published.

3 Para. 1, Art. 1 of the Federal Law of Dec. 5, 2006 No. 225-FZ "On Amending the Federal Law "On the Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation" and the Code of Civil Procedure of the Russian Federation." SZ RF. Dec. 11, 2006. No. 50. Art. 5303.

4 See, for example: "The Case of Yves Rocher." The Supreme Court against the ECtHR // https://zona.media/online/2018/04/25/yves-rocher-vs (accessed 4/30/2018).

5 http://tass.ru/obschestvo/1514789 (accessed: 06/05/2016).

persons who had ever been convicted of grave or especially grave crimes,[1] that is, in fact, it was a question of lifetime deprivation of passive suffrage. The amendment was retroactively applied to all those ever convicted of serious or especially serious crimes.[2]

4. The limitation of passive suffrage was the *presence of conviction for certain elements of crimes*. The first among the "non-nominees" were citizens convicted of crimes of an "extremist orientation" and having an unexpunged or outstanding conviction for them (2010).[3] Introducing this rule, the parliamentarians did not bother with a more precise wording, without taking into account the fact that the special part of the Russian Criminal Code does not contain such a chapter at all. That is, conditions were artificially created for the widest administrative discretion in determining the extent of persons limited in passive suffrage.

5. Restrictions on passive suffrage also affected those *who were subjected to liability for certain administrative offenses*—propaganda and public display of Nazi paraphernalia and symbols and for the production and distribution of extremist materials (2010).[4] And this is quite understand-

1 Part 3 Art. 32 of the Constitution of the Russian Federation.

2 The norm was challenged in the Constitutional Court of the Russian Federation, which considered the life-long restriction inconsistent with the Constitution and suggested that the legislator limit the term for depriving a citizen of the passive electoral right and differentiate it depending on the severity of the crime. As a result, in February 2014, amendments were made to the legislation establishing that for serious crimes a person is deprived of the passive electoral right for 10 years from the moment the conviction was expunged or extinguished, and for especially serious crimes—for 15 years from the same moment. In practice, this means that a person convicted of a serious crime is first deprived of the right to run for a term of imprisonment (from 5 to 10 years), then for a term of conviction (8 years), and then for an additional 10 years in accordance with the electoral legislation—in total from 23 to 28 years. With regard to those convicted of especially serious crimes, the period of restriction of passive suffrage will be from 35 to 50 years (from 10 to 25 years in prison plus 10 years of conviction plus 15 years of additional restriction), which can practically be called a lifetime ban.

3 Art. 7 of the Federal Law of July 24, 2007 "On Amendments to Certain Legislative Acts of the Russian Federation in Connection with the Improvement of Public Administration in the Field of Countering Extremism." SZ RF. July 30, 2007. No. 31. Art. 4008.

4 Art. 7 of the Federal Law of July 24, 2007 "On Amendments to Certain Legislative Acts of the Russian Federation in Connection with the Improvement of Public Administration in the Field of Countering Extremism." SZ RF. July 30, 2007. No. 31. Art. 4008.

able, since bringing to administrative responsibility is procedurally simpler and more efficient. In addition, the Constitution and the norms of the Code of Administrative Offenses provide a person adjudged administratively liable with a smaller amount of legal guarantees. In other words, it is easier to subject a person to administrative punishment than to convict him for a criminal offense, which makes it possible to relatively quickly, if necessary, "deprive" any citizen of his passive electoral right.

6. In May 2021, the Duma introduced further amendments to the Law "On Basic Guarantees..." and the Law "On Elections...", on a ban on the participation in elections of persons *involved in extremist and terrorist organizations*. The people immediately called this document a law "against the Anti-Corruption Foundation (FBK)." As a result, if by June 2021 experts estimated the number of those "deprived" of passive suffrage at 9 million people (8% of voters), then by the beginning of 2022 the Golos movement (recognized as a foreign agent) in its report stated an increase in their number to 10 to 11 million people (10% of voters)[1].

Indirect restrictions on passive suffrage

Such restrictions are procedural in nature and are tied to the stages of the electoral process. For example, in 2002, the possibility of nominating candidates by a group of voters was excluded from the electoral legislation.[2] After the introduction of this amendment, candidates were left with only two options—nomination by an electoral association or self-nomination. In 2005, when the electoral system was changed from a mixed majoritarian-proportional system to a purely proportional one, the right to self-nomination was also eliminated. So, in practice, non-party citizens were deprived of passive suffrage. And although they still had the opportunity to "submit an application" to a political party with a request to include them in the list of candidates, this procedure made them completely dependent on the will of the party leadership.

Another indirect limitation on passive suffrage was the five-fold reduction in the maximum percentage of possible defects when checking

1 *Otvet na popytki TsIK Rossii zanizit' chislennost' "lishentsev"* (Response to the attempts of the Central Election Commission of Russia to lessen the number of "those deprived"—Russian citizens deprived of passive suffrage) // https://www.golosinfo.org/articles/145784.

2 Part 2 Art. 6 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."

signature sheets, introduced in 2005. At the same time, the allowable limit of the "reserve" signatures that could be handed over in excess of those required for registration was also reduced from 25 to 10% of their required number.[1] As a result, the already complicated procedure for collecting signatures became practically insurmountable for self-nominated candidates and for political parties whose participation in the elections could be considered undesirable for one reason or another. According to V.L. Sheinis, "in practice, it is not difficult for the state to reject practically any number of signatures for a variety of reasons."[2] At the same time, there is no effective procedure for contesting the results of verification of signatures. This procedure for registering candidates has been criticized more than once from various quarters. During the mass protest actions that took place after the elections of the State Duma of the Russian Federation of the 6th convocation, its cancellation was one of the main demands of the protesters. As a result, the legislator made a kind of "concession" and in 2012 completely exempted all political parties from collecting signatures in any election, except for the election of the President of the Russian Federation.[3] But such an amendment, which expands the possibilities of political competition, turned out to be extremely inconvenient and even dangerous for the authorities. It literally destroyed the whole conveniently arranged scheme of limiting the participation of collective actors in the political struggle. Therefore, two years later, everything returned to normal—the mandatory collection of signatures returned to elections at all levels, up to municipal ones. Exceptions concerned only the parties whose lists received mandates in the current composition of the legislative assemblies of the constituent entities of the Federation. Thus, the state almost com-

1 Para. 36 Art. 9 of the Federal Law of July 21, 2005 No. 93-FZ "On Amendments to the Legislative Acts of the Russian Federation on Elections and Referendums and Other Legislative Acts of the Russian Federation." SZ RF. July 25, 2005. No. 30 (part 1). Art. 3104.

2 V.L. Sheinis, *Pochemu v Rossii net oppozitsii. Vzglyad iurista* (Why there is no opposition in Russia. The view of a lawyer)//https://www.specletter.com/vybory/2008-11-15/print/pochemu-v-rossii-net-oppozitsii-vzgljad-jurista.html

3 Federal Law of 02.05.2012 "On Amendments to Certain Legislative Acts of the Russian Federation in Connection with the Exemption of Political Parties from the Collection of Voter Signatures in the Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation, to State Authorities of the Subjects of the Russian Federation and Local Self-Government Bodies." SZ RF. May 7, 2012. No. 19. Art. 2275.

pletely regained control over the process of registering candidates and their lists in federal elections.

Creating an uneven playing field for the participants of the election campaign

The second group of amendments is aimed at *creating unequal conditions for participants in the election campaign*. We are talking about a specially created system of advantages for some participants in the electoral process and, conversely, creating obstacles for others. In most cases, these advantages and barriers relate to campaigning and election finance issues. But not only.

A striking example of creating advantages is the introduction of the so-called "preferential registration" regime, when political parties admitted to the distribution of deputy mandates in previous elections of the same or higher level were exempted from collecting signatures when nominating candidates and lists of candidates.[1] As a result, these parties and their candidates saved a significant amount of financial resources and always had the advantage of starting the campaign earlier than others. The legislator cunningly substantiated this initiative by the need to support parties "that are popular among voters." However, in this case, the deputies found themselves in the role of judges in their own case—they created special preferences for their own parliamentary parties.

In addition to the rule on registration inequality, a state funding mechanism was created for parties that received a certain percentage of votes in previous elections. The provision on state financing of political parties that won at least 3% of the vote in the last elections to the State Duma or won at least twelve single-mandate constituencies was provided for in the very first version of the Law "On Political Parties", adopted in July 2001.[2] These parties received annual funding of 0.005 of the minimum wage (50 kopecks) for each vote received.[3] The party received the same amount in a lump sum for the result of the candidate nominated by it for the President of the Russian Federation, if he scored three or more percent of the vote.[4] Since then, the amount of funding has changed repeatedly and always upwards. So, in 2005, the "price of

1 Para. 16 Art. 38 of the Law on Basic Guarantees of 2002.

2 Subpara. "a" and "b" para. 5 of Art. 33 of the Law "On political parties."

3 Subpara. "a" para. 6 of Art. 33 of the Law "On political parties."

4 Subpara. "v" p. 5 and subpara. "b" Art. 33 of the Law "On political parties".

a vote" increased tenfold, up to 5 rubles,[1] in 2008 by another four times, up to 20 rubles,[2] in 2012, up to 50 rubles,[3] in 2014, up to 110 rubles per vote,[4] and usually this took place within one year of the last election. That is, the deputies of the new convocation honestly satisfied their obligations to the parties that nominated them. The latest changes in 2016 raised this price to 152 rubles,[5] which is 304 times higher than the price in the original version of the law.

Yes, of course, many countries prefer state financial support for political parties in order to avoid their dependence on sponsors. True, the state does not always take on the constant financing of the life of parties. Some countries (Germany and the USA) partially finance only the campaign expenses of parties.[6] But of all the main methods of direct state financing of parties, only one, used in Russia and Latvia, seriously discriminates against the participants in the electoral process.[7]

1 Subpara. "v" paragraph 13 of Art. 7 of the Federal Law of July 21, 2005 No. 93-FZ "On Amendments to the Legislative Acts of the Russian Federation on Elections and Referendums and Other Legislative Acts of the Russian Federation". SZ RF. July 25, 2005. No. 30 (part 1). Art. 3104.

2 Subpara. "b" para. 2 of Art. 1 of the Federal Law of July 22, 2008 No. 144-FZ "On Amending Articles 30 and 33 of the Federal Law "On Political Parties"." SZ RF. July 28, 2008. No. 30 (part 1). Art. 3600.

3 Art. 1 of the Federal Law of December 1, 2012 No. 211-FZ "On Amendments to Article 33 of the Federal Law "On Political Parties"."SZ RF.Dec. 3,2012. No. 49. Art. 6756.

4 Art. 1 of the Federal Law of October 14, 2014 No. 300-FZ "On Amendments to Article 33 of the Federal Law "On Political Parties"." SZ RF. Oct. 20, 2014. No. 42. Art. 5608

5 Art. 1 of the Federal Law of December 19, 2016 No. 452-FZ "On Amendments to Article 33 of the Federal Law "On Political Parties"." SZ RF. Dec. 26, 2016. No. 52 (Part V). Art. 7501.

6 *See*: Financing of political parties and election campaigns. Guide to the financing of political activities / ed. S. Jones, M. Oman and E. Falger. International Institute for Democracy and Electoral Assistance. SE-103 34 Stockholm. Bulls Graphics, Sweden ISBN: 978-91-7671-064-2016.

7 The four main methods of direct public funding of political parties are:
depending on the number of votes received by the party in national or municipal elections (this method is used only in Russia and Latvia);
in equal shares for all registered political parties;
a combination of two methods: the first part of state funding is distributed in accordance with the number of votes received, and the second part is sent to political parties in equal shares;
depending on the number of votes and the number of seats in parliament: part of

Thus, in matters of financing the election campaign, a situation of deliberately unequal position of various parties participating in the elections was created. The favorite parties receive direct financial support from the state in proportion to their results in the last elections. The support mechanism is embodied in the legislation on political parties, but is tied to their participation in elections.

The principle of equality of candidates and electoral associations turned out to be limited by law in the field of election campaigning as well. The Law "On the Procedure for Covering the Activities of Public Authorities in State Mass Media," which has been in force for more than 20 years, makes it possible to disseminate information about candidates holding public office without the restrictions provided for election campaigning by other candidates.

Another limitation of the principle of equality of election participants in matters of campaigning concerns the right to free airtime and print space. According to the law, until 2009, any electoral associations could receive such time andprint space. After 2009, a special amendment to the electoral law introduced a rule that associations that did not receive a certain percentage of votes in previous elections (less than 3%)[1] can be deprived of this right. Thus, only the mechanism of paid publications and broadcasts was left for them.

As a result, provisions were introduced into the legal regulation of pre-election campaigning, creating deliberately unequal conditions for less popular parties and opposition candidates, and conditions were created for the dominance of information by candidate officials. At the same time, their opponents are deprived not only of similarly wide opportunities for campaigning, but also of the possibility of effective counter-campaigning.

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the state funding is allocated in accordance with the number of votes received, and part goes to finance political parties admitted to the distribution of seats in parliament.

1 Art. 1 of the Federal Law of July 19, 2009 "On Amendments to the Legislative Acts of the Russian Federation on Elections and Referenda in the Part Providing Airtime and Print Space for Election Campaigning." SZ RF. July 20, 2009. No. 29. Art. 3640.

Creation of a system of control over the activities of election commissions

The third group of amendments is aimed at *creating a system of control over the activities of election commissions*, that is, the organizations responsible for organizing and conducting elections.

Formally, from the point of view of the law, election commissions are neither bodies of state power nor bodies of local self-government, but are participatory bodies formed jointly by the state and society.[1] The rules for their formation are determined by the state. Thus, the state is relatively free in choosing one of the two principles of their formation—"from above," when a certain part of the composition of the commission is appointed directly by state authorities and local governments or higher commissions, or "from below," when members of election commissions are nominated by meetings of voters, political parties and public associations. Giving priority to the principle of formation "from above," the state thus increases the share of members administratively dependent on it in the composition of commissions. In addition, the state can assume the authority to approve candidates nominated "from below."

This is exactly what happened to the Russian election commissions. Contrary to the law, according to which "election commissions, when preparing and holding elections, within the limits of their competence, are independent of state authorities and local self-government bodies" (clause 12, article 20 of the Federal Law "On Basic Guarantees..."), the formation of commissions at various levels was gradually placed in complete dependence on the authorities. For example, the formation of election commissions of the constituent entities of the Russian Federation is carried out half by the regional legislative (representative) body, half by the highest official of the region (head of the highest executive authority of the subject).[2] As a result, the current status of election commissions has allowed a number of scholars to directly categorize them as

1 According to A. Yu. Buzin, one of the significant shortcomings of the Russian electoral legislation is the lack of certainty of the status of electoral bodies, that is, the bodies that organize and conduct elections, inherited from Soviet legislation. In other words, the "underdetermination" of the legal status of Russian election commissions, and to some extent the very concept of the system of election commissions, negatively affects the institution of Russian elections as a whole. *See*: A.Iu. Buzin, Problems of the legal status of election commissions in the Russian Federation: abstract, dissert. cand. legal sciences. Moscow (2004).

2 Para. 6 Art. 23 Law of Basic Guarantees of 2002.

belonging to the political executive authorities that manage the electoral process.[1]

As a result, the state almost completely controls the procedure for the formation of election commissions at all levels, and the political basis for their activities is contained from the outset in the procedure for their formation, since "the personnel composition of the commissions is determined by the political component of the representative and executive bodies that take part in their formation."[2]

But it was not only the formation procedure that brought the status of election commissions closer to state authorities. The commissions, primarily the highest ones (Central and regional), were entrusted with separate governmental powers. Thus, since 2005, the Central Election Commission of the Russian Federation has been entrusted with the authority to collect and verify all consolidated financial statements of political parties.[3] At the regional level, the election commissions of the subjects of the Federation were endowed with similar powers in relation to the regional branches of political parties.[4] In addition, the law assigned regulatory functions to the election commissions to determine the manner of a number of electoral procedures (three-day voting under quarantine conditions, remote electronic voting, etc.). The legislator decided that operational legal regulation in changing political conditions is easier and more efficient to entrust to supervisory bodies, by giving them the corresponding rights.

1 A.A. Makartsev, *Organizatsionno-pravovoy rezhim izbiratel'nykh komissiy v RF: problem realizatsi pravovogo statusa* (Organizational and legal regime of election commissions in the Russian Federation: problems of implementing the legal status.) Bulletin of the Tomsk State University. Law. 2014. No. 3 (13). 51–60; V.E. Churov, B.S. Ebzeev, Democracy and management of the electoral process: domestic model. Journal of Russian Law. 2011. No. 11, 5–20; K.K. Makarevich, Electoral commissions as an institution of political elections: state and optimization of functioning in modern Russia: dissert. cand. polit. sciences. Orel, 2004.

2 Makarevich, *ibid.*, 53.

3 Subpara. "v" paragraph 20 of Art. 9 of the Federal Law of July 21, 2005 No. 93-FZ "On Amendments to the Legislative Acts of the Russian Federation on Elections and Referendums and Other Legislative Acts of the Russian Federation." SZ RF. July 25, 2005. No. 30 (part 1). Art. 3104.

4 Paras. 5 and 6 subpara. "g" paragraph 22 of Art. 9 of the Federal Law of July 21, 2005 No. 93-FZ "On Amendments to the Legislative Acts of the Russian Federation on Elections and Referendums and Other Legislative Acts of the Russian Federation." SZ RF. July 25, 2005. No. 30 (part 1). Art. 3104.

At the same time, while increasing the powers to control parties outside the electoral process, the supervisory powers directly related to the elections were reduced. So, back in 2004, the Central Election Commission was deprived of the right to appeal to the Supreme Court of the Russian Federation with complaints about decisions, and actions and inactions related to the massive violation of the rights of voters. It is precisely those violations that the Central Election Commission, as a commission organizing federal elections and heading the system of election commissions, could most accurately and promptly identify and stop. Thus, the powers to suppress mass violations were actually completely transferred to the prosecutor's office of the Russian Federation, which only increased the possibility of influence on the electoral process by state authorities. In addition to this, the obligation of the commission to consider at its meetings dissenting opinions prepared by members who disagree with the decisions of the commission was excluded. Now their role has become purely formal, and their preparation no longer entails any legal consequences.[1]

Restriction of society's ability to exercise oversight of the electoral process and protect violated rights

The fourth group of amendments is aimed at *limiting the ability of society to exercise oversight over the electoral process and protect violated rights*. To be less polite, these amendments are intended to make the fight against fraud more difficult and provide additional opportunities for fraud. They relate to various forms of monitoring and observation of elections at all stages of the election campaign. First of all, we are talking about the subject composition of the observers, about their powers, about the forms of interaction with election commissions, and with the state and with local self-government. Secondly, we are talking about the legal consequences of illegal actions of the state during election campaigns. And this is also understandable—if the state is interested in obtaining a certain result different from the real one in the elections, it will strive to minimize the possibilities of public observers and to complicate their activities.

1 Subpara. "e" para. 27 of Art. 9 of the Federal Law of July 21, 2005 No. 93-FZ "On Amendments to the Legislative Acts of the Russian Federation on Elections and Referendums and Other Legislative Acts of the Russian Federation." SZ RF. July 25, 2005. No. 30 (part 1). Art. 3104.

With the adoption of the Law "On Elections of Deputies…" of 2005, public associations were deprived of the right to independently appoint observers,[1] and without it, such associations were made dependent on parties and candidates pursuing their own goals in the framework of election campaigns, or were forced to use other methods of oversight. For example, to send their representatives to polling stations as employees of the media, who, however, have a relatively limited arsenal of rights related directly to monitoring.

But even having the status of media workers, representatives of monitoring associations were able to quite effectively record violations. The response of the state was the complication of the procedure for appointing persons exercising such oversight. Since 2015, a requirement was introduced: a future media representative at a polling station must work for that particular publication for at least six months. Public observers were forced to form a corps of their representatives far in advance, whereas previously a media representative could be appointed and sent to the polling station directly on voting day.

An ambiguous situation has developed with the powers of observers. Even granting them certain rights, the legislator limited them with a variety of limitations. For example, in 2016, the Law "On Basic Guarantees…" of 2002 finally included the right of an observer to take video and to photograph at a polling station. However, it can be carried out only after prior notification of the chairman, deputy chairman or secretary of the commission. And only from the place that the chairman of the commission determines.[2]

The introduction of a single voting day is also one of the measures that has the hidden goal of complicating public oversight. When elections are held simultaneously throughout the country in different regions, the effectiveness of observation is reduced due to the quantitative shortage of observers, the dispersion of their attention, the accessibility

1 Subpara. "b" paragraph 29 of Art. 9 of the Federal Law of July 21, 2005 No. 93-FZ "On Amendments to the Legislative Acts of the Russian Federation on Elections and Referendums and Other Legislative Acts of the Russian Federation." SZ RF. July 25, 2005. No. 30 (part 1). Art. 3104.

2 Subpara. "g" para. 2 of Art. 1 of the Federal Law of Feb. 15, 2016 No. 29-FZ "On Amendments to the Federal Law "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation" and Article 33 of the Federal Law "On Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation" regarding the activities of observers. SZ RF. Feb. 15, 2016. No. 7. Art. 917.

by transport of locations to be observed, and the simultaneous increase in the amount of information about violations that has to be analyzed within strictly allotted procedural deadlines. The possibilities for monitoring and protecting violated rights were significantly undermined by the introduction in 2020–2021 of extended three-day voting (voting "on stumps") and the introduction of remote electronic voting in certain regions. The three-day vote was first introduced as a single instance during the pandemic when voting for amendments to the Constitution in the summer of 2020. As we have already said, the determination of the manner of this voting was delegated by the CEC. And, apparently, its results turned out to be so obviously impressive for the authorities that it was decided to extend the practice to the next elections, and on the same regulatory terms. Remote electronic voting, which we will certainly talk about separately, was tested in the elections to the Moscow City Duma in 2019 and repeated in the elections to the Duma in 2021. It was in 2021 that the use of remote electronic voting caused a huge scandal, since the results of electronic and paper voting turned out to be completely opposite from one another. Because of its lack of transparency and lack of adequate oversight, remote electronic voting has been heavily criticized and its continued use questioned. The issue has not yet been resolved, but it is quite likely that the aggravation of the internal political situation may, on the contrary, lead to the mass introduction of remote electronic voting as an ideal way for the authorities to achieve the desired electoral result in the absence of proper control of the system.

Thus, a whole range of measures aimed at limiting the possibilities of public oversight was built into the Russian electoral legislation.

Manipulation of the Rules of determination of election results

The fifth group of amendments concerns *the rules for determining the results of elections*— the choice of an electoral formula through which the votes of voters are transformed into deputy mandates. Unfortunately, any electoral formula to some extent distorts the results of the expression of will, and the task of democratic legislation is to smooth out this problem as much as possible. However, in Russia, a group of amendments, on the contrary, is aimed precisely at using the hidden properties of various electoral formulas in the interests of certain candidates and parties. At the same time, both a complete change in the formula and the introduction of minor changes in it can create conditions for a completely legal redistribution of mandates between the winners.

For many years, the electoral formula in the formation of the personal composition of the State Duma deputies remained unchanged—half of the deputies were elected in single-member districts according to the majority system of the relative majority, and the other half were elected in the federal district, according to the proportional system, using the Hare quota, the largest remainder rule and 5% threshold. At the same time, the formation of blocs between different electoral associations was allowed. The turnout threshold was set at 25% of the number of voters. The ballots contained the line "against all." These are the main elements of the formula used from 1993 to 2003. In subsequent years, all of them were change done way or another.

With the adoption of the Law "On the Election of Deputies…" in 2005, a fully proportional electoral system was introduced in Russia using the Hare quota and the rule of the largest remainder, although there were proposals to switch to the Imperiali quota method. In itself, the rejection of single-member districts meant a complete transition to party elections and fit into the logic of reducing political competition, increasing state control over elections, and ensuring a parliamentary majority for the party in power.

After the exclusion from the electoral process of all public associations except for political parties, and a several-fold reduction in the number of the latter, the voters' options were sharply reduced: only a very limited number of options remained on the ballot. Under these conditions, the use of the Hare quota in the distribution of mandates strengthened the advantage of the favorite party. True, more radical proposals were also voiced within the walls of the parliament: on the transition to the use of the Imperiali quota method, which frankly contributes to an even greater increase in the result of the leading party at the expense of "outsiders." But, as already mentioned, on the scale of the parliament, consisting of 450 deputies, this method was recognized as insufficiently effective.

In 2014, the electoral system was changed again. The authorities were forced to return a mixed system with single-mandate constituencies, since with a sharp decline in the rating of the ruling party, maintaining fully proportional elections threatened it with the loss of the parliamentary majority. And vice versa, in combination with single-mandate elections with a fully built vertical of election commissions, it guaranteed the preservation and possibly even an increase in the number of deputy mandates.

The independent mixed system, in which the results of single-seat elections are not taken into account in determining the results of elections under the proportional system, but are simply added to them, contributed to this goal to the maximum, and it was successfully achieved. As a result, the ruling party received 76.22% of the seats in the State Duma with 54.2% of the votes on party lists. That is, *the use of the features of the electoral system in specific political conditions gave a total distortion of the representativeness of the parliament of 22%.*

The size of the threshold has also been subject to repeated changes over several electoral cycles. Thus, even the Law "On Elections of Deputies..." of 2002 stipulated that the next elections after the nearest elections in 2007 would be held using a 7% threshold. The Law "On Elections of Deputies..." of 2005 confirmed this. The increase in the size of the threshold was directly related to the task of limiting competition in elections, since it was aimed at removing a number of political actors from the pre-election process. The increased threshold was supposed to guarantee that relatively small parties that retained state registration after the party reform did not get into the State Duma. As a result, only four parties overcame the threshold, which for many years remained the only parliamentary parties, but at the same time did not at all reflect the entire palette of the country's political life.

In subsequent years, after the decision of the ECtHR in the case of the Republican Party v. Russia, in which the value of the threshold was called into question, certain reservations were introduced to this value—the rules on the so-called preferential mandates for parties that did not overcome the barrier, but nevertheless gained a significant number of votes. Thus, one mandate was given to a party that received from 5 to 6% of the vote, and two mandates to a party that received from 6 to 7%. The transfer of one or two mandates on the scale of a deputy corps of 450 people was absolutely meaningless, but at least somehow imitated democratic procedures. However, these provisions have never been used. In 2014, the threshold was returned to the level of 5%, however, when returning to a mixed independent system, such a measure no longer posed any significant risks for the favorite party.

As we see, all these groups of amendments achieved their goal to such an extent that the Chairman of the Constitutional Court of Russia, in a public speech in the press, was forced to speak about the need to restore the situation "so that the opposition has a real opportunity to come to power within the framework of the Constitution, that is, on

principles of fair political competition."[1] The electoral legislation, which by definition is the key to democracy, has fully demonstrated its reverse anti-democratic properties, subject to certain goals and objectives of the authorities.

Near-electoral amendments

The sixth group is *near-electoral amendments*. This is another very important group of amendments, the names of which are not directly associated with elections, but restrict the tools of democracy and the principle of change of power. We are talking about extending the terms of office of the president and parliament, restricting the right to a referendum, redistributing jurisdiction in favor of one of the branches of power, lifting restrictions on the number of elections of a senior official, and complicating the procedures for applying to constitutional justice. The group includes mainly constitutional amendments and amendments to federal constitutional laws directly related to elections or other types of voting, which are openly authoritarian in nature. The adoption of such amendments is characteristic of periods of retention of power, when the adjustment of electoral norms alone is not enough to achieve the goal.

Perhaps our classification will be useful not only to scholars. It happens that the criterion of authoritarian amendments to legislation as a marker of changes in the political regime turns out to be important for the entire population. Even if these amendments do not bear very frank signs of the seizure or retention of power. Such a marker usually works without any special classification, but only if there is a serious authoritarian inoculation, when the population develops natural counter-authoritarian antibodies and the social organism automatically rejects any, even the weakest signs of restrictions on the change of power.

It happens. And here the quite recent (2017) situation in Paraguay is indicative. The Constitution of the Republic contains Article 229, according to which the President holds office for five years, and this period cannot be extended. Such an article appeared after the 34-year rule of the dictator A. Stroessner as an important guarantee against a return to authoritarianism. In 2016, a constitutional amendment was proposed to deputies of both houses of Congress, at the suggestion of the former and

1 V.D. Zor'kin, *Bukva i dukh Konstitutsii* (Letter and Spirit of the Constitution). *Rossiyskaya gazeta*, Oct. 10, 2018 // https://rg.ru/2018/10/09/zorkin-nedostatki-v-konstitucii-mozhno-ustranit-tochechnymi-izmeneniiami.html.

current presidents, giving the right to the President (and vice president) to run for a second time in a row or after skipping one presidential term. On the night of March 31, 2017, the vote on the amendment took place in a closed session of the Senate. Twenty-five senators out of 45 voted for the amendment.

The next morning, the news of the night vote caused an outburst of indignation. Demonstrators surrounded the Congress building in Asuncion, broke through the police cordon and set fire to the parliament. The unrest spread to other parts of the country and lasted almost a week. As a result, the amendment was blocked and repealed.

PART TWO
ELECTIONS AND PARLIAMENT

Chapter 1.
Parliament—Parliamentarism—Elections

The tasks of ensuring special representation corresponding to the goals of a certain political regime have always been solved with the help of electoral legislation or the creation of special electoral practices. The composition of the parliament, formed according to various rules, will take into account the will of citizens to a greater or lesser extent and will ensure a level of representation that corresponds to the goals and objectives of the authorities. To what extent the resulting parliament will be based on the authority of the society that elected it, and to what extent the election results will be programmed can all be predetermined by the electoral legislation. Thus, on the basis of a study of the transformation of the electoral systems of individual countries, conclusions can be drawn not only about their very state, but also about the forecasts for the effectiveness of the functioning of the parliaments formed on their basis. And vice versa—one of the main indicators of what the electoral legislation will be like or in what directions its transformation will take place is the true purpose of the parliament and its place in the system of separation of powers.

Over the past 20 years, three processes have been observed simultaneously in Russia: an intensive permanent transformation of the electoral legislation, a steady gradual decrease in the electoral activity of citizens and an increase in dissatisfaction with the parliament, with a simultaneous external intensification of the activity of the highest representative body of power, accompanied by a decrease in the quality of laws. A priori, there is a dependence among all three processes is felt. However, a feeling is not proof. To correct the current situation, at least a systemic analysis and an attempt to identify the relationship and interdependence are needed.

Parliament and elections

From the very first lines of this book, we say that the main goal of free and fair elections is the formation of an authorized body that, on behalf of the population, adopts generally binding rules of conduct and is a counterbalance (controller) to the executive branch. But if in liberal democracies elections work as a tool for changing power, and reflect changing public interests, then controlled elections in authoritarian conditions serve to preserve the status quo, helping rulers stay in power[1] through artificially formed parliaments that obediently change the rules of the game to suit the needs of autocrats. Keeping the incumbents in power is a priority goal and is achieved at any cost.

It is the electoral system, embodied in the electoral legislation, that largely determines the role, place and significance of the parliament in the system of democratic constitutionalism. One of the main criteria of this system is "an institutional arrangement for making political decisions in which individuals acquire power through competition for votes."[2] K. Popper wrote that "in a democracy, the people can remove the government without bloodshed. Thus, if those in power do not guard the social institutions that enable the minority to effect peaceful change, then their rule is tyranny."[3] These statements in relation to the electoral law are analyzed in detail by M.A. Krasnov in his article "The voter as an official position."[4]

Despite the French origin of the word "parliament," medieval England is considered to be its homeland, where in the 13th century, against the backdrop of economic difficulties and the weakening of the king's power, parliament arose as a body of estate representation, which included large feudal lords, representatives of counties and cities, and also

1 M.V. Grigorieva, *Institut vyborov v avtoritarnykh rezhimakh: diskussi v sovremennoy zapadnoy politicheskoy nauke* (The Institute of Elections in Authoritarian Regimes: Discussions in Contemporary Western Political Science). *Politicheskaya nauka* (Political science)(2012). No. 3, 307–317.

2 J.A. Schumpeter, *Capitalism, Socialism and Democracy*,transl. from English. Foreword and general ed. V. S. Avtonomov. Moscow. Economics (1995) // http://www.libertarium.ru/lib_capsocdem (accessed 04.02.2017). Part 4. Ch. 22.

3 K.R. Popper,*The Open society and Its Enemies*, in 2 vols. Vol. 2: *The time of false prophets: Hegel, Marx and other oracles*, transl. from English. Ed. V. N. Sadovsky. Moscow. Phoenix; International Foundation "Cultural Initiative" (1992), 187.

4 M.A. Krasnov, *Izbiratel' kak dolzhnost'* (The voter as an official position). Comparative Constitutional Review, 2017. No. 4 (119), 13–29.

the higher clergy. These estates constituted the social base of the supreme state power—the power of the monarch—and quantitatively were in a significant minority.

Initially, the main task of the parliament was to limit the absolute power of the monarch to resolve the most painful issues for the estates represented in it: taxation, disposition of the treasury, and the declaration of war. All these issues, which were initially only special cases of the participation of estates in lawmaking, nevertheless laid the foundation for the main legislative function of parliament. Subsequently, the range of legislative problems that required the participation of Parliament only expanded until it eventually became practically unlimited.

In addition to the right to participate in the publication of laws, a right shared with the king, for the first century of its existence, the English parliament secured for itself another important authority, which forms the basis of parliamentarism to this day—the right to exercise control over the highest officials of the state. Including to act as a quasi-judicial body in the framework of the impeachment procedure.[1]

Even in the heyday of absolutism in England in the 14th and 15th centuries, parliament was not abolished. And although its role was significantly reduced, the function of control over the establishment of taxes was preserved. It is from there that the main principle of tax law originates—"no taxes without representation." Omitting the details of the long confrontation between parliament and the monarch in the 16th-17th centuries, which are insignificant for the purposes of this study, it should be noted that it resulted in the Glorious Revolution of 1688, which finally defined the English state as a constitutional monarchy. The Bill of Rights, issued in 1689, finally secured the limitation of royal power to the power of Parliament. Under the provisions of the Bill of Rights, it was illegal to suspend laws or their enforcement and collect taxes and fees in favor of the Crown, unless such actions were consented to by Parliament.[2] At the same time, the joint participation of both Parliament and the King in the legislative process was finally established: "Everything that is pleasing to Their Majesties and to which they have agreed, must be declared, legalized and established by the authority of this Parliament and must act, remain in force and remain the law of this

1 *History of the state and law of foreign countries: a textbook for universities*, in 2 parts, Part 1,Eds. O. A. Zhidkov and N. A. Krasheninnikova. Moscow. Norma (2004), 351.

2 English Bill of Rights 1689 / published on the website of the Lillian Goldman Law Library, Yale Law School // http://avalon.law.yale.edu/17th_century/england.asp.

Kingdom for all time."[1] The law, therefore, could not be adopted without the participation of parliament, although its adoption required the consent of the monarch.

Similar models of parliament became widespread in a number of other countries: in France, Spain, the Netherlands, Poland, and Hungary.[2] And approximately in such a conceptual modification, the parliament has existed to this day. It retained unconditional priority in the field of lawmaking, broad powers to control top officials and reliance on a social base in the form of population groups that participated in the formation of a representative body. Of course, over time and as the number of states with a monarchical form of government shrank, the legislative powers of the parliament were expanded. Up to the point when its participation in lawmaking became not just one of the conditions, but the only form of passing laws. The head of state has only the right to sign or veto them. In parallel, there was a process of consistent expansion of the social base of the parliament, which ended with the inclusion of all adult citizens in this base.

In other words, the parliament arose as a tool to limit the power of the monarch in certain issues that were most sensitive to the estates that formed the social base of power. The method of restriction was the involvement of representatives of estates in the process of adopting laws. In addition to the legislative function, the parliament assumed the function of controlling the activities of the executive branch as a whole.

Simultaneously with the gradual weakening of the ruling classes, there was a quantitative and qualitative growth of the bourgeoisie, which claimed its rights to participate in the adoption of state-power decisions and claimed the role of a new social support of power. It was from here that the need arose to change the ways of forming the parliament— the transition from estate representation to territorial representation and finally to nationwide representation. So gradually the parliament was transformed into a body of people's representation. The main essential content of the parliament is its representative character. It is that which allows this body, which is a kind of scaled-down model of society at a certain stage of its development, to provide an acceptable peaceful consolidated coordination of interests when making govern-

1 V.A. Tomsinov, *The Glorious Revolution of 1688–1689 in England and the Bill of Rights*. Moscow. Zertsalo-M (2010), 242.

2 A.I. Lukyanov, *Parlamentarizm v Rossii* (Parliamentarism in Russia (questions of history, theory and practice)). Moscow, Norma: INFRA-M (2010), 11–12.

ment decisions. The representative character is precisely the evolutionary revealed purpose of parliament, without which it loses its original meaning and ceases to fulfill its functions.

But the parliament is not just a collective body of representing the people, it is an irreplaceable balancing institution in the system of separation of powers, ensuring a fine alignment of the interests of the state and society. Moreover, as the social base of power expands, the role and importance of the parliament increases, as it becomes the spokesman for the interests of an ever wider range of people. And then the theory of parliamentarism takes the place of the theory of representative government.[1]

Parliamentarism—Parliament—Elections

Parliamentarism is no longer just a government based on a more or less reliable representation of the interests of the population in the adoption of state-power decisions. It is a special system of state management of society, which is characterized by the division of labor between the legislative and executive branches of power with a privileged position for parliament. Such a privileged position of the parliament is ensured by the procedure for its formation and the presence of special protected rights on a certain range of issues.

Therefore, the most important foundations of modern parliamentarism are free and fair elections, together with a reasonable functional delimitation of powers between the branches of government in the presence of a mutual system of checks and balances. Naturally, both of these "pillars" on which parliamentarism stands are closely interconnected and interdependent. But nevertheless, the primary determining role in the process of forming an authoritative parliament with the proper level of popular representation is played by the procedure for organizing and conducting elections (the electoral system), formalized in the electoral legislation. It is the electoral legislation that determines the circle of participants, the rules of the election campaign and the procedure for transforming the will of voters into a concrete result, namely the personal composition of parliament. That is, we are talking about

1 *See*G.D. Sadovnikova, *Predstavitel'nye organy v RF* (Representative bodies in the Russian Federation: problems of historical conditionality, modern purpose and development prospects): author's abstract of dissert.doc. of legal sciences. Moscow(2013), 33.

the conditions for citizens' access to participation in the management of state affairs. The freer and fairer these conditions are, the more authoritative will be the decisions of the parliament and the public's trust in it, since the reliability of the election results gives rise to mutual responsibility to each other of the voters and the elected. And vice versa, the less free and fair the elections are, the further the composition of the parliament is from public expectations, the lower the confidence in its decisions and their acceptance by the subjects of legal relations will be. As a result, a decrease in confidence in the parliament can be transformed into alienation of the population from the state and the emergence of tension.

Parliamentarism cannot exist without parliament. A strong, authoritative and sovereign parliament is its foundation. But a parliament can exist without parliamentarism, because the quality of parliamentarism—the highest quality of a real parliament—can be lost by it. A weak or dependent parliament cannot fully exercise its functions in such a way as to ensure the full-fledged existence of the system of parliamentarism. Then it truly becomes a parliament of a completely different kind—a relatively representative institution that performs legislative functions.

It is even more dangerous when a certain body called parliament actually becomes its complete simulacrum notwithstanding the constitutionally embodied principle of separation of powers and other democratic institutions. Unfortunately, this situation is typical for many post-socialist countries that proclaimed the democratic foundations of their development, but did not have time to adapt to the true content and meaning of democratic processes. These countries strive to demonstrate adherence to democratic values and principles while implementing in practice completely different state-power practices. Today, political scientists are actively discussing the question of what kind of political regimes such systems belong to, calling them hybrid or pseudo-democratic.[1] However, hardly anyone doubts that such regimes are not truly democratic.

1 *See, e.g.*,E.M. Shulman, *Tsarstvo politicheskoy imitatsii* (The kingdom of political imitation),Vedomosti. August 15, 2014 // http://www.vedomosti.ru/opinion/articles/2014/08/15/carstvo-imitacii (accessed 09/19/17); E.M. Shulman, *Gibka kak gusenitsa, gibridnaya Rossiya* (Bending like a caterpillar, hybrid Russia. Information agency "Rosbalt." January 2, 2017 // http://www.rosbalt.ru/russia/2017/01/02/1579820.html (accessed 9/19/17).

Real democratic political regimes in the conditions of a republican form of government or a limited monarchy of the modern type need parliamentarism. Such countries are aimed at forming the most representative parliaments to take into account the current opinion of society in the development of generally binding rules of conduct. Conflict-free interaction between the authorities and society, as well as high efficiency of law enforcement, are possible only if consensus is reached in the adoption and implementation of generally binding rules of conduct. Under the conditions of consensus, it is beneficial and easy for the state to assume and implement the obligation of self-restraint and the transparency of its institutions.

However, a number of states that in the last decade of the 20th century simultaneously adopted and institutionalized the entire set of democratic electoral principles and standards accumulated and achieved through great effort by other countries began to reverse their interpretation and practical application in order to erode popular representation and monopolize individual power.

Of course, the basis of parliamentarism is not only elections. The loss of the qualities of parliamentarism by the parliament depends not only on elections. The division of powers between the legislative and executive powers also plays a huge role in determining the place and role of the parliament. Nevertheless, the procedure for the formation of representative bodies (the electoral system as the implementation of the rules established by the electoral legislation) remains one of the most important factors determining parliament's significance and effectiveness of functioning. Therefore, the real goals of pseudo-democratic regimes, aimed at strengthening the executive power to the detriment of the representative, as a rule, are achieved precisely through the ongoing permanent transformation of electoral laws. That is, without clearly visible coups. This gradual transformation is outwardly not as noticeable as explicit constitutional amendments, but at the same time, with its help, the desired result can be quite successfully achieved—to deprive the parliament of the qualities of parliamentarism, turning it into an obedient appendage of the executive branch or into a simulacrum of a representative body.

The process of consistent democratization of suffrage in the world and understanding of its criteria were long and difficult. This process was different in different countries. It was accompanied by ups and downs, even by a certain withering of parliamentarism and a decrease

in the role of representative institutions. But as progressive electoral practices accumulated, the situation began to level off—parliaments formed according to new standards gradually began to regain their lost positions (France, Finland, the USA, Israel).[1] In any case, the fact that the effectiveness of parliamentary systems depends on the quality of electoral legislation today can be considered proven.

The formula that was developed as a result of this long journey is fixed in the European Convention for the Protection of Human Rights and Fundamental Freedoms. It sounds like this: "free elections held at reasonable intervals by secret ballot under such conditions as to ensure the free expression of the will of the people in the choice of legislative bodies."[2] Actually, it's not just a phrase. These are the conditions for the formation of the most representative parliament, consisting of rather rigid principles and standards determined by special intergovernmental bodies.[3] These standards contain the requirements that electoral legislation and electoral practices must comply with in order to ensure the freedom and fairness of elections of representative bodies of power. Therefore, the electoral process and the electoral system applied in the state, which should be based on international electoral standards, can no longer be considered the prerogative of national legislation alone. Given a constantly integrating world, the state cannot ignore universal

1 For example, during the Watergate case in the United States, the real power of Congress increased dramatically, as presidential power was compromised. However, with the advent of the Republican administration of Ronald Reagan in 1981, the system of checks and balances stabilized due to the activation of presidential power. In the Fifth Republic of France, after the departure of President Charles de Gaulle, as Gaullism waned, there was a process of increasing the real powers of the National Assembly and restoring parliamentarism. This process was most fully expressed during the years of Francois Mitterrand's tenure. French President Nicolas Sarkozy promised to expand the role of parliament during his election campaign in 2007. Shortly after his election as president, significant amendments were made to the Constitution aimed at strengthening parliamentary power in France. They prohibit the president from serving more than two consecutive terms and give parliament the power to veto certain decisions of the president, and limit the government's control over the work of parliamentary committees.

2 Art. 3 of Protocol No. 1 of March 20, 1952 to the Convention for the Protection of Human Rights and Fundamental Freedoms (signed in Rome on November 4, 1950). SZ RF. Jan. 8, 2001. No. 2. Art. 163.

3 *See* Founding documents of the Venice Commission in the field of electoral law and political parties. Chisinau: Cu drag, 2016 (F.E.-P. "TipografaCentrală").

values and the experience accumulated by other states and inter-governmental associations.

The Political regime and parliament

Depending on the political regimes (and the methods of achieving the true goals of power), parliaments or those bodies that we may conditionally call parliaments differ. In democratic political regimes, they have an unequal, but in any case wide range of powers. In non-democratic political regimes, representative organs are most often puppets, simulacra, or non-existent.[1] The circle of their official or real powers is narrowed. In particular, in personalist regimes, the leader is forced to constantly weaken the representative institutions of power because of the fear of creating strong competitors for himself, capable of limiting his power.[2]

To create a puppet body or a simulacrum parliament, there is no point in having a democratic electoral system. More precisely, a puppet parliament cannot be formed through democratic elections. And vice versa, it is impossible to create a parliament that meets the requirements of parliamentarism by all criteria through non-free and non-competitive elections.

When determining the functional purpose of parliaments and, accordingly, the main parameters of electoral systems, the political regime is primary in comparison with the form of government. Within the same form of government, different electoral systems and completely different electoral legislation are possible. The clearest example of this is the RSFSR-USSR at various stages of its statehood. Thus, the Soviet republican form of government under the conditions of the political regime of the dictatorship of the proletariat (1918–1936) assumed a definite composition of representative bodies of power. That composition required the complete exclusion from participation in the elections of all "exploiters" (persons using hired labor), the clergy, officers of the tsarist army and members of the imperial court, as well as the unequal repre-

1 In a number of Muslim countries there is no parliament, the monarch is the legislature: the king, emir, sultan (Saudi Arabia, Qatar, Oman) or the council of monarchs (emirs) of the constituent parts of the federation (United Arab Emirates).

2 *See* M. Gaidar, M. Snegovaya, *Poznaetsya v sravnenii: kak dolgo zhivut diktatury* (It is known in comparison: how long dictatorships live), *Vedomosti*, July 29, 2013 // http://www.vedomosti.ru/newspaper/articles/2013/07/29/kak-dolgo-zhivut-diktatury.

sentation of the peasantry in comparison with the workers in the Soviets.

Under the conditions of the republic of working people (1936–1988), only working citizens were allowed to participate in the adoption of state-power decisions (endowed with passive suffrage). Therefore, candidates for deputies of the Soviets could be nominated exclusively by labor collectives. All other legislative restrictions on voting rights were abolished. But under the constitutionally established authoritarian regime[1] of the leading and guiding role of the CPSU, the highest representative body of power—the Supreme Soviet of the USSR—could only be a puppet, artificially formed legislative body that met twice a year at its solemn-ceremonial meetings to approve already adopted decisions (decrees of the Presidium of the Supreme Soviet) or a formal vote, without discussion, for fully drafted laws. Therefore, with all the external electoral freedom during this period, there were no real elections in the country. The nomination of candidates took place according to an order from above according to the approved norms of representation (age, gender, profession, education, nationality, party membership), and the voting itself was uncontested. That is why in dictionaries and textbooks the Supreme Soviet was not called parliament, and parliamentarism and the separation of powers were denied as bourgeois teachings and were replaced by the theory of "Soviets—working corporations."

But as soon as the goals and objectives of the authorities shifted towards the democratization of the political system and the change of the political regime, the situation changed dramatically. Under the same form of government, the electoral system was immediately reformed, free alternative elections were held, and the highest representative body of power was elected, which was associated only in name with the former Supreme Soviet, but at the same time met the basic characteristics of parliamentarism. It was called the parliament with glass walls, since all its meetings, discussions and voting were transparent and accessible to the entire population of the country.

Just as the reverse change in the goals and objectives of power from democracy to authoritarianism at the beginning of the new millennium within the framework of the same democratic Constitution entailed an

1 A political regime in which the real social base of power is extremely narrow (class, party, elite group). Power is exercised by bureaucratic management methods with minimal participation of the people and in the absence of democratic rights and freedoms (Spain during the reign of Franco, Chile during the rule of Pinochet).

entire chain of authoritarian actions and results—from the consistent restriction of political competition through the transformation of electoral legislation to the formation of a non-representative dependent body, not capable of exercising parliamentary functions, but remaining a parliament in name. As already mentioned, autocrats cannot win fair elections, since their interests are at odds with the public. On the other hand, controlled elections are an effective tool for co-opting opposition or pseudo-opposition forces into controlled legislatures. They provide a forum to which access is controlled, where opposition demands do not escalate into acts of opposition to the regime, where compromises are worked out without undue public scrutiny, and where agreements reached will be presented wrapped in legal form.

"Feed and rule" is the formula for autocracy. It was on these principles that the Soviet nomenklatura existed in conditions of total shortages and an overall extremely low quality of services. It had a special access to goods, determined by the level of its loyalty and its place in the hierarchy.[1] This is called the co-optation of elites to stabilize the political regime. Elite co-optation involves the incorporation of lower-level elites or potential rivals into a privileged class. At the same time, the creation of co-opted institutions makes it possible to split up the opposition. It is believed that the more successfully a regime is able to co-opt elites, the more likely it is to exist for a longer period of time. The more the "rules of the game" that form the basis of a political regime allow co-opting lower-level elites and potential rivals to the ruling group, the more one can speak of its ability to maintain stability and repel challenges. Management of co-opted elites is often handed over to the dominant party.

Legislatures are ideal for co-optation. The ruler can choose the groups that will be given access to the flow of information about the implementation of the relevant agreements and control over them to build the basis of loyalty to the regime. For example, King Hussein of Jordan invited the Muslim Brotherhood, a moderate Islamic group, to influence educational and social policy in exchange for cooperation with the regime. Polish communists have repeatedly spoken out in favor of the participation of certain Catholic groups in political life. Thus, in 1990, the former first secretary of the Central Committee of the Polish United Workers' (Communist) Party, Edward Gierek, said in an interview that he was forced

1 T. Kondratyeva, *Kormit' ipravit'*(Feed and rule: about power in Russia in the 16th–20th centuries). / transl. from French by Z. Chekantseva. Moscow, ROSSPEN (2006).

to give seats in the Sejm to a significant group of Catholic deputies in the amount of 25%. This allowed us, Gierek continued, to "*expand the political base of power*."[1]

The direct transfer of wealth and privileges by the dictator to his supporters and the creation of limited "court" bodies of state power are ineffective means for establishing a reliable and long-term contract between the ruler and the elites. Both sides have opportunities and incentives to break it. The power of a dictator will not be limited by the institutions he himself created and staffed. And it is more profitable for members of the ruling elite to take the place of a dictator than to exist at the expense of his handouts, which, moreover, he can take away at any moment.

The institution of regular elections is a tool for providing this access according to certain and understandable rules and a guarantee that control is transferred to the ruling party for a long period of time. Access to national authorities is more valuable than access to an advisory board under a dictator: the privileges are higher, but the danger of losing them is less. Of course, the dictator will still have the ability to remove a dangerous politician, but to repeat such actions too often would be a dangerous breach of contract with the elites already united in a powerful organization. The institution of elections as a set of established rules will attract new politicians to the ranks of the ruling party who want to achieve higher positions over time. As long as the ruling party retains a monopoly on the distribution of power positions, ordinary politicians have a powerful incentive to serve it, and the loyalty of the party elite is maintained by the existence of institutionalized inheritance of leadership provided by the same electoral institutions.[2]

Parliament—Elections—Quality of laws

A parliament that is not quite representative, and even more so a parliament consisting of persons who are to a certain degree dependent on the-

1 *See also*J. Gandhi, A. Przeworski, *Avtoritarnye instituty isokhranenie vlasti avtokratami* (Authoritarian Institutions and the Preservation of Power by Autocrats. Inviolable stock. Debate about politics and culture). 2018. No. 5, 200–222 of the paper version of the issue;R.F. Turovsky, M.S. Sukhova. *Kooptatsiya oppozitsii v regional'nykh parlamentakh: igra s narusheniem pravil* (Co-optation of the opposition in regional parliaments: a game with violation of the rules),Politia. (2021). No. 2 (101), 121–143.

2 *See*M.V. Grigoryeva, *Institut vyborov r avtoritarnykh rezhimakh* (The Institute of Elections in Authoritarian Regimes: Discussions in Contemporary Western Political Science).*Politicheskaya nauka* (Political science). (2012). No. 3, 307–317.

executive branch, is not able to fully comprehend and formulate the public demand in its decisions. A parliament not formed on the principle of selecting the best is even less able to do this. A parliament in which there is no discussion due to the lack of political competition runs the risk of making decisions that are not fully thought out and not well designed. The presence of all three factors in one parliament at the same time is a huge risk and the reason for the total decline in the quality of laws.

And this is natural. The interdependence of the processes of parliament formation and the results of its activities interestsscholars all over the world. Even more than half a century ago, Oxford professor Carleton Kemp Allen wrote about this: "Legislative activity is a characteristic lawmaking tool of modern societies, expressing the relationship between the individual and the state. It is not, however, a relationship that takes the form of an order from a superior to a subordinate. It is a process of action and interaction between constitutionally organized initiative and social forces." Consequently, legislation is the result of the interaction of various social forces on a constitutional basis. If the body responsible for the legislative process is not formed properly, then the normal process of such interaction is impossible, and the legislative result will not be adequate and reliable.[1]

The position of C. K. Allen is also confirmed by modern researchers. British political economist Abby Innes draws a clear conclusion: "After the accession of the countries of Eastern Europe to the EU, the systematic attempts to roll back democracy have succeeded only where, for political and economic reasons, it has so far failed to create effective representation: in Hungary."[2] It has to be this way. The parliamentary form of government is the main barrier to the restoration of authoritarianism in post-socialist countries. Even with mixed and presidential forms of government, the parliament plays a huge role in any constitutional transformations that lead to a change in the political regime. It is impossible to carry out such transformations without a parliament. And therefore, the first and main target of the elites, whose goal is to create a mechanism for the irremovability of power, is precisely the parliament and the procedure for its formation.

1 C.K. Allen, *Law in the Making*. Oxford (1958), 606.

2 Abby Innes. *The political economy of state capture in central Europe* // http://eprints.lse.ac.uk/54670/1/__lse.ac.uk_storage_LIBRARY_Secondary_libfile_shared_repository_Content_Innes,%20A_Political%20economy_Innes_Political%20economy_2014.pdf. R. 2.

A parliament in which one of the factions numerically prevails over all the others will naturally strive to reduce parliamentary procedures and simplify the stages of the legislative process, although it is precisely the legislative procedures that are an additional filter specially developed by mankind, guaranteeing the adopted laws from errors, defects and conflicts. Even the speed of passing a bill affects its quality—the longer the legislative procedure, the more active the public discussion, the more feedback and comments it receives from future subjects of legal relations, and the higher the quality of the final document emerging from the parliamentary walls.

> The circulatory system of lawmaking is competition, and monopoly is a stroke. Therefore, the electoral legislation should be structured in such a way as to prevent the formation of a stable majority in parliament. Any faction that has a 50% plus one vote package is a killer of parliamentarism. Parliament should be pluralistic and consist of many factions and groups that will enter into coalitions among themselves and force the executive branch to complex negotiation processes.1

With an artificially formed majority in parliament, any discussion is extremely unlikely. The faction with the majority does not need anyone to make decisions—it can easily block any initiatives and objections. But we must not forget that the government, formulating the goals and objectives of the state itself, in its narrow circle, is at great risk. Under the conditions of the functioning of a pocket parliament, the risk of discrepancy between the goals of power and the interests of society is very high. This, in turn, with a high degree of probability implies the vulnerability and unfeasibility of its decisions.

If the procedure for forming a parliament does not provide it with the necessary representative qualities, this directly affects the quality of its performance of its functions and the results of its activities. In addition, an artificially created dependent parliament deliberately transforms its electoral legislation in such a way that the representative body formed would not be able to normally perform parliamentary functions, but would be a weak-willed appendage of executive power and an inarticulate expression of its will.

The dynamics of the development of modern Russian electoral legislation testify to a situation in which a decline in the functional qualities

1 E. Shulman, Legislation as a political process. Moscow. Moscow School of Civil Education (2014), 134.

of the Russian parliament is inevitable. For example, the 1999 elections have a higher representativeness index than the 1995 elections, and by 2007 this index is falling again. This trend testifies to the multidirectional goals of the transformation of the electoral legislation in the 90s and after 2002.[1] According to the results of the elections of the State Duma of the 7th convocation, the approximate total distortion of the parliament's representativeness was 22%.

Only 12% of Russians surveyed believe that Russia does not need new parliamentary parties. This is much less than the figures for voting for systemic parties in elections. Even taking into account all the cheating and stuffing, the percentage of opponents is radically less than the percentage of supporters. According to the latest Public Opinion Foundation (Russ. abbr. FOM) poll, a total of 63% of respondents expressed their readiness to vote for the four systemic parties. This last figure should not be taken at face value either—we do not know how much the often discussed factors of refusing to answer, demonstrating loyalty, following the majority, etc. increase the rating of the ruling party. Nevertheless, the difference of more than five times speaks for itself. Many of those who are ready to vote in conditions of absence of choice and even actually reach the polling stations nonetheless feel unrepresented. And many of the sincere supporters of one or another systemic party feel the situation when the views and interests of the majority of fellow citizens are not represented in the political spectrum as some kind of disorder.

In the "systemic" political spectrum, there is neither a liberal party (according to the poll, 34% of voters consider it missing), nor a nationalist one (18%), nor one representing the views of Orthodox fundamentalists, habitually disguised as supporters of "traditional values" (10%).

In an ideological sense, the voter is given a choice between simple loyalty to the current government, which is expressed by voting for United Russia, and nostalgia for the USSR, and adherence to the Soviet tradition, which can be expressed by ticking the Communist Party of the Russian Federation—the only one, we must give it its due, of the systemic parties that has preserved one way or another at least some independent ideological face. In terms of representing the interests of social groups, the beneficiaries of oil authoritarianism are represented, from security

1 *See* A.V. Karpov, *Izmerenie predstavitel'nosti parlamenta v sistemakh proportsional'nogo predstavitel'stva* (Measuring the representativeness of parliament in systems of proportional representation). Preprint WP7/2006/04 Ser. WP7. Moscow. GU HSE (2006).

officials to defense plant workers, and, relatively speaking, pensioners. All others are not represented; in fact, the entire active part of society: up-to-date citizens demanding freedom and respect for the individual, working poor demanding for decent wages and human working conditions, private business demanding deregulation and a favorable economic climate, young families who are in an even worse situation than the elderly, but not receiving even half of their support and attention to their problems. This list can be continued.

That is, about 60% of the political preferences of citizens are not represented in the body whose main task is to represent the population.[1] Instead, the majority is artificially provided in parliament by way of certain political forces—passive-loyal or active supporters of the right of an authoritarian type as the will of the ruling class elevated into law, that is, adherents of legal regulation on the principle of "accepted, so please execute." This principle works in the context of the reduction of modern requirements for law and the distortion of its constitutional (Article 18 of the Constitution) purpose. Instead of a measure of justice and protection of human rights, completely different criteria are applied to the content of legal norms—compliance with the interests of the autocratic group in power. Accordingly, the quality of the adopted laws will be assessed in terms of precisely these criteria, and not in terms of the requirements for legal norms in accordance with the international obligations of the state. From this point of view, from the standpoint of the rule of law, the quality of lawmaking will naturally decline to the level when laws cease to have a legal character. And vice versa, from the standpoint of the interests of the regime, the quality of mandatory regulations will become higher, but such regulations have nothing to do with law, but are in the nature of state arbitrariness.

The Importance of the Personal Composition of Parliament

Based on the generally accepted and scientifically substantiated properties of the parliament, which are necessary for the performance of its functions (the control function, the legislative and representative functions), it is assumed that the effectiveness of its activities directly depends on the personal composition. The personal composition that would ensure the effective performance of the parliament's functions, in turn, de-

1 E. Paneyakh, *K chemu privodi ostriy defitsit predstavitel'stva* (What does an acute shortage of representation cause), *Vedomosti*, November 1, 2018.

pends on the method and procedure for the formation of the parliament. The tasks of ensuring special representation corresponding to a certain social base of power and the goals of a certain political regime have always been and are being solved with the help of electoral legislation or the creation of special electoral practices.

The personal composition of the parliament should certainly not be underestimated.. Deputies elected not on the basis of the "best of the best," who did not participate in tough competition but received their mandates through artificial selection, have insufficient motivation to make high-quality parliamentary decisions. For them, when voting for a bill, the determining factor, most likely, will not be the search for a single exact formula for the adopted rule, but the opinion of those with whose help they received a deputy seat. This is a simple human factor. It is on this principle that the authors of electoral transformations carried out in order to achieve certain political goals rely. But the same factor, returning like a boomerang, strikes at the prestige and quality of the work of the parliament.

An attempt was made to correct the situation of total "non-representation" manually. Indeed, the personal and social composition of the State Duma has undergone some changes during the last convocations. The number of "professional politicians" and representatives of business, both federal and large regional, has decreased in it (although these two groups still remain the largest in the deputy corps). The size of the group designated in the tables as "others" and including partly random people who were included in the lists mainly along the lines of the All-Russian Popular Front to demonstrate "social diversity" has decreased by a factor of three. The number of "state employees" and trade unionists has sharply increased. The number of former heads of municipalities increased several times, especially among deputies elected in majoritarian districts. The number of former speakers of regional parliaments has almost tripled, and the representation of the regional nomenklatura has also increased. The number of representatives of the media business, journalists, and astronauts has doubled, and even a rather large group of athletes and sports officials has expanded. The proportion of representatives of regional elites has increased, including from governors' teams.[1]

1 A.V. Kynev, *Gos. Duma RF VII sozyva: mezhdu "spyashchim potentsialom" i partiynoy distsiplinoy* (The State Duma of the Russian Federation of the VII convocation: between the "sleeping potential" and party discipline, *Politia* (2017). No. 4 (87), 66–67 // http://

However, the artificial adjustment did not give much effect. The increase in the share of "state employees" among deputies was the result of a long-term limitation of political competition, due to the interest of the authorities, including regional ones, in the formation of a manageable deputy corps through "budget-dependent" candidates. As a result, an analysis of the composition of the State Duma of the 7th convocation showed that the real diversity of interests again turned out to be concentrated within the United Russia faction. The composition of the factions of other parties (largely due to the general decrease in the number of "listed" seats), in fact, narrowed down to a simple formula, "party nomenklatura plus individual representatives of large regional businesses." It is obvious that no improvement in the representative character of Parliament has taken place. Technically, the reform only led to another increase in the representation of United Russia and to the formation of a mega faction of 343 deputies, which had to be divided not into four, as in the previous two convocations, but into five deputy groups—in order to mask this Central Asian effect of an absolute majority, formed from "overdried" turnout (i.e., greatly lowered by administrative methods) turnout and intense electoral creativity of individual regions that have achieved an increase in their representation. Even the posts in the presidium of the Duma and in its committees were distributed as if the former fractional proportion of the 6th convocation was preserved, where United Russia did not have a constitutional majority.

The long-term artificial formation of the personal composition of the parliament, achieved through a special transformation of the electoral legislation in accordance with personal loyalty and the creation of conditions for the smooth implementation of any plans of the executive (presidential) power, sooner or later inevitably led to the principle of kakistocracy—power of the worst ones. Any bright and strong personality cannot be weakly dependent and silently obedient. But it is precisely such individuals that a priori cannot satisfy the requirements of such a request. If they accidentally penetrate the sieve of artificial selection, then over time they get rid of them by any means, by transforming legislation, by intra-parliamentary procedures for this task, or by creating special administrative practices. The cells of the preliminary selection are getting smaller and smaller.

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politeia.ru/files/articles/rus/Politeia-2017-4(87)-65-81.pdf.

As a result, the state of the personal composition of the parliament in Russia was quite accurately described by the Chairman of the State Duma VyacheslavVolodin, the former deputy head of the Presidential Administration and co-author of a significant part of the electoral reforms of the last decade: "After the parties were formed, party brands began to compete, not personalities. Filling party lists with authoritative people has already become secondary. This is very bad, because the quality of representation in the Duma began to decline."[1] True, Volodin was slightly cunning—the number of parties admitted to elections for 10 years was strictly and unreasonably limited by the state. The removal of real opposition political forces from the pre-election struggle was precisely one of the most important elements in the transformation of the electoral legislation. Naturally, in the absence of political competition, the parties that remained in the political field ceased to care about the quality of the personal selection of candidates. As a result, the 6th State Duma became a parliament with one of the lowest ratings and the saddest legislative result of its work.

1 *See "Zapros na kakie-to intrigi vsegda sushchestvuet"* ("The request for some kind of intrigue always exists." VyacheslavVolodin on the causes and consequences of his demonization) // *Kommersant*. February 9, 2017 // https://www.kommersant.ru/doc/3214419 (date of access: 09/19/2017).

Chapter 2.
Parliamentary Portraits in the Interior of Russian Electoral Legislation

By 2021, seven full parliamentary cycles had passed since the adoption and entry into force of the current Russian Constitution. Looking back at the parliamentary processes a quarter of a century later, one can distinguish several conventional portraits and completely different characters of the Russian parliament, and each of these portraits and characters was largely determined by the state of the electoral legislation.

Following the main directions of this transformation in Russia, the entire post-Soviet period can be divided into two parts: 1993–2002 and 2002–present. These two parts are quite obviously divergent, since the goals and objectives of the authorities in these years were clearly divergent. April 2002 can be considered the starting point in such a division of history, when one of the factions of the State Duma violated the so-called "package agreement" on leading positions in the chamber and when representatives of one party received a majority of votes in the Duma Council. Since that moment, the "face" of the parliament has changed dramatically, and at the same time, the trajectory of reforming the electoral legislation that had been preserved since the first elections after the adoption of the Constitution in 1993changed, and its active transformation began. This transformation, in turn, increasingly changed the parliamentary appearance, which by now has almost reached the state of the grotesque.

First portrait. 1993–2002

In 1993, Russia introduced a new, completely unusual electoral system, in comparison with the old Soviet single-mandate, majority system of an absolute majority, a parallel mixed-member electoral system, combining the majority system of a relative majority and a proportional one with

closed lists. And although in the first six years the basic electoral laws underwent several revisions and were subjected to numerous clarifications, it was not so much about changing its content as about adapting to realities. Despite the explosive public interest in the powerful arsenal of electoral techniques accumulated by world practice, until 2002 elections in Russia were quite competitive, free and more or less fair.

The portrait of the parliament formed as a result of such elections was quite consistent with the electoral situation. The first two and a half convocations of the State Duma were very active and productive, and the activities of the chamber aroused the keen interest of voters. It was an argumentative coalition parliament, in which none of the factions had a majority and therefore there was always a tough debate. But at the same time, the deputies knew how to reach an agreement. We gave a fairly detailed characterization of this parliament when describing the parliamentary coup d'état.[1] With an extremely small number of deputies outside the factions (about 2–3%), it was rather difficult to determine the exact alignment of forces "from left to right," since the the formation of blocs of deputy groups on various issues on the agenda was situational. Most of the issues on the agenda caused a lively discussion, which resulted in the formation of short-term blocs between various parliamentary factions. The Duma worked in a mode of constructive interaction with the Federation Council, which during the transition period was also elected, active and fully fulfilled its mission of checking laws for compliance with the interests of the subjects of the federation.

The Duma of the 1st convocation (1993–1995) had a difficult time. The transitional parliament faced extremely complex tasks. It not only had to determine its true place in the system of separation of powers and interaction with the president, who was taken out of this system by the Constitution. The split-up of the USSR, the formation of the Russian Federation as an independent state, and the adoption of a new Constitution required changes in the entire basic state legal framework. Therefore, the parliament had to adopt a number of complex transitional laws in the shortest possible time (in less than two years), without which the further functioning of state power in Russia would have been impossible.

The Duma of the 1st convocation was remembered for its permanent conflict with the President. On several occasions it raised the issue of no

1 See Chapter 1, 54–56.

confidence in the government; the Communist Party faction attempted to organize the impeachment of Boris Yeltsin and adopt amendments to the Constitution that gave the parliament the right to approve power ministers and make decisions of no confidence in individual members of the government.

Among the high-profile decisions of the parliament of the 1st convocation are the amnesty of the participants in the "putsch" of August 1991 and the defenders of the Supreme Soviet of 1993, as well as the vote of no confidence in the government in July 1995.

During two years, the deputies adopted 461 laws, 310 of which came into force. Among them are all electoral laws, the laws "On Arbitration Courts" and "On the Constitutional Court," "On the Referendum," the first part of the Civil Code, as well as the Family and Arbitration Procedure Codes. In general, this is an almost unrealistic amount of work for the parliament, which was just formulating and mastering in practice its internal rules, including the basics of the new law-making process. And in two years of work, it also had to adopt the budget three times: for 1994, 1995 and 1996. And the Duma coped with this difficult task, despite factional differences.

The Duma of the Second Convocation (1996–1999). In this convocation, the left opposition represented by communists and agrarians, including single-mandate members, controlled almost 50% of the votes and interfered with the initiatives of the Kremlin and the government with all its might. The deputies tried to restart the procedure for impeaching Boris Yeltsin, but were defeated.

Relations between the Duma and the president escalated during the voting on the candidacy of the head of government—the deputies several times disrupted this voting and rejected the candidacies of Viktor Chernomyrdin and Sergei Kiriyenko proposed by the head of state. The situation was acute in the spring and autumn of 1998, when the Duma, after a third vote, and even then only under the threat of dissolution and early elections, approved Kiriyenko as head of government. As a result, due to a number of government crises, the deputies of the second convocation voted ten times for the candidacy of the head of government: in the summer of 1996, three times in April 1998, three times in September-August 1998, and in May and August 1999.

Despite the tough confrontation with the president and the executive branch, the Duma managed to develop and adopt the most complex laws based on new constitutional principles and values: the Criminal

Code, the Penal Code, the Budget Code, the first part of the Tax Code, the second part of the Civil Code, the Forest Code, the Air Code, Urban Planning codes, as well as the Merchant Shipping Code. For the uninformed, we explain that codes are the pinnacle of lawmaking, the most time-consuming and painstaking rule-making work in which a large document is laid out in a single logical system, and includes both general and special norms and unifies a huge number of definitions. Taking into account that the 1993 Constitution established goals, tasks and principles of legal regulation radically different from the Soviet tradition, such work was especially difficult. Yes, of course, parts of the old codes "moved" to the new ones. Purification does not happen all at once. But in general, it was completely different and very modern legislation, developed and achieved through effort by scientists and practitioners. This is especially true of civil legislation, which was prevented from developing in Soviet times by the absence of the right to private property and freedom of entrepreneurship in the constitutions. In fact, after a 70-year break in private law, everything was built and restored anew, since the centuries-old experience and knowledge in this area were not lost.

True, at the very end of their term, after several unsuccessful attempts, in November 1999, the Communists managed to vote the Federal Constitutional Law "On the State Anthem of Russia," replacing Mikhail Glinka's "Patriotic Song" approved by President Yeltsin's decree with the melody of the Soviet composer Alexander Alexandrov.

In total, during the work of the II convocation, almost 1,100 federal laws were adopted, of which almost 750 came into force.

The Duma of the III Convocation (1999–2003). This is the last convocation when, at least during the first half of their term of office, all the political forces represented in the Duma were forced to reckon with the opinion of their opponents and look for allies to make decisions, because none of the factions had a majority.

Formally, the 1999 elections were won by the Communist Party of the Russian Federation, but immediately after it, the Unity bloc followed close behind. In 2001, the Unity movement absorbed the Fatherland-All Russia (Russ. abbrev. OVR) party and in December 2001 reorganized into the United Russia party. As a result, a new coalition of the majority was formed in the Duma, consisting of the Unity faction, the OVR, and the Regions of Russia and the People's Deputy parliamentary groups.

At the end of March 2002, a closed meeting was held in the Duma to revise the two-year-old package agreement, on the basis of which, in

January 2000, the seats of the speaker, vice-speakers and chairmen of 28 committees were distributed in the chamber. The "conspirators" included almost three fourths of the Duma. Only the communists, their friends the agrarians, and the Liberal Democratic Party were not invited to the meeting. According to the distribution of mandates in 2000, the communists, together with the agrarians, had 12 leading positions in the Duma—speaker, vice speaker, nine committee chairmen and head of staff. The new majority decided that when the alignment changed, the number of these posts was reduced to five. Zyuganov said that in such a situation, all communists and agrarians would submit an application for resignation from leadership positions. However, three (the speaker and two committee chairs) refused to leave their posts.

As a result, on April 2, the Duma (four centrists, SPS, and Yabloko) decided that the communists would be left with only the two most "irrelevant" committees: on public organizations and religious associations, and on culture and tourism. And although the Communist Party of the Russian Federation could claim five positions in terms of the number of mandates, the Duma majority considered that the three leading posts—speaker, vice speaker and head of staff—could be considered as three committees.

Communist Gennady Seleznev remained as speaker of the State Duma, but the Communist Party faction paid a very high price for this. At the end of everything, a plenum of the Central Committee of the Communist Party of the Russian Federation took place, at which the communists summed up the results of the April redistribution of the package agreement in the Duma. Gennady Seleznev and two chairmen of the committees—Svetlana Goryacheva and Nikolai Gubenko—were expelled from the party by the plenum "for violating the charter," consisting in the refusals to leave their Duma posts. So the communists not only lost the leading committees, and primarily the committee on state building and constitutional legislation, but also got rid of three very valuable members of the party at once, which undoubtedly dealt a serious blow to its influence in the State Duma and in power as a whole.

A few months after the violation of the package agreement, in June 2002, a new Law "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation" was adopted.[1] This enactment launched a long-term permanent pro-

1 Federal Law of June 12, 2002 "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation." SZ RF. June 17,

cess of anti-democratic transformation of the electoral legislation. As a result, over the past 15 years, 2,630 amendments have been made to the electoral laws, which together predetermined a number of negative consequences for the Russian parliament, turning it into a pseudo-representative assembly that is rapidly losing its significance and authority. In total, 805 laws were adopted during the period of the chamber's work, of which more than 700 were signed by the president.

Second portrait. 2002—present

Despite the fact that the five subsequent convocations of the Duma were elected according to different electoral systems (the 4th convocation by a mixed system, the 5th and 6th by a proportional system, and the 7th and 8thagain by a mixed system), the general conditional portrait of the Russian parliament was and remains the same. And this is natural, since it was precisely this image of the parliament that was conceived in President Putin's general model of power. It was to this future image that all the electoral and party reforms of the first years of the 21st century were adapted.

Such a modern Russian parliamentary portrait has very specific features:

- non-discussion provided by a specially formed dependent parliamentary majority;
- non-execution of control and representative functions;
- distortion of reasonable parliamentary procedures;
- a sharp increase in the number of adopted laws;
- declining quality of legal texts;
- decrease in independence and increase in dependence on the executive branch;
- a decrease in ratings and, as a result, an increase in legal nihilism in society.

E. M. Shulman draws the portrait of the modern Russian parliament as follows:

> Discussing the prospects for the development of parliamentarism in the absence of a party system, competitive elections and control over the government is reminiscent of the search for an answer to the children's quiz question "What animal can live without a head?.." This is not exactly a parliament,

2002. No. 24. Art. 2253.

> because the soul of parliamentarism is political competition for the sake of representing public interests. It is rather an "administrative exchange," a trading platform for power groups and actors, but more public due to its constitutional nature than any other departments or law enforcement agencies.1

The clear features of the new parliamentary "face" appeared almost immediately. In the Duma of the 4th convocation, the party in power, represented by United Russia, not only won the majority of votes on party lists, but also received a constitutional majority thanks to the number of single-mandate deputies—more than 300 out of 450 deputy mandates. This gave the Kremlin the opportunity to easily pass any laws through the State Duma, including constitutional laws, which require two thirds of the votes of deputies, and adopt amendments to the Constitution. All leading positions were occupied by representatives of the party in power. Parliament ceased to be a "place for discussion."

Here is another consolidated qualified assessment, a short and precise description characterizing the work of three convocations (from the 4th to the 6th) of the Russian parliament, again from Ekaterina Shulman:

> The Fourth convocation was the last elected under a mixed scheme—225 party lists for 225 single-mandate members, and the first convocation of a party majority. It passed laws that would abolish gubernatorial elections, tighten the party system, and restrict the electoral rights of citizens in general, and learned to be not a place for discussion. The Fifth Convocation realized this ideal, showing a picture of perfect discipline and almost perfect silence. Its actions are unknown, its deeds obscure. It tried to legislatively serve "Medvedev's modernization" and at the same time vaguely oppose the government from the positions of a generalized leftism, extended the term of office of the Duma to five years and that of the president to six years. Its chairman was almost always silent. The Sixth convocation first put together a high legislative gallows in two years—a framework for new repressive legislation for election participants, parties, NGOs, orphans, protesters, believers, the media, social media users, and even for the deputies themselves, who could be deprived of their mandate by a simple decision of the chamber for vague sins. With great reluctance, it adopted a law on returning to a mixed electoral system, changed the Constitution not on its own initiative, adding two new subjects of the Federation to Russia, and by the end of its work

1 *See* E.M. Shulman, *Probuzhdenie spyashchego parliamenta* (Awakening of the sleeping parliament), *Vedomosti*. July 30, 2017 // https://www.vedomosti.ru/opinion/articles/2017/07/31/727051-probuzhdenie-parlamenta.

> supplemented the repressive legislative vector with a confiscatory one—not only new terms, but also new fines, fees, higher excises and the transformation of everything that was free into something paid, and what was paid into something expensive.1

By the middle of the work of the State Duma of the 6th convocation, on the eve of the 2016 elections, the country's leadership finally drew attention to the catastrophic ratings of the parliament, damaging the entire system of power. Partly for this reason (in fact, due to a sharp drop in the ratings of the party in power and the threat of not getting a majority in the proportional system), on the eve of the elections on September 18, 2016, it was repeatedly suggested that a change in the rules for its election (return to a mixed majority-proportional system) would affect qualitative composition of the deputy corps. For example, according to A.E. Lyubarev, "the return to a mixed system should be assessed positively: non-party candidates (as well as party members who, for one reason or another, were not nominated by parties) get the right to run as self-nominated candidates; voters get the opportunity to vote for specific candidates; the influence of the party bureaucracy on the deputy corps is reduced." However, these expectations were not met.

An analysis of the activities of the 6th and 7th convocations of the Duma may deserve special attention. Because, firstly, these convocations coincided with the period of maximum concentration of authoritarianism. Secondly, because the Crimean events and the maximum number of the most unpopular and repressive laws fell to their lot. And thirdly, it was in these convocations that the collective portrait of the Russian parliament of the second type became especially distinct and drawn in detail.

Duma of the 6th Convocation (2011–2016). Only seven parties took part in the elections to this Duma. There were no other parties in the country officially registered and therefore entitled to participate in elections. Four of them passed: United Russia received 238 mandates, the Communist Party of the Russian Federation—92, Just Russia—64 mandates and the LDPR—56 mandates. This time, the practice of "refuseniks-locomotives" actively showed itself. After summing up the results of the elections, many elected candidates refused deputy mandates. Ninety-nine people decided to transfer their seat in the Duma to the next one on the list. United Russia had the most "refuseniks." For example, the acting

1 *Ibid.*

governor of the Tomsk region, Viktor Kress, the chairman of the government of the Republic of Khakassia, Viktor Zimin, and the governor of the Sverdlovsk region, Alexander Misharin, refused mandates.

In the Duma elected according to the proportional system, United Russia noticeably worsened its performance: 49.3% voted for it. Although the party in power received a majority, this time it was unconstitutional. In addition, after the elections there were mass protests against the falsification of the voting results.

Naturally, after that, the deputies simplified the registration of parties, returned the system of elections in single-seat districts, and introduced direct elections of governors. The date of the elections to the State Duma was postponed to mid-September in order to make the election campaign as difficult as possible for alternative deputies (collection of signatures in seasonally empty cities, for example) and so that voters during the summer holidays and autumn harvest would not delve into the details of the election battles too much.

It was at this convocation that the decision was made on the admission of the Republic of Crimea and the city of Sevastopol to the Russian Federation. It was in this convocation that the deputies adopted a number of high-profile laws that introduced new bans: on the adoption of Russian orphans by US citizens (Dima Yakovlev's Law), on the promotion of homosexuality, on smoking in public places, liability was introduced for insulting the feelings of believers, and an "anti-piracy law" was adopted, which caused the discontent of large internet companies. Responsibility for holding unauthorized rallies and marches was also tightened, and amendments to the law on non-profit organizations were adopted, which greatly complicated the work of NGOs, especially those receiving grants from abroad.

"The Crazy Printer"—it was in this convocation that the Duma received this popular nickname, when the number of laws issued by parliament in an emergency manner began to break all records. The nickname denoted not only the outstanding speed with which laws were adopted, but first of all, the fact that laws appeared not on the initiative of the parliamentarians themselves, but on orders from "above." It was not only their quantity that caused criticism, but also their dubious quality. The effect was strengthened by the "slip of the tongue" of journal-

ist Vladimir Pozner broadcasting on Channel One, who called the State Duma a "state fool," which became a household word.[1]

In total, 6,012 bills were submitted to the lower house of parliament during the convocation. In the first, second or third readings, the deputies managed to consider 4,107 legislative initiatives and adopt 1,817 laws, of which the president signed 1,812. Previously, the 4th convocation was the record holder in the number of bills submitted—4,808 documents, and in the number of adopted laws—the 5th, with 1,608. Twenty-one rejected or returned bills were submitted to the State Duma by the President or the Federation Council. For comparison: in the 2nd and 3rd convocations of the State Duma, 441 and 102 documents were rejected or returned, respectively. The activity of some subjects of the right of legislative initiative greatly increased, primarily the government, which introduced 1,259 bills against 699 in the 5th convocation.

The average number of bills that the Duma considered at one meeting exceeded 18 bills (up to 50 legislative initiatives were considered at some meetings). The discussion of bills often took a matter of minutes. The productivity of deputy labor, measured by the number of laws considered per unit of time, has tripled over the past 15 years. But with the quality of this work, everything is a little more modest. If in the early 2000s the number of adopted laws was 40% of the bills under consideration, now only 15% of legislative initiatives reached the finish line.

As in previous convocations, deputies sometimes liked to have fun. For example, the current governor of the Khabarovsk Territory, Mikhail Degtyarev, when he was a member of the LDPR faction, introduced bills "On protecting citizens from the consequences of garlic consumption"[2] and on repainting the Kremlin white. In the first case, "in order to prevent the impact of the pervasive garlic smell on human health," it was proposed to ban the consumption of garlic in the territories and premises intended for the provision of educational services, on long-distance trains and in workplaces and not to sell garlic to "pregnant women,

1 *Kak Gosduma stala "vzbesivshimsya printerom": itogi raboty shestogo sozvya* (How the State Duma became a "crazy printer": the results of the work of the sixth convocation). *Kapital strany. Federal'naya internet-gazeta* (Capital of the country. Federal Internet newspaper) // https://kapital-rus.ru/articles/article/kak_gosduma_stala_vzbesivshimsya_printerom_itogi_raboty_shestogo_sozyva/.

2 The draft federal law "On the protection of citizens from the consequences of garlic consumption" was officially submitted to the State Duma on April 1, 2013 as number 249494-6.

nursing mothers, and workers of art and culture, whose official duties include working with the population, andto public servants." The proposal to repaint the Kremlin was justified by the fact that "the image of the white stone Kremlin, as in ancient times, will symbolize the priority of ethicsand morality in the daily life of our citizens and rulers, as opposed to moral decline in the countries of Western civilization."

Another delightful legislative initiative is "On Restrictions on the Circulation and Storage of US Dollars on the Territory of the Russian Federation," justified by the fact that the proposed measures "will be an effective step to protect the interests of Russian citizens and organizations from the negative impact of the collapsing American debt pyramid." Not surprisingly, the state of health of the legislature began to cause serious concern among citizens.[1] "Ban sneakers and stilettos, change the colors of the Russian tricolor, remove the phallus of Apollo from the 100-ruble bill, fill the dying villages with Chinese, and return political information to schools"—these amazing proposals are actual legislative initiatives of deputies.[2] People understood that most of the bills did not have any serious legislative goal-setting, but were self-promotion of deputies, when the goal was to introduce the most stupid bills, but at the same time, of course, providing their authors with a lot of media noise and increased mention in the media.[3]For reasons of self-promotion a number of deputies of the State Duma of the 6th convocation came up with all sorts of

1 *Beshenstvo printera: Gosduma stala prinimat' v tri raza bol'she zakonov* (Printer frenzy: The State Duma began to pass three times as many laws), *Moskovskiy Komsomolets*. September 28, 2015 // https://www.mk.ru/politics/2015/09/28/beshenstvo-printera-gosduma-stala-prinimat-v-tri-raza-bolshe-zakonov.html.

2 M. Ganapolsky, *Razchekhlenia. Deputaty Gosdumy obnazhilis' do kocheryzhki* (Uncovering. The deputies of the State Duma were nakedto the core.)*Moskovskiy Komsomolets*. December 2, 2014 // http://www.mk.ru/politics/2014/12/02/raschekhlenie.html (date of access: 04/15/2018).

3 During the period of work of the VI convocation (from December 2011 to March 2016), deputies submitted 3,679 bills to the State Duma for consideration. Of these, only 549 bills were adopted, which is 15% of the total. The remaining drafts were introduced by other subjects having the right of legislative initiative. *See* M.A. Vyadro, *Analiz kachestvennykh pokazateley predstavitel'skoy deyatel'nosti deputatov Gos. Dumy chetvertogo i pyatogo sozyva* (Analysis of the qualitative indicators of representative activity of the deputies of the State Duma of the fourth and fifth convocations), *Vestnik Povolzhskogo in-ta upravleniya* (Bulletin of the Volga Institute of Management)(2014), 19–25.

scandalous and semi-anecdotal legislative initiatives, which negatively affected the image of the parliament as a whole.[1]

Duma of the 7th Convocation (2016–2021). Elections to the State Duma of the 7th convocation again ended with the victory of United Russia, which regained its constitutional majority, taking more than 340 out of 450 seats. The central events of the convocation were two large-scale reforms—pension and constitutional.

In 2017, one of the very first high-profile laws launched renovation works in Moscow. Moreover, the leadership of the State Duma did not hide the fact that the initiative was worked out jointly with the mayor's office of the capital, and in order to stop protests, Okhotny Ryad came up with a format for expanded parliamentary hearings with public participation. This innovation proved to be very effective, so such hearings began to be held later, when it was necessary to relieve tension around the government's initiatives. The renovation, followed by protests, can be considered a rehearsal for the 2018 pension reform. At the same time, as sociologists stated, the increase in the retirement age sharply lowered the ratings of both deputies and the government as a whole. In September of the same year, representatives of United Russia lost to the opposition in the gubernatorial elections in three regions. The approval rating of the State Duma fell by almost 20%: in December 2016 it was 52.1%, and at the end of May 2021 it was already down to 34% (VTsIOM).[2]

On January 15, 2020, it was the deputies (together with the senators) who were the first to hear from Putin in a message to the Federal Assembly that they would have to seriously change the Constitution, and basically (except for the Communist Party) did not object to this. Moreover, it was through the mouth of the deputy Valentina Tereshkova that it was proposed, when considering a bill on an amendment to the Constitution, to abolish restrictions on the number of presidential terms. Her initiative was supported by Putin, and after him by the Russians in

1 *See* A.V. Kynev, *Gos. Duma RF VII sozyva: mezhdu "spyashchim potentsialom" i partiynoy distsiplinoy* (The State Duma of the Russian Federation of the VII convocation: between the "sleeping potential" and party discipline, *Politia* (2017). No. 4 (87), 65–81 // http://politeia.ru/files/articles/rus/Politeia-2017-4(87)-65-81.pdf (accessed 10.04.2018).

2 *Chem zapomnilas' rabota Gosdumy sed'mogo sozyva* (What the work of the State Duma of the seventh convocation was remembered for. The deputies adopted 2672 laws and proved that they are ready to carry out any reforms even at the cost of their rating) // https://www.vedomosti.ru/politics/articles/2021/06/17/874617-gosdumi-sedmogo.

a specially invented all-Russian vote. This in turn became a test for many innovations, which in 2020 again changed the electoral rules of Russia in a very peculiar way, including for further use in organizing voting—for example, online elections in the regions and multi-day voting were introduced.

It was the Duma of Unfulfilled Opportunities, political scientist Alexander Kynev believes: "The composition formed in 2016 was notable—there were almost 30 former mayors, well-known public figures. But the political framework in which the State Duma acted did not allow this personal potential to manifest itself, many of these people will no longer stand for election."

Having come to the State Duma from the post of first deputy head of the presidential administration, Volodin tried to fight for parliamentary discipline. In particular, the deputies were recommended to coordinate their legislative initiatives with the special councils in the factions. Volodin also struggled with the voting of deputies for neighbors at the tables in the plenary hall. True, this struggle turned out to be rather formal: even Volodinwas voted for during his absence in the lower house, the media wrote.

An analysis of the transcripts of all speeches in the State Duma for the convocation showed that deputies most often spoke about bans and toughening, as well as about protests and rallies. The adjective "military" in their statements was almost three times more common than "peaceful." Such rhetoric is reflected in the adopted laws. The deputies introduced immunity for former Russian presidents, limited educational activities, passionately tightened censorship on the Internet, fought against foreign "enemies" and "protected" children, along the way passing a law decriminalizing beatings in the family. Of all the convocations, it was the work of this composition of the Duma that earned the most folk memes:

- multi-day voting;
- imprisonment for defamation on the Internet;
- the law on the "protection" of Russians from censorship of social networks;
- the law on "foreign agents" who are natural persons;
- the "spanking" law—the decriminalization of beatings;
- the standalone Internet (according to the idea of the deputies, it should ensure the reliable operation of the Russian network without dependence on Western servers);

- "undesirable organizations" (the law on "undesirable" organizations was adopted by the State Duma of the VI convocation, but it was significantly tightened in 2021. "Unwanted" are international or foreign organizations (commercial and non-commercial) that, according to the authorities, pose a danger to Russia. For example, these can be companies that hold seminars on human rights, election observation and criticism of Russian politics);[1]
- the veterans defamation law.

We add to this series the law on immunity of former presidents of Russia, on educational activities, and many others.

Toward the close, the deputies approved a law prohibiting persons who were involved in the activities of organizations that were later recognized as extremist from participating in elections. It was adopted despite the criticism of many lawyers who found a contradiction in Art. 54 of the Constitution ("No one can be held responsible for an act that at the time of its commission was not recognized as an offense").

As of the end of the session, 5,531 bills were submitted to the State Duma during the convocation. In total, in the first, second or third reading, the deputies managed to consider 6,479 bills (including those introduced in previous sessions) and adopt 2,672 laws (855 more than in the previous convocation). According to the last two indicators, the convocation was a record one, that is, an average of 534 laws were adopted per year.

The President rejected two laws adopted by the State Duma of the 7th convocation. The first one, in December 2016, was about the creation of the federal and regional information systems "Contingent of Students," widely criticized for the opacity of the principle of access to personal data of citizens. The second one, in June 2021, on expanding the responsibility of the media for the dissemination of false information. The Federation Council rejected seven laws adopted by the State Duma during five years.

The federal government, compared to the previous convocation, introduced 88 bills more—1,404 (25.4%).

1

The effect of the "crazy printer." Sharp increase in the number of laws passed

So, in 1996, the first year of the 2nd convocation (and the first full-fledged one), 832 bills were submitted to the lower chamber, 419 were considered (in the first, second or third reading), and 258 were adopted. Thus, in one plenary session then 5.99 bills were considered on average, and 3.69 were adopted. Legislators worked with approximately the same productivity in the remaining years of the 2nd convocation. During this four-year period, from 1996 to 1999, there were 5.43 considered and 3.42 adopted bills per average statistical meeting. At the beginning of the Putin era (the first half of the 3rd convocation), the pace of lawmaking remained about the same. Let's say, in 2000, 990 drafts were submitted, and 423 were considered. In one sitting, almost the same number of bills were considered as five years previously—6.04. And even fewer were enacted—2.37.

But then the legislative assembly line accelerated sharply. In the 4th convocation, from 2004 to 2007, there are already 10.5 considered and 4.2 adopted laws per session of parliament. In the 5th convocation, from 2008 to 2011, the speed increased even more: for one "plenary" then 12.36 bills were considered, and 6.2 were adopted. But the Duma Stakhanovites have deployed in full force into the current, 8th convocation. In 2014, a record 1,688 projects were submitted to the lower chamber. 1,234 were considered, also a record. 555 enacted—another historic achievement. The pace is thus a record one: on average, 17.63 considered and 7.93 laws were enacted per meeting.

In other words, over the past 15 years, the productivity of the legislative machine has tripled. At the same time, it should be borne in mind that in the "tumultuous 90s," due to extremely complex relations between the branches of power, as well as between individual "branches" of the branches themselves, far from all the laws adopted by the State Duma were approved by the Federation Council and the president. For example, for the 2nd convocation, almost half, 42%, of the drafts approved by the lower chamber were rejected. In the 5th convocation, this share decreased to 1.19%, and in 2014 to 0.9%.

Considering that the duration of the Duma "plenary" does not, as a rule, exceed six and a half hours—from 10 am to 6 pm, with two breaks with a total duration of 1.5 hours, the discussion of one law in the Duma

of the Sixth convocation, if it can even be called a discussion, takes a matter of minutes.[1]

The policy of the State Duma, which is usually described as "the desire to get rid of the label of a crazy printer" or as "an attempt to increase its own political weight," was carried out in three directions. Firstly, the struggle for legislative quality and discipline: this includes both increased requirements for deputy attendance, and the rejection of the practice of adopting drafts "in the first reading and in whole"; in the second and third readings on the same day; the appearance of a new unit in the legal department designed to help young lawmakers; a new practice of public parliamentary hearings; a number of measures to restrict the freedom of the right to legislative initiative of both deputies and regional legislative assemblies (a system of filters, factional and built into the Council of Legislators). During the first year of the work of the State Duma of the 7thconvocation, 231 drafts were submitted by regional legislative assemblies, and only three of them became laws; for comparison, during the same period of work of the previous Duma, 313 regional initiatives were submitted, and seven were approved.[2]

But all the measures taken did not help. According to the deputies, they often received 60–70 legislative initiatives "for familiarization" by internal mail in the evening, on the eve of the parliamentary session, and then 15–20 bills could be sent to them in the morning. With such a practice, there could be no question of any analysis of the laws, but this was not required—everything was decided by party and factional discipline.[3]

1 *Beshenstvo printera, op.cit.* note7.

2 *See* E. Shulman, *Awakening of the Sleeping Parliament*, *op.cit.* note 3; A.V. Kynev,*Disproportsional'naya Rossiya* (Disproportionate Russia (Territorial representation in the State Duma in elections under the proportional system)),*Politia*,(2017). No. 3 (86). pp. 25–41; A.V. Kynev, *Spyashchiy potenstial vmesto "beshennogo printera"* (Sleeping potential instead of a "mad printer": what came out of the Volodinsky State Duma?), *Republic*, July 5, 2017 // https://republic.ru/posts/84594; I. Vaganov, *Novaya Duma: ot beshennogo printera k zadumchivomu kompiuteru* (New Duma: from a frenzied printer to a thoughtful computer). *KolokolRossii* (Bell of Russia). January 30, 2017 // http://kolokolrussia.ru/vlast/novaya-duma-ot-beshenogo-printera-k-zadumchivomu-komputeru#hcq=Dk4gnPq.

3 *Deputatskaya istina* (Parliamentary truth. Toward some results of the work of the State Duma of the sixth convocation) // https://ruskline.ru/analitika/2016/09/14/deputatskaya_istina.

Having begun its activities in October 2021, the Duma of the 8th convocation quickly set to work, proving its commitment to the traditions of its predecessors. During the first session (from October 12 to December 22, 2021, that is, two months and ten days), along with all organizational procedures such as the formation of committees and procedural amendments, the deputies adopted 143 laws…

The Correlation of Quantity and Quality of laws

It turns out that the parliament works at the speed of a machine gun. But is this a measure of the effectiveness of its work? Is it possible to quantify the work of the legislature at all? It seems not. The plurality and instability of legal regulation are not only harmful, they are extremely dangerous for the state.

It is well known that in lawmaking one should proceed from the principle of regulating only those issues that citizens and organizations cannot solve on their own and that affect their common interests. Unjustified multiple legal regulation not only leads to a restriction of individual freedom, but also causes "inflation" of legislation, which can generally paralyze law as a social regulator. Just as the stability of legal regulation is achieved only with the maximum reasonableness and validity of the law. A hasty and superficial approach, and an inadequate reflection of reality lead to numerous amendments and corrections in the legislation. Momentary legal regulation and the practice of "patching holes" also do not improve the quality of legislation.

But such an approach is available only to a highly professional and responsible parliament. Simulacrum parliaments are not capable of independent analytical activity. They either churn out bills handed down from above in approval mode, or act impulsively, adopting laws and amendments to them *ad hoc*, not caring about systemic connections and the adequacy of these amendments.

In addition, a hastily adopted bill, which has not passed public examination and has not been properly discussed in parliament, as a rule, contains gaps and defects. These shortcomings will need to be filled in by regulations, and a lot of additional explanations and instructions will be adopted for those complying with them. Not to mention the fact that it will take a long and difficult time to correct the situation by correcting mistakes in the course of law enforcement practice. As a result, there is confusion in the legislation, a decrease in executive discipline, congestion and growth of departments and control bodies. Expensive,

inconvenient, difficult to implement and, most importantly, extremely inefficient.

All these conclusions are to a large extent a priori applicable to many laws adopted by the Russian parliament of the second type (within the framework of the general characteristics of the second portrait of the parliament). We are forced to state that along with the change in the external and internal appearance of the parliament in Russia, the quality of laws has drastically decreased. And this is natural. Oddly enough, in fact, it was in the conditions of states with an authoritarian political regime that the modern concept of positive law was formed, which means that the signs of positive law are adapted specifically for states with an authoritarian political regime. This is largely due to historical tradition, since during the period of the emergence of positive law (in its modern sense) there were simply no alternatives to an authoritarian political regime, the differences consisted only in the belonging of the state to one or another type of authoritarianism. This can also explain the limited requirements for law, and the absence of a number of signs that could arise in the conditions of states with other political regimes.[1]

Hastily adopted, without due deliberation and without reasonable procedure, the laws very quickly revealed their flaws. For example, the so-called "Spanking Law" on the decriminalization of beatings, the shortcomings of which the Duma has been trying to correct for a long time and with difficulty. In order to implement the Resolution of the Constitutional Court of the Russian Federation on the recognition of Art. 116.1 of the Criminal Code of the Russian Federation on repeated beatings as partially unconstitutional, another bill was submitted to the State Duma. Now it is proposed to punish for repeated beatings not only those who were previously punished administratively, but also those who have a criminal record for crimes committed with the use of violence. In general, this draft was originally different and included not only those convicted of crimes with the use of violence, but also tried for crimes with the threat of violence. And that was correct. In the new version, the norm, closing one gap in the law, creates another. Based on the text of the bill, a person convicted of rape or robbery with the threat of violence will not be subject to the new version of Art. 116.1

1 *See* M.G. Tirskikh, *Pravo v gosudarstvakh s avtoritarnym rezhimom* (Law in states with an authoritarian political regime), *Sibirskiy Iuridicheskiy Vestnik* (Siberian Legal Bulletin) (2011). No. 3(54), 109–115.

of the Criminal Code of the Russian Federation, in contrast to a person who was convicted of similar crimes, but with the use of violence. And this is not the first and certainly not the last attempt by the legislator to "adjust" decriminalization. And why? Because initially decriminalization in the form in which it was made was a big and hasty legal mistake, and, alas, it is impossible to revive a corpse, even a legal one. That is, first we drive ourselves into a corner, and then we try to find a way to pull ourselves out of this corner.

A similar situation was created with many other laws adopted through the method of "machine-gun fire." The Law on NGOs and individuals as foreign agents belongs to the sameassemblage, in which there was no mechanism for changing the status received; the law on undesirable organizations with the same flaw, which has unconstitutional retroactive effect and prohibits participation in elections by persons who were involved in the activities of organizations "subsequently recognized as extremist;" the law on educational activities, for the implementation of which the responsible ministry cannot invent any adequateregulationthat will not damage education, and many others. This list can be continued, but this is the subject of another study.

The most serious defect (sometimes it is thought that it was intentional) was the legal uncertainty of a number of legal definitions, which allows law enforcement and other state bodies to arbitrarily interpret them in accordance with political expediency or their own vision. The content of the principle of "legal certainty" has been repeatedly clarified by the European Court of Human Rights as a result of the interpretation of the provisions of paragraph 1 of Art. 6 of the Convention and by the Constitutional Court of Russia. The requirement of legal certainty forms "one of the fundamental aspects of the rule of law principle," and is a necessary consequence and condition for implementation. Thus, in the decision in the case *Marx v. Belgium* of June 13, 1979, the European Court of Human Rights emphasized that the principle of legal certainty "is inherent in the law of the Convention" (para. 58). Legal certainty is necessary so that the participants in certain relations can reasonably foresee the consequences of their behavior, be confident in the stability of their officially recognized status, and of acquired rights and obligations. Conversely, "legal uncertainty" is seen as the possibility of unlimited discretion in the process of law enforcement, leading to arbitrariness, and therefore to violation of the principles of equality and the rule of law. The criteria for legal certainty are very clearly articulated

in paragraphs 44–48 of the Venice Commission's report on the rule of law. Mathematicians operate with formulas, and lawyers with definitions. Actually, the principle of legal certainty is a requirement for legal formulations.

But it seems that the Russian deputies have never heard of such a thing, and if they did, it was only out of the corner of their ear. Considering that the vast majority of bills are submitted to the Duma by other state bodies, they are also unaware that the fulfillment of the requirement of legal certainty is an obligation assumed by the Russian state. As a result, we have what we have. For example, the definition of political activity in Article 2.1 "On measures of influence on persons involved in violations of fundamental human rights and freedoms, rights and freedoms of citizens of the Russian Federation," which allows, under certain circumstances, to recognize individuals as foreign agents.[1]

Here is the definition: "Political activity is recognized as activity in the field of state building, protecting the foundations of the constitutional order of the Russian Federation, the federal structure of the Russian Federation, protecting sovereignty and ensuring the territorial integrity of the Russian Federation, ensuring the rule of law, law and order, state and public security, national defense, foreign policy, socio-economic and national development of the Russian Federation, the development of the political system, the activities of state bodies, local governments, legislative regulation of the rights and freedoms of man and citizen in order to influence the development and implementation of state policy, and the formation of state bodies, local governments, and their decisions and actions."So it turns out that when creating this book, the authors are engaged in political activities? Are scholars analyzing the activities of state bodies politicians? Are the organizations that monitor elections and publish a summary of violations also politicians? Such is the legal uncertainty.

Another example is the definition of extremist activity. On June 20, 2012, the Venice Commission published the Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation // European Commission For Democracy Through Law (Venice Commission). June 20, 2012). The document was adopted at the 91st plenary meet-

1 Federal Law No. 272-FZ dated Dec. 28, 2012 "On Measures to Influence Persons Involved in Violations of Fundamental Human Rights and Freedoms, Rights and Freedoms of Citizens of the Russian Federation." SZ RF. Dec. 31, 2012. No. 53 (part 1). Art. 7597.

ing of the commission on June 15–16, 2012.[1] The document notes that the wording of the Law "On Counteracting Extremist Activities" is too unclear and vague, especially in terms of basic concepts such as "extremism," "extremist activity," "extremist organization" and "extremist materials," and gives too wide a scope for interpretation and enforcement, which leads to the arbitrariness of the authorities. As a result, the Venice Commission concludes that the arbitrary application of the law on countering extremism opens up the possibility of introducing severe restrictions on fundamental rights and freedoms enshrined in the European Convention on Human Rights (in particular, Articles 6, 9, 10 and 11), and violates the principles of legality, necessity and proportionality. The Commission requires Russia to bring legislation into line with the European Convention on Human Rights, offering aid and assistance in this work. But, as we see, there are no consequences, and the law continues to be applied arbitrarily.

Reducing the independence of parliament. Dependency of the representative body on the executive branch

In political science, there is the concept of so-called veto players, proposed by University of Michigan professor George Tsebelis, which was expanded on in his 2002 work *Veto Players*.[2] This theory is that in the arena of the struggle for power there are always actors who can be called veto players. Veto players are actors whose voice is important in making political decisions, that is, at a certain stage they have the power to block the adoption of any political decision. Strictly speaking, the theory of veto players is a certain measure of the effectiveness of the system of separation of powers in terms of the presence of real mechanisms of checks and balances in it. From a theoretical standpoint, various political institutions were considered, in particular the Russian State Duma, which can be considered as a veto player from 1993 to 2003. Although it is worth noting that the appearance of a pro-presidential majority in the legislature was outlined as early as 2001, and in 2003 United Russia received a constitutional majority. Thus, with the help of the State

1 https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)016-e.

2 G. Tsebelis, *Veto Players.How Political Institutions Work*. Princeton, N.J., Princeton University Press (2002)

Duma, the president received all the leverage for carrying out the political courses that he needed.[1]

Everything is correct. After 2002, the Russian deputies ceased to be an independent political force and turned de facto into officials waiting for instructions "from above." According to experts, the majority of bills are currently being submitted to the Duma by the government directly, and a significant part of the bills that deputies are introducing are fromthe same federal ministries and departments. This is not only about documents the authorship of which officially belongs to the Cabinet of Ministers. Behind a significant part of the drafts formally submitted by the deputies, in fact, are the same federal ministries and departments, as well as some other authorities, such as the Investigative Committee or the Prosecutor General's Office. As for the latter, everything is very simple here: for bodies that do not have the right to legislative initiative, but which have a lot of ideas about arranging Russia, lawmaking, disguised under a Duma pseudonym, is a simple and quite effective way to bring these ideas to life.

Here is how deputy Alexander Kulikov assessed the "achievements" of the Duma of the 5th convocation:

> The lower chamber, like the entire parliament as a whole, has completely lost its independent significance during this convocation. Clear evidence of this is the attitude of Russian ministers towards the Duma. Previously, it was impossible to even imagine that they would ignore calls to the building on OkhotnyRyad. However, the current situation is such that, for example, Vitaly Mutko, after the disastrous Olympics in Vancouver, allowed himself defiantly not to come to the indignant deputies. And this is understandable: the State Duma has neither the authority nor, most importantly, the desire to dismiss the members of the Cabinet of Ministers who have made a mistake. Yes, how canwe speak of the Duma dismissing them, if the Duma does not even dare to criticize members of the government.
>
> The draft laws of United Russia dominated the legislative process. The legislative initiatives of the other three factions were not considered at all in

1 The State Duma of the Russian Federation: is it possible to send the Parliament to the moon? Transcript of the discussion held as part of the third cycle of the educational project "Citizen Political Scientist" with the participation of Senior Lecturer at the Higher School of Economics in St. Petersburg Mikhail Turchenko, Associate Professor at the National Research University Higher School of Economics in St. Petersburg Alexei Gilev. Discussion moderator Dmitry Travin, scientific director of the Center for Modernization Research, EU St. Petersburg. // https://polit.ru/article/2017/12/17/duma/.

this convocation. Even the amendments made by the Communist Party of the Russian Federation, the Liberal Democratic Party and A Just Russia were rejected, no matter how good they were. The State Duma, in fact, failed to cope with its main strategic task—the development of laws that would meet the interests of the majority of the population. This happened due to the fact that the real decision-making was in the hands of the absolute majority, which finally turned into a well-functioning legal department of the Presidential Administration, adopting all the laws coming down "from above." In this regard, it is not surprising that the level of public confidence in the Russian parliament has fallen even more in comparison with previous periods.1

Boris Gryzlov, one of its speakers, described the state of the highest representative body of power most precisely: "Parliament is not a place for discussion."[2] And the Duma fully justified these words.[3] The practice of using the right of suspensive veto by the president has practically ceased. As already mentioned, President Yeltsin exercised this right an average of 50 times a year. In six years, from 1994 to 2000, Yeltsin vetoed 307 laws. During the first two post-Yeltsin years, as the parliament was gradually "tamed," President Putin exercised this right 29 times. Over the next eight years (2002–2010), laws adopted by the Duma were vetoed only 21 times, that is, an average of 2.5 times a year, and even then in some cases for purely technical reasons. This was explained by the fact that the leader of a sovereign democratic state simply cannot often use the right of veto, because the vast majority of bills that become laws with the tacit approval of parliament are written by his own administration.[4]

But the Duma also lost its veto power. American scientists Thomas Remington and PaulChaisty, who studied the Russian parliament, argue

1 *Byloei Duma* (Past and Duma. The State Duma of the 5th convocation has completed its work: the results are deplorable, the reports are triumphant, the prime minister is satisfied), Alexander Kulikov and Andrey Piontkovsky comment // http://www.specletter.com/politika/2011-11-23/byloe-i-duma-v-sozyva.html (accessed 04/15/2018).

2 According to the transcript of the meeting, literally the phrase sounded like "The State Duma is not the place where political battles should be held," however, its interpretation as "Parliament is not a place for discussions" became more famous.

3 E. Belevskaya, *Tochka zreniya naroda formiruetsya v "EdinoyRossii"* (The point of view of the people is formed in "United Russia"), Gazeta.Ru. July 8, 2008 // https://www.gazeta.ru/politics/2008/07/08_a_2777274.shtml.

4 *See also*, *Medvedev rabotal na publiku. Dutaya sensatsiya* (Medvedev worked for the public. Exaggerated sensation) // https://www.kommersant.ru/doc/1532244 (date of access: 04/15/2018).

that since 2003 the State Duma has ceased to be a veto player and has lost a significant role in the political decision-making process. How was this expressed? Firstly, the bills introduced by the executive branch began to be considered much faster than in the 1990s. Secondly, the number of draft laws that were introduced by the executive branch and rejected by the State Duma has practically vanished. Thirdly, discussions in the State Duma have ceased. At least from the studies that are currently available, this becomes obvious.[1]

In such a situation, the deputies are only responsible for providing the necessary "background noise." The real "generators" of bills are the government and the Kremlin. The State Duma is turning into a mere platform on which various groups near the government defend their interests, and for these groups the "crazy printer" is just a very convenient aid.[2]

The report of the Lawmaking Assistance Center of the Institute for Socio-Economic and Political Research shows that, contrary to expectations, the independence of the parliament by the 7th convocation decreased: in the first "kick-off" session of the State Duma, the share of government initiatives sharply increased among the adopted bills in at least one of the readings (from 41 to 71%), and the share of parliamentary bills decreased from a record 46% in the pre-election session to 17%. A significant increase in the share of consensus votinguniting all factions was also noted. During the first readings, the consensus vote rate remained at the same level in the fall, about 62%, and during the second readings, consolidated support for bills is now twice as common as before the elections— 55.5% of adopted bills (previously this figure usually did not exceed 40%). Of the 26 socio-economic laws of the "budget package," almost a third (31%) were adopted by consensus vote or votes of three out of four parliamentary factions. Thus, the Duma has become to an even greater extent a monolithic bloc of deputies, in which party differences are determined only by signboards on the doors of party premises.

1 *Op.cit.* note 20.

2 *Itogi pyatiletki* (Five-year results. How the deputies of the State Duma of the sixth convocation worked). *Kommersant*, June 22, 2016 // https://www.kommersant.ru/doc/3019232.

And if the 6th Duma was called a "crazy printer"—in fact, a tool that could print anything, then the 7th Duma became an exclusively controllable printer. Whatever task will be given, it will do it.[1]

Distortion of reasonable parliamentary procedures

We will not go into too much detail on this issue, because then we would have to write another big book. We will only briefly outline the problem. It consists in a specific Russian understanding of the importance of procedures in ensuring human rights and freedoms. Any well-written procedure can be both a barrier to the arbitrariness of the state and a stumbling block in the implementation of the law (as, for example, is the case with the procedure for coordinating the holding of public events). Parliamentary procedures are one of the most important guarantees for the right of the population to participate in the management of state affairs. It is they which determine the parameters of parliamentary discussions, the functional purpose and timing of each of the readings of the bill, the procedure for making amendments, public and professional evaluation, and much more. It is in their power to reduce the participation of the population or the opposition in lawmaking to zero, or, conversely, to create maximum opportunities for taking their opinion into account.

Parliamentary procedures and lawmaking are a longstanding pain for Russian lawyers. Back in the middle of the last century, scientists raised the question of the need to create a so-called "law on laws" and the role and place of representative bodies in the system of normative regulations. At that time, only the first step was taken in the USSR—a regulatory culture was introduced into the organization of the activities of the Soviets, and the legal force of the regulations was constitutionally raised to the level of law. The "Law on Laws" was not adopted. Since then, 30 years have passed. Today we are the only post-Soviet and European country that does not have such a law. Even the Vatican City State has a regulation law. A Russian draft of such a law was prepared and even passed two readings in the Duma of the second convocation, shortly before the parliamentary coup. But it was shelved and remained in the archives, since normal legislative procedure was not only unnecessary to the parliament of the post-revolutionary model, but also extremely harmful for realizing the true parliamentary goals and objectives.[2] Al-

1 *Op.cit.*, note 11.

2 See for more details: E.A. Lukyanova, *Zakon o zakonakh* (Law on laws). *Zakonodatel'stvo*

though even more than half of the constituent entities of the Russian Federation have their own "laws on laws."

At the federal level, in the absence of a "law on laws" regulating the legislative procedure, only the regulations of the chambers of parliaments remained. Now they are approved by resolutions of the State Duma and the Federation Council, that is, they are adopted by a simple majority of votes from those present at the meeting of the chamber, subject to the presence of a quorum. And, accordingly, in the same manner they can change and be adjusted depending on momentary needs. And this is exactly how these regulations are adjusted to the implementation of the goals and objectives of the authorities. They determine the sequence of introduction and consideration of legislative initiatives, the voting procedure, the order and time of speeches of deputies, the possibility of voting for multiple amendments as one option (a list of amendments recommended for adoption and a list recommended for rejection), the possibility of passing the bill in several readings at once, etc. That is, the regulations legalize all the procedures necessary for the rapidity and non-discussion of the passage of bills, and this makes for the distortion of reasonable procedures and the creation of conditions for the impossibility of adopting legal laws. As you know, in order for a law to be recognized as legal, it must be adopted in due course by a representative body formed as a result of free and fair elections.

Our parliaments also have quite odious cases from the point of view of parliamentary procedures. For example, for all its machine-gun legislative speed, the Duma does not have time to consider all the legislative initiatives it inherited from previous parliaments or half-passed bills that hung between convocations. So, the Duma of the 7th convocation inherited more than two thousand of these "hanging proposals." And then the chairman, VyacheslavVolodin, suggested simply rejecting them, that is, refusing consider them and sending them to the archive. Fortunately, this proposal has remained just "thinking aloud," since, firstly, it categorically contradicts the very meaning of the right of legislative initiative, according to which the right of an authorized subject corresponds to the obligation of the legislative body to consider such an initiative. Secondly, such a proposal violates the principle of continuity

(Legislation). (1999). No. 11, 79–87; E.A. Lukyanova, *O kharakternykh chertakh Reglamenta Verkhovnogo Soveta SSSR* (About the characteristic features of the Regulations of the Supreme Soviet of the USSR. VestnikMoskovskogo Un-ta (Bulletin of Moscow University)(1983). No. 3.

of parliamentary activity. The 7th Duma partially succeeded in clearing the legislative blockage. Now the new, 8thconvocation of unconsidered bills acquired less—only a thousand. We suspect that procedurally everything was not entirely smooth here, but at least they didn't send them to the archive.

A great many complaints were caused by parliamentary procedural modifications during the adoption of amendments to the Russian Constitution in 2020. The Venice Commission analyzed the situation in detail and made the following conclusions:

- the speed of the process of preparation of such wide-ranging amendments absolutely did not correspond to the depth of the content of the amendments, taking into account their impact on society. The speed of the process meant that there was not enough time for proper consultation with civil society before the amendments were passed by Parliament;
- since a Constitutional Assembly was not convened, the Constitution was adopted after the Parliament and the constituent entities of the Russian Federation voted on it. After these stages, in accordance with Article 135 of the Constitution, the amendments were to come into force. The negative result of the specially introduced additional stages, such as consideration by the Constitutional Court and the all-Russian vote, could not become an obstacle for the amendments to come into force. It follows from this that the inclusion of additional stages in the procedure for amending the Constitution is clearly in conflict with Article 16 of the Constitution, which is aimed at protecting "the foundations of the constitutional order of the Russian Federation;"
- giving constitutional status to already existing provisions of ordinary laws (*their constitutionalization*) is fraught with the exclusion of relevant issues from open discussion and thereby limits the democratic process. Being enshrined in the Constitution, the norms lose their flexibility: they cannot be submitted for consideration by the Constitutional Court and, on the contrary, become a standard for the Constitutional Court when evaluating other legal norms.[1]

1 https://www.coe.int/ru/web/moscow/-/venice-commission-adopts-new-opinion-on-2020-constitutional-amendments-and-the-procedure-for-their-adoption-in-the-russian-federation.

But Parliament had no time to think about it. It needed to complete the task in the shortest possible time.

This is how the portrait of the modern Russian parliament turned out. And if in normal democratic countries there is a principle of separation of powers, where the parliament regularly performs its function, "then the first question that has been brewing for the last 15 years is: why is a parliament needed in Russia?" This is the opinion of political scientist Dmitry Travin: "If we imagine the situation that Deputy Prime Minister Rogozin is going to actively explore space and in the coming years the entire parliament, the entire Federal Assembly, is put into a spacecraft and sent to colonize the Moon, then, the way I feel, is this won't change anything in Russian life. Moreover, we will learn about the disappearance of the parliament only if we accidentally read the information in the media. The government apparatus will prepare economic laws, the presidential administration will prepare laws related to domestic policy, and the president will sign them. Isn't that how it works today? Essentially the same thing. The question arises: is this true or not? If so, why does this imitation exist at all? Why doesn't President Putin one fine day come out and say that in order to save budget funds, we will liquidate our Federal Assembly, since wedon't need it?"[1]

1 *Op.cit.*, note 20.

Chapter 3.
Mechanisms of the Influence of Electoral Legislation on the Representative Nature of Parliament

An analysis of the transformation of the electoral legislation makes it possible to formulate the mechanisms of the influence of electoral legislation on the representative character of the parliament. There are four such mechanisms:

- *the first* is to choose a legislative model of the electoral system, which, depending on the goals and objectives of the authorities, will be aimed either at improving the accounting for the will of voters, or, conversely, at distorting it;
- *the second* is aimed at changing (expanding or shrinking) the electorate as a social base of power by introducing additional restrictions on active suffrage or abolishing them;
- *the third* mechanism works to adjust the conditions for political competition. It consists in introducing or abolishing restrictions on passive suffrage and creating unequal conditions for the struggle between candidates and parties;
- *the fourth* pursues the goal of changing the personal-representative composition of the parliament by choosing a formula for the distribution of deputyseats, which, under certain legislative conditions, makes it possible to distort the will of the voters.

The choice of the electoral system and its legislative model

The quality of the functioning of representative (electoral) type of people's representation depends on the model of the electoral system used in

the course of elections and determining their results,[1] since in the process of the evolution of state building, the electoral systems themselves and the corresponding models of electoral legislation changed from simple to complex, evolving towards creating conditions for the formation of the most representative parliaments. This does not mean that all simple legislative models are bad. Even with their help, it is possible to ensure a completely sufficient level of popular representation. Nevertheless, historical experience shows that the complication of the electoral process in most cases was due to the desire of states to take into account the maximum range of opinions and interests of consolidated social strata when making state-power decisions. It was for this purpose that the main changes in the electoral legislation in the world were directed.

Most of the existing electoral systems belong to one of two groups: majoritarian and proportional.

Majoritarian systems historically emerged first; they are as simple and understandable as possible for the voter. There is one candidate in the electoral district who receives a relative (simple majority), absolute (50% plus one vote) or qualified (specially established percentage) majority of votes. The only seat awarded in the constituency goes to the winning candidate. Majoritarian systems can also be used in multi-member constituencies—in them, several candidates who receive the most votes win.

The main drawback of the majoritarian system is a large loss of votes, since all votes cast for losing candidates are "burned up" and are not taken into account in any way. Moreover, in the majority system, the relative majority of such votes can be much more than half. But even when using the majority system of an absolute majority, losses can reach almost half of those who voted (50% minus one vote). The use of a qualified majority system, which assumes the support of the winning candidate by an overwhelming majority of voters, partly solves this problem, but at the same time, the effectiveness of elections is catastrophically reduced, because getting, for example, 65 or 75% of the votes on the first attempt is a difficult task.

Another disadvantage of majoritarian systems, which is also their advantage, is the personal nature of the elections. Even if all candidates are nominated only by political organizations (for example, parties), this

1 *See also*,N.S. Grudinin, The State Duma of the Federal Assembly of the Russian Federation as a body of people's representation: questions of theory and practice: abstract,dissert.cand. legal sciences. Moscow(2015), 12.

will still not allow adequate reflection in the parliament of the alignment of political forces in society. The choice of voters will be largely determined by the personality of the candidate, and not by his political platform, and not the one who is more effective, but the one who is more popular in a particular constituency will receive votes. The advantage is that such a deputy will be more interested in taking care of the voters and in maintaining the level of his support. The downside is the loss of the element of party spirit and the political program of the elections.

The historical response to the shortcomings of majoritarian electoral systems was the creation of systems of a different type—**proportional.** Initially, the transition to them was due to the search for ways to restore the value of the opinion of voters whose votes were lost during the majority vote. As we know, under a proportional system, voters do not vote for individual candidates, but for party lists, and seats in parliament are distributed among the lists in proportion to the number of votes received. Thus, the loss of votes in comparison with majoritarian elections is many times reduced, since seats are also distributed among lists with a small number of votes.

But even here, not everything was perfect. Any proportional system, by virtue of its very nature, somewhat distorts its own proportionality. In other words, the outcome of the distribution of mandates is always somewhat different from the outcome of the voting of voters. This can be caused by rather harmless reasons, for example, the impossibility of division without a remainder—no normative act will change the laws of mathematics. Or it may be due to certain hidden properties of the system itself. In different systems, distortions occur to varying degrees and, most importantly, in different directions.

All proportional methods of distribution of seats are divided into two groups: quota methods and divisor methods.

Quota methods involve dividing the total number of votes cast for all lists of candidates admitted to the distribution of mandates by the number of mandates to be distributed. The resulting private, or, in fact, the quota, is the number of votes required to obtain one seat in parliament. The number of votes received by each list of candidates is divided by the received quota, which is the same for all participants. The method described is known as Hare's quota, after the English barrister Thomas Hare, who proposed it in 1855.[1] This is how most man-

1 *Konstitutsionnoe (gos.) prava zarubezhnykh stran* (Constitutional (state) law of foreign countries. General part) / ed. B. A. Strashun, 470.

dates are distributed, the presence of a fractional remainder—division without it is extremely unlikely—entails additional distribution, carried out according to different rules. The seats can go either to the lists with the largest fractional balances (largest remainder rule) or to the lists with the largest number of votes per each seat received in the first distribution (largest average rule).[1]

Other quota methods, such as those proposed by the English lawyer Henry Droop in 1868 or the University of Basel professor Eduard Hagenbach-Bischoff in 1888, differ mainly in the greater number of mandates distributed at the first stage, with a sufficient similarity of the final result.[2] However, it is Hare's quota that is considered one of the most progressive, since distortions of the will of voters with it are minimal, and all actions performed are easily justified mathematically.

When using **the divisor methods**, the number of votes received by each list of candidates admitted to the distribution of seats is successively divided by an increasing series of numbers, and the number of division operations depends on the number of seats to be distributed. The meaning of all these manipulations is quite simple: to find a divisor that, when dividing by it the number of votes received by each party, would immediately distribute all the mandates. In other words, find an "ideal quota" that gives division without a remainder. And the described mathematical actions are just a search algorithm, the selection of a solution.

In fact, on which series of numbers the division is made, determines external differences between the various methods of divisors. However, with this model, differences in terms of proportionality distortion are much more noticeable. The most famous and one of the most common divisor methods was created by the Belgian researcher Victor d'Hondt in 1882. The method involves dividing by an increasing series of numbers starting from one. According to the researchers, it gives a result that most often does not differ much from Hare's quota.[3]

1 After dividing the number of votes received by the list of candidates by the quota, the quotient (the result of the first distribution) is almost always a non-integer. If you divide the total number of votes cast for the list bythe rounded to the nearest integer result of the first distribution, the final result will be different from the quota. Additional mandates go to the lists with the highest result of the specified actions.

2 Strashun, *op.cit*. note 2.

3 A.E. Lyubarev, Once again about the Imperiali method // http://www.votas.ru/imperial-2009.html (accessed 07/16/2017).

In 1910, the French researcher A. Saint-Laguet proposed using a series of divisors consisting only of odd numbers, which ultimately favors lists of candidates with less voter support. A modified version of this method does not start at 1, but at 1.4, and favors average lists to win. The so-called "Danish method" uses a series of numbers starting at one and increasing by 3 (1, 4, 7, etc.)[1] at each step, and works in the favor of less popular lists of candidates.

In addition to strictly majoritarian and proportional electoral systems, systems have been developed and tested that combine elements of the two named groups and are conditionally called transitional or **semi-proportional**. These include cumulative and limited vote systems, single transferable and single non-transferable vote systems, and various options for preferential or alternative voting.[2] The main idea of these systems is an attempt to create a formula that will preserve the advantages of majoritarian or proportional systems, but offset their shortcomings.

Mixed electoral systems, which involve the simultaneous use of two different systems in the formation of parts or chambers of a representative body, deserve special mention. Usually we are talking about a combination of majoritarian and proportional systems. Mixed systems can be divided into two groups: dependent and independent, depending on whether the results of different electoral systems are mutually taken into account when summing up the overall election results. In **the unrelated case**, as the name implies, such accounting does not occur, and the elements of the mixed system are applied independently of each other. Often in such cases, the positive or negative aspects of the applied formulas have a cumulative effect. So, for example, the independent application of the majoritarian system of relative majority and proportional voting for party lists of candidates allows the favorite party (if there is one in the political arena) to significantly strengthen its result at the expense of candidates who won in majoritarian single-mandate districts.

So, for example, *the elections of the State Duma of Russia on September 19, 2021 were formally won by United Russia: according to official data, it won 49.82% of the vote*, which provided it with 126 out of 225 seats on par-

1 Strashun, *op.cit.* note 2, 473.

2 For more information about the various types of transitional and semi-proportional electoral systems, see: Strashun, *op.cit.* note 2, 475–479.

ty lists. In the majority part of the State Duma, it won 198 out of 225 seats (there is a majority system of relative majority, or *First-past-the-post* (FPTP)). *As a result of the total victory in the majority part, the total number of seats in the United Russia was 324, that is, a constitutional majority.* This result is worse than in the 2016 elections, when UR received 54.2% of the votes on party lists and only 343 seats. At the same time, throughout the election campaign, United Russia's rating remained steadily low and fluctuated, even according to the official sociological service of VTsIOM, at the level of 27–28%.

Such a dissonance between ratings and formal results became possible primarily due to a parallelmixed-membersystem, when, due to the majoritarian part, the leading party can receive an exaggerated (fabricated) majority that exceeds its result on party lists. Majoritarian plurality systems often create a "false majority" by over-representing larger parties (giving a majority of seats to a party that did not receive a majority of the vote), while under-representing smaller parties. Moreover, under this system, a party can win elections with a minority of votes. An example is the election of George W. Bush Jr. in 2000 and Donald Trump in 2016 as presidents of the United States (under this system, all the electoral votes of 48 out of 50 states go to the majoritarian winner in the state under the same FPTP system), although they received fewer votes. In Canada in 2019 and 2021, the Liberal Party won more constituencies, although the Conservative Party was the leader in the number of votes. Regional parties (which have been banned in Russia since 2001) also sometimes receive proportionately more seats than their share of the vote. The losers are always ideological parties that have even support throughout the country, but without dominance in a particular geographical area (in the Russian case, in the absence of falsifications, liberal parties would be the losers from such a system). Generally, the FPTP favors parties that can concentrate their vote in certain constituencies (or, more broadly, in certain geographic areas). On the other hand, parties that cannot concentrate their votes in one region (constituency) usually get a much smaller share of the seats, since they "spend" most of their votes without a chance of a seat. Under such a system, it is difficult for parties without a solid geographic base to win seats. In the 2017 UK general election the Green Party, the Liberal Democrats and the UKIP (United Kingdom Independence Party) won 11% of the vote but only 2% of the seats, and in the 2015 election these three parties received almost a quarter of the votes cast but only 1.5% of the seats. The situ-

ation in the majoritarian part can change (turn over) only in the conditions of a sharp drop in the rating of United Russia below the first place and the loss of its administrative resource. This sometimes happens at the local level; for example, in the elections of the Legislative Duma of the Khabarovsk Territory in 2019, United Russia did not win a single majoritarian district.[1]

It was the parallel mixed-memberelectoral system that became the most important tool for the autocratization of the Russian political regime. In 2003, it allowed United Russia, which received 37.6% of the vote and got less than half of the single-seat members into the Duma, to form a stable majority, and in 2016 and 2021 to maintain a constitutional majority, receiving only about 50% of the votes on party lists.

Mixed-member proportional systems, on the contrary, are designed in such a way as to take into account the results of voting in both systems, thereby ensuring a more accurate reflection of the will of voters in the election results and a greater representativeness of the parliament being formed. For example, the system used in Germany, as well as proposed for introduction in Russia (the proposal did not receive support in the State Duma),[2] also includes a majoritarian system of a relative majority and a proportional system with a Hare quota. However, when distributing deputy mandates, the overall results of the party list that has overcome the threshold are considered taking into account the number of single-mandate candidates elected from the same party, and are not summed up with them, as happens in anindependent system. In the distribution of party seats, preference is given to single-mandate party members, as they have received direct support from voters in their constituencies. If, according to the results of the list voting, a party should receive more seats than single-mandate members gave it, the remaining share of seats due to this party is distributed among the "listed" candidates. The resulting distribution result a priori does not allow one party to get more seats in parliament than its list received a percentage of the votes, or than the number of winners nominated from it. Clearly, a certain balance can be achieved in this way between the need to repre-

1 A. Kynev, *Obshchie itogi vyborov iizbiratel'noy kampanii-2021* (General results of the elections and the election campaign-2021), Liberal Mission Foundation // https://liberal.ru/ekspertiza/obshhie-itogi-elektoralnyh-rezultatov-izbiratelnoj-kampanii-2021.

2 The draft on the procedure for electing deputies according to the German model has been submitted to the State Duma.—RIA "Novosti". October 15, 2015 // https://ria.ru/politics/20151015/1302435286.html (date of access: 03/22/2018).

sent political parties and strong, established candidates from the field in parliament, while avoiding a significant distortion of the proportionality of party results.[1]

Of course, each state chooses for itself that electoral system and its legislative model which seems to it optimal at a certain stage of historical development. But this choice largely predetermines the role, place and significance of parliament in the system of state bodies and in the system of constitutionalism as a whole. The more adequately the parliament reflects the state of society and the correlation of the truly operating forces in it, the higher, respectively, will be this role, place and significance. And vice versa.

In Russia, over the past quarter of a century, the electoral system has changed twice— from parallel mixed-memberto fully proportional and vice versa. Attempts to improve it in the direction of mixed-member proportional were unsuccessful. The results, as they say, are evident. It was the parallel mixed-member electoral system that became the most important tool for the autocratization of the Russian political regime. In 2003, it allowed United Russia, which received 37.6% of the vote and got less than half of the single-mandate members into the Duma, to form a stable majority, and in 2016 and 2021 to maintain a constitutional majority, receiving only about 50% of the votes on party lists.

Changing the electorate (social base of power) by restricting active suffrage.Electoral qualifications

The circle of those who form the parliament (in other words, who can be an elector) is determined by law. The wider this circle, the greater the part of society that can be represented in parliament and involved in the management of state affairs. With the widest possible range, the parliament becomes a larger and more comprehensive model of society. Conversely, the narrower the circle of voters, the fewer real public interests will be represented in parliament. The expansion or narrowing of this circle is carried out through the introduction or abolition of explicit and hidden electoral qualifications—the conditions fixed in the legislation for vest-

1 For more information about the mixed-member proportional electoral system proposed for introduction in Russia, *see*D. Gudkov,*Sovmestno s KGI A. Kudrina vnesli 126 popravokv zakon o vyborakh* (Together with A. Kudrin's Civil Initiatives Committee (KGI), introduced 126 amendments to the election law) // http://dgudkov.livejournal.com/252553.html (accessed07.16.2017).

ing a person with active and passive suffrage. Moreover, qualifications for candidates (passive suffrage) are always traditionally higher than for voters (active suffrage). They are more related to issues of political competition and therefore will be considered separately. The expansion of the social base of the representative body presupposes the gradual elimination of the majority of electoral qualifications and the transition to universal suffrage.

History of qualifications. Historically, parliament arose as a body of class representation. Therefore, to participate in its formation, it was required to belong to a certain estate, each of which independently determined the procedure for electing its representative. *The estate qualification* in parliamentary elections is the main one. "Unequal suffrage and estate representation corresponded to the hierarchical social organization of feudal society and were understandable to the population, reflecting the ideas that existed in feudal society about government."[1]

The bourgeois revolutions of the 17th-18th centuries radically changed the situation. Proclaiming the principles of freedom and equality, the state itself forced itself to change the system of representation, just because "representatives of the entire people (for all its heterogeneity) could not be elected in the same way... as in social category representation."[2] But so far there had been no talk of truly universal suffrage—a whole set of other qualifications took the place of the social category one. Their gradual abolition meant the inclusion of new population groups in the process of parliament formation. Consider some of the most common qualifications.

Until the 20th century, women were completely and unconditionally disenfranchised in national elections. The patriarchal structure of society assumed that women and men perform different social functions, and, accordingly, they were endowed with different sets of rights and duties. Women were usually in a position of dependence on their father or husband, and therefore their property and civil rights, including voting rights, were often limited by gender. And although some states abandoned this qualification at the end of the 19th/beginning of the 20th century, the right of women to take part in elections was enshrined as a universal international principle only in 1948 with the adoption of

1 G.N. Andreeva, I.A. Starostina, *Izbiratel'noe pravo v Rossiii v zarubezhnykh stranakh* (Electoral law in Russia and in foreign countries): textbook / ed. A. A. Klishas. Moscow, Norma (2010), 115.

2 *Ibid.*

the UN Universal Declaration of Human Rights.[1] In the Russian Empire, women's suffrage was first introduced in 1906 in the Grand Duchy of Finland, which enjoyed wide autonomy and had its own constitution. It was introduced throughout the country in 1917.[2] In Portugal, since 1911, women recognized as heads of the family could vote, and individual cases of vesting women with limited suffrage have been known since the 18th century.

Another qualification widely used in the past, but almost not used now, is *the property qualification*. Charles Louis de Montesquieu wrote about the need to deprive the right to elect those who, due to their excessively low position, are not capable of "having their own will."[3] The property qualification consists in the need to own or possess property for a certain amount or pay a certain amount of taxes to the local or state treasury. According to B. A. Strashun, at the dawn of the constitutional system, this qualification really "made a certain sense given that the proletarians and paupers were completely illiterate," and the proletarians were forced to work 10–14 hours a day, "which in the most negative way influenced their mental development."[4] The struggle of the working class for their rights, combined with an increase in the level of education of the population, led to the fact that in the 20th century the property qualification was eliminated almost everywhere. Although traces of it still remain in some places. For example, in Luxembourg, bankrupts are deprived of active suffrage. At the same time, even today scholars speak about the dependence of the level of civil liability on the status of a taxpayer and about the independence of a citizen in paying taxes as a manner of his interaction with the state.[5] Following the property qualifica-

1 Article 21 of the UN Universal Declaration of Human Rights // http://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml (date of access: 07/16/2017).

2 Clause 3 of the Provisional Rules on the conduct of elections of elected members of city dumas, approved by the Decree of the Provisional Government of 04/15/1917 // http://emsu.ru/ml/default.asp?c=161&p=1 (accessed 07/16/2017).

3 Andreeva and Starostina, *op.cit*. note 11, 116.

4 Strashun, *op.cit*. note 2, 419.

5 See, for example: M.A. Krasnov, *Izbiratel' kak dolzhnost'* (The Voter as an OfficialPosition). Sravnitel'noe konstitutsionnoe obozrenie (Comparative constitutional review). 2017. No. 4 (119), 13–29; Draft Constitution of Russia / Ed. M.A. Krasnov. Moscow, Foundation "Liberal Mission" (2012), 168; S.A. Bazhukov,*Sootnoshenie ponyatiy "est-estvennoe predely prava" i "ogranichenie prava" na primere izbiratel'nykh prav grazhdan* (Correlation between the concepts of "natural limits of law" and "restriction of law" on the example of citizens' electoral rights). *Iuridicheskie zapiski* (Legal notes) (2014). No.

tion, *the literacy qualification*, the requirement to possess a certain level of education, was also abolished. It lost its meaning with the consolidation of the right to universal secondary education and the general increase in the educational level.

To date, only a few qualifications have survived in a relatively common form. They include, firstly, *the age limit*—the opportunity to take part in elections vests when a citizen reaches a certain age. Traditionally, it will coincide or be close to the age of majority and full legal capacity (18 to 21 years). The qualification aims to allow only those voters who are able to independently evaluate and choose candidates and the programs they offer and be responsible for their actions to participate in the elections. Of course, the higher the age of vesting a person with active suffrage, the greater the amount of knowledge and life experience he will have at the time of the election. The lower the age, the more the voter is exposed to the influence of information technologies and the influence of his relatives and the less independent his choice. On the other hand, this qualification can be used manipulatively to exclude the most active and critical part of society, the youth, from participating in the adoption of state-power decisions.

Another qualification is that of *citizenship*. It means that in order to participate in elections, a person must be a citizen of the state (in some cases, a certain period of time after naturalization is also required). This qualification is the most common, since a stable political and legal relationship between a person and the state, called citizenship, implies the voter's interest in a certain political course of the state as a consequence of his choice. At the same time, in the modern world, this qualification is becoming less and less rigid. In itself, a person's having citizenship of a particular state is no longer considered as a guarantee of his interest in the results of the elections.

In determining the electoral status, what becomes of primary importance is the place of residence, whose well-being the voter must also desire. For example, in the Russian Federation, citizens of foreign states permanently residing in the territory of the corresponding municipality are allowed to participate in local elections and referendums on the basis of international treaties.[1] And this is quite logical, since the political

2, 63–69.

1 Para. 10 Art. 4 of the Federal Law of June 12, 2002 No. 67-FZ "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation."

course of the state and its fate are not determined at the local level. At this level, issues of local importance are resolved, in which the real residents of administrative units are interested, regardless of what citizenship or nationality they have.

However, the tendency to abolish the qualifications for citizenship in Russia is still in its infancy. The European legislator went much further in this direction, having directly established that a citizen of any of the countries of the European Union, who has a residence permit in another EU country, receives equal voting rights with local residents to participate in municipal and pan-European elections. It can be assumed that the logic here is of the same order: if a person permanently resides in a certain territory, he becomes personally interested in its development and well-being.

Although there are also reverse examples. Namely, the situation with the qualification of citizenship that has developed in Latvia and Estonia.[1] After the collapse of the Soviet Union, these Baltic countries, unlike other former Soviet republics, did not implement the so-called "zero option" for granting citizenship, in which all residents of the republics who did not have citizenship of another state automatically received citizenship at their place of residence. So, according to the decision of the Supreme Council of the Republic of Latvia dated Oct. 15, 1991, Latvian citizenship was recognized only for persons who were citizens of the Republic before its accession to the USSR, and for their descendants, in other words, for only two thirds of the population. The remaining third of the population (about 730,000 people), who lived on the territory of Latvia as of July 1, 1991 and did not have citizenship other than the citizenship of the USSR, acquired the unique status of "non-citizens." These people are not stateless in terms of the Convention on the Reduction of Statelessness, but they are not recognized as citizens of Latvia.[2]

A similar situation exists in Estonia, where on March 30, 1992 the Citizenship Law of 1938 was recognized as valid. A legal fiction was

1 *See also,* V. Buzaev, *Grazhdane i "negrazhdane"* (Citizens and "non-citizens": political and legal division of the inhabitants of Latvia in the post-Soviet period. Scientific reports of the Russian Association for Baltic Studies. Series 1. Domestic and foreign policy. 2nd edition. Moscow.Assotsiatsiyaknigoizdateley "Russkayakniga" (Association of book publishers "Russian Book")(2017).

2 *See* Convention on the Reduction of Statelessness, adopted on August 30, 1961 pursuant to Resolution 896 (IX), adopted by the General Assembly of the United Nations on December 4, 1954.

created that this law did not cease to operate during the entire time of Estonia's belonging to the USSR. As a result, as in Latvia, only those who had the citizenship of the Republic as of June 16, 1940 and their descendants were recognized as citizens. The rest of the inhabitants of Estonia became "foreigners" with a specific status, which was enshrined in a separate Law "On Aliens," adopted on July 8, 1993.[1]

Researchers believe that one of the reasons for the introduction of the institutions of non-citizens in Latvia and foreigners in Estonia was a deliberate desire to exclude part of the population from participating in the formation of national parliaments, since both categories of persons are deprived of voting rights in the first place (with the exception of local elections in Estonia). In fact, this concerned the Russian-speaking population (ethnic Belarusians, Russians, and Jews), who made up the absolute majority of non-citizens, and foreigners. As a result, the Estonian parliament formed in 1992 consisted entirely of ethnic Estonians. It is clear that if the "zero option" were implemented and all residents of the country who were not citizens of other states were recognized as citizens, the outcome of the elections would be completely different, as well as the chosen political course of the state. By now, the majority of foreigners in Estonia have become Estonian or Russian citizens. In Latvia, non-citizens continue to make up a significant proportion of the population, about 12% (approximately 250,000 people), and they are still deprived of the right to vote. True, it should be borne in mind that the state of "non-citizenship" is already their own choice, since Latvia creates enough opportunities for naturalization. Children of non-citizens have recently been granted citizenship by birth, and for adults, the only obstacle is passing a language exam, for which the state provides free preparation. However, non-citizens continue to insist on their right not to know the state language. In addition, the status of non-citizens gives them the opportunity to visa-free crossing of the border with Russia.

So far, Russia has not particularly abused this qualification. It doesn't officially exist. But minor manipulations, especially when voting outside the country, still take place. For example, Russian missions abroad organize a collective delivery of an "impeccable" electorate to polling stations, but at the same time they can try to refuse to issue a ballot to

1 V. Polishchuk, *Negrazhdane v Estonii* (Non-citizens in Estonia) // https://fictionbook.ru/author/vadim_poleshuk/negrajdane_v_yestonii/read_online.html?page=1#part_109 (Accessed: 10.10.2017).

a "doubtful" electorate, appealing, for example, to the fact that the voter has an "inappropriate" passport. In some countries, the ballot is issued only for foreign passports, in others, only for internal ones. In the 2021 elections, attempts were made to refuse to issue a ballot for voting for a deputy in a single-mandate district to persons registered in Moscow, because "they could vote electronically." The style of the new version of the Citizenship Law submitted to the Duma is not very friendly to Russian citizens who have opposition views. If the discussion around this law is transformed into certain legislative provisions, we can say that it is used to limit the active suffrage of "dissenters." But it's still too early. However, some experts argue that the legislative restriction of political competition in itself is a restriction of active suffrage—such an indirect infringement of the active suffrage through the restriction of the passive one. Perhaps scholars should take a closer look at this balance. So far, this is just a hypothesis.

The residency requirement implies that there is a requirement for admission to the elections of persons who have lived in the territory of a given state or region for a certain time. This is justified by the fact that the candidate must have an interest in the fate of this state, region or locality. For the emergence of such a connection, it is necessary that the person live there, and permanently and for a long time. Then he truly recognizes himself as part of the local community and makes decisions based on this.

Another fairly common qualification is *the qualification of having a criminal record or being in prison*. In many foreign countries, persons serving sentences in places of deprivation of liberty by a court verdict are limited in their right to vote or deprived of it. In Austria, Belgium, France, Germany, Greece, Italy, Luxembourg, Malta, the Netherlands, Norway, Poland, Romania and Turkey, there are restrictions on prisoners' electoral rights. In Armenia, Azerbaijan, Bulgaria, Estonia, Georgia, Ireland, Latvia, Liechtenstein, Moldova, the Russian Federation, Slovakia and the United Kingdom, prisoners are denied the right to vote. In accordance with § 45 of the German Criminal Code of 1871, the deprivation of passive suffrage is carried out for a period of 2 to 5 years. Section 22 2 Regulations on the conduct of the elections to the National Council of Austria 1992 (Nationalratswahlordnung 1992) provides for the deprivation of convicts of the right to vote for 6 months. In China, political (including electoral) rights are deprived for life of persons who have com-

mitted counter-revolutionary crimes, as well as those sentenced to death and indefinite imprisonment.[1]

True, in a number of cases we are talking only about crimes for the commission of which punishment in the form of imprisonment is imposed, and the persons who receive such punishment. For example, those convicted of serious crimes cannot vote in most US states; in Italy and Greece, those sentenced to life imprisonment are automatically deprived of the right to vote; in Bulgaria, the Netherlands, Luxembourg, and Slovakia, those sentenced to a term of 10 years or more. In this case, deprivation of the right to vote acts as an additional measure of punishment, not imposed by the court, but established by law. Because of this, responsibility becomes non-personalized, imposed equally on persons who have committed acts that are completely different in subject and degree of public danger.

The qualification of a criminal record and deprivation of liberty has repeatedly become the subject of consideration in the European Court of Human Rights. In its decisions on a number of cases, there is a position according to which it is unacceptable to deprive all persons serving sentences of imprisonment of such an important political right as the right to vote in elections; it is necessary to differentiate responsibility depending on the gravity of the crime committed. According to the logic of the European Court, the right to vote is not a privilege given to a person, which can be deprived of it. The right to vote and be elected is critical to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law. As a consequence, in a modern democratic state there should be a presumption of vesting a person with voting rights. Their limitation is possible, but it should not hinder the free expression of the will of the people in the choice of legislative bodies—it should reflect or not contradict the goal of maintaining the integrity and effectiveness of the electoral process.[2]

1 See: V.O. Krasinsky,*O pravovykh pozitsiyakh Evr. Suda po pravam cheloveka i Konst. Suda RF po voprosam ogranicheniya izbiratel'nykh prav* (On the legal positions of the European Court of Human Rights and the Constitutional Court of the Russian Federation on the issues of restriction of voting rights due to a criminal record) / Entrepreneurship and Law. Information and analytical portal // http://lexandbusiness.ru/view-article.php?id=2553.

2 § 93–96 of the judgment of the European Court of Human Rights of 4 July 2013 Anchugov and Gladkov v. Russia (applications nos. 11157/04 and 15162/05) (First Section).Bulletin of the European Court of Human Rights. Russian edition. No. 2 (2014).

When prosecuted for a crime, a person may also be deprived of voting rights by a court verdict. In this case, deprivation of rights acts as an additional punishment in addition to the main one, which does not always entail deprivation of liberty, and concerns passive suffrage. Often, such a measure of responsibility accompanies crimes committed in the exercise of the powers of a public official. For example, Russian criminal law provides for the possibility of depriving a person of the right to hold certain positions[1]—if we are talking about an elected position, then in fact there is a deprivation of a passive electoral right. This punishment is directly mentioned among the measures of responsibility for crimes against state power, the interests of state and municipal services, however, depending on the severity and public danger of the act committed, it may be imposed at the discretion of the court in other cases. The fundamental difference between such deprivation of voting rights and the general link to a criminal record and deprivation of liberty lies in the personalized nature of responsibility.

In addition to the above, there are a number of less common qualifications, such as *religious* (belonging to a particular religion) or *moral* (having a decent reputation). The moral qualification can be expressed both in specific criteria (for example, in Ecuador, drunkards and vagrants cannot vote), or in terms of evaluative categories (in Pakistan, a candidate for the National Assembly must have a "good moral reputation," whatever that means).[2]

As already mentioned, in the world at large the number of electoral qualifications is decreasing from year to year. Only qualifications of age and citizenship remain widespread. The existence of the age limit is logically justified, although its value, as discussed above, can also be a subject of discussion. The fate of the citizenship requirement is gradually becoming less and less certain. If earlier the principle "only citizens vote" was immutable, then today's international integration processes require more flexibility in this matter. There is an obvious awareness in a number of countries of the importance of the maximum admission of the population to participation in the management of state affairs by granting them the right to participate in the formation of representative bodies of power.

1 Art. 47 of the Criminal Code of the Russian Federation. SZ RF. June 17, 1996. No. 25. Art. 2954.

2 Strashun, *op.cit*. note 2, 420.

Changing the competitive environment by limiting passive suffrage

The electoral legislation determines not only the circle of holders of active suffrage, but also the circle of those potentially elected and the conditions for the struggle between them. Qualifications are also applied here, but rather of passive suffrage. At the same time, the requirements for candidates in most cases are derived from the requirements for voters—to become a candidate, a person must at least be a voter.

Passive suffrage qualifications are designed to establish minimum criteria for future people's representatives. For example, in order to hold an elective office, *a minimum age requirement* is applied, that is, by the time a person has the right to be elected, a person must have reached a certain age. For various public positions, this qualification can range from 18–21 to 35–40 years. For judges of higher courts, the minimum age limit may be higher. Increased age requirements seem to be quite justified, since a certain life experience is needed for conscious and balanced decision-making in power.

The right to be elected is usually denied to *persons serving sentences of imprisonment*. This prohibition is based on the desire to prevent persons who have committed criminal acts from participating in the management of state affairs. A variation of it is *the limitation for the presence of an unexpunged and outstanding conviction*. This qualification is much more dangerous, since it can be artificially used to remove the most serious political competitors from the election campaign.

A striking example of the danger of such a qualification is the introduction in Russia, starting in 2006, of numerous amendments to the Federal Law "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation." At first, the restrictions applied only to Russian citizens who had the citizenship of a foreign state or a residence permit outside the Russian Federation, then to persons convicted of grave and especially grave crimes and having a criminal record. The process sharply escalated in 2012–2014. Anticipating the presence of serious competition for the incumbent president in the next election cycle and using Article 55 of the Constitution, the deputies established a deprivation ofpassive suffrage for those convicted of grave and especially grave crimes, regardless of whether they were detained in places of deprivation of liberty, for a period significantly exceeding the terms of even a suspended sentence. Subsequently, criminal trials were specially initiated, which prevented individual representatives of the opposition from becoming candidates in elections,

including presidential ones.[1] Thus, the restriction of the passive suffrage automatically led to the restriction of the active one: hundreds of thousands of voters were deprived of their candidate, who eventually called for a boycott of the vote. And although in this particular case we are not talking about parliamentary elections, the norm of the law is quite applicable to them. S. A. Tsyplyaev described this Russian legislative exercise in the following way: "The law not only restricts the passive suffrage of a particular citizen. It violates the rights of the bearer of sovereignty and the only source of power in the Russian Federation—its multinational people (Article 3 of the Constitution). The active suffrage of all citizens is affected—the people are limited in their right to determine whom they need in government bodies. The federal government limits the will of the people as a whole, which is unacceptable." Later, after the introduction of amendments to the Constitution, this process acquired a creeping and expanding character, when the newly introduced restrictions on passive suffrage received retroactive effect and began to apply to virtually an unlimited circle of people.

Therefore, in introducing any restrictions on passive suffrage, the legislator must always be as careful as possible. When establishing new qualifications, the most thorough study of the issue of their expediency and assessment of potential consequences, taking into account the current state of society, are necessary. For example, the exclusion of persons with a second citizenship from the list of potential candidates may result in the disappearance from parliament of the most educated, successful and economically active citizens with business and intellectual recognition in the world. Thus, any restriction of passive suffrage is fraught with serious distortions of the normal competitive environment in elections and a decrease in the representativeness of parliament.

1 For example, one of the opposition politicians, A. A. Navalny, was unable to nominate his candidacy in the presidential elections in the Russian Federation in 2018. It should be noted that the criminal proceedings against him were recognized by the European Court of Human Rights as violating the European Convention for the Protection of Human Rights and Fundamental Freedoms. Thus, on February 23, 2016, the European Court of Human Rights ruled on the complaint of citizens P. Ofitserov and A. Navalny against Russia (Case of Navalnyy and Ofitserov v. Russia, Applications nos. 46632/13 and 28671/14), in which it concluded (paragraphs 115 and 126) that "the domestic courts applied the criminal law arbitrarily and found the applicants guilty of carrying out activities indistinguishable from ordinary commercial (economic) activities. // http://hudoc.echr.coe.int/eng?i=001-161060#{%22itemid%22:[%22001-161060%22]}.

All the more dangerous is the purposeful introduction of qualifications to artificially limit the competitive political environment, which in fact leads to deliberate manipulation of the composition of parliament with all the ensuing consequences.

Another way to influence the pre-election competitive environment is the state of *legal regulation on the observance of the principle of equality of candidates and electoral associations*. Insufficient or not well-defined normative formalization of equality provisions, as a rule, leads to a distortion of this principle in practice and can nullify any broad entry criteria in the form of low electoral qualifications. It is even more dangerous when veiled benefits and preferences are introduced for certain participants at the legislative level, and for others additional requirements that are difficult to meet. For example, at the start of a campaign, some candidates may be required to collect thousands of expensive signatures or pay an electoral deposit in order to support their nomination, while others need only support a particular political party. As well as overcoming the municipal filter, which is easily feasible for some candidates, but is practically insurmountable for their opposition colleagues. In these cases, equality is violated at the stage of nomination and registration of candidates.

However, the distortion of the principle of equality is also possible at other stages of the election campaign. For example, at the earliest stage, when redrawing constituencies. In the pursuit of obtaining the necessary, but not true, election results, quite absurd situations sometimes happen. In 1812, the American politician and Senator Elbridge Gerry, in an effort to predetermine the results of the next election in his favor, initiated the reorganization of constituencies in such a way as to concentrate his supporters as much as possible and artificially create an advantage for them in most constituencies. The electoral districts he created were so intricately shaped that their map resembled the silhouette of a salamander. Hence the name of this electoral technology, "gerrymandering," a combination of the name of the senator and the word "salamander." The technology is also known as selective geography.[1] At the same time, being competently applied in the course of holding elections according to the majoritarian electoral system, "gerrymandering" can indeed ensure victory for a candidate who is not the leader of the election race.

1 P.J.Taylor, R.J. Johnston. *Geography of elections*. London, Croom Helm (1979).

The distortion of the principle of equality is also applied later, already during the campaign, when, for example, access to campaign and financial resources is limited. There are many ways that directly or indirectly create more favorable conditions for some campaigners to the detriment of others. All of them, even at first glance insignificant, limit the competition of candidates and influence the outcome of the elections, distorting the will of the voters. A parliament formed under such conditions is unlikely to adequately reflect the alignment of political forces and the state of society and will not be able to represent it qualitatively.

Additionally, we should note electoral legislative models which are characterized by the absence of strict prohibitions on creating unequal conditions for the subjects of the electoral process and responsibility for violating the principle of equality. This also applies to procedural norms specially formulated for the consideration of electoral disputes. Such involuntary or deliberate gaps and defects in the legislation have a significant impact on the reduction of political competition and the resulting distortion of the will of voters. Therefore, the state, which is interested in the effective operation of its representative body, should also strive for the maximum possible observance of the principle of equality of candidates.

It can be confidently stated that the use of qualifications for active and passive electoral rights of citizens is a means of direct influence on the circle of participants in the electoral process. Such actions are fraught with serious political risks for the state, as well as pressure on political competition. All these actions cannot be concealed from voters. Sooner or later they will figure out the manipulative nature of the elections and lose interest and trust in them. Between election cycles, this lack of confidence in elections translates into a lack of interest and a decline in confidence in parliament. The chain reaction of this process is a decrease in respect for the law, a distortion of legal consciousness and, as a result, distrust of the state as a whole.

The other side of such an electoral model is a parliament that is not fully representative, elected under conditions of an artificially limited social power base and unreliable political competition, which, due to the peculiarities of its formation, does not rely on the support of the population and does not express its interests. Naturally, such a parliament is not able to perform the function of a public platform for discussing the most pressing issues of concern to society. As a result, the state in its relations with society constantly runs the risk of finding

itself in the situation of a boiling kettle with a sealed lid, not to mention the fact that a parliament that is not quite representative is not interested in controlling the executive branch and cannot play the role of a balancer in the system of state bodies, which inevitably leads to weakening of the state. Are such risks worth the apparent temporary benefits of momentary political victories?

Changing the personal-representative composition of the parliament by choosing a formula for the distribution of deputy mandates

The formula for the distribution of deputy mandates, under certain legislative conditions, makes it possible to distort the will of the voters. Electoral qualifications and ensuring the implementation of the principle of equality of participants in the electoral process are not the only tools by which the state can influence the level of parliamentary representativeness. The rules for counting votes and determining, on the basis of this count, the personal composition of the representative body, remain extremely important in ensuring the greatest correspondence between the results of elections and the will of voters. The task is intended to be solved by various electoral formulas for the distribution of deputy mandates (electoral systems in the narrow sense of the term), which transform the resulting ratio of votes of voters into the ratio of the number of distributed mandates.

Electoral formulas transform the will of citizens at the polling stations into specific election results. Millions or thousands are transformed into specific people, holders of deputy mandates, who have the right to vote in a representative body. It depends on the application of this or that formula how these votes will be distributed, to which parties or personalities they will go. Over the centuries of development of the theory and practice of suffrage, dozens of different formulas have been created. Majority and proportional are the most famous and widespread of them, but there are also many semi-proportional or transitional systems, as well as various options for their combinations. This diversity indicates a long search for the most accurate formula, which, unfortunately, has not yet been invented, but everything has been done to get as close to it as possible.

The search led the researchers to the understanding that the formulas differ not only by different values of errors. Often, they initially contain the vector of these errors—it shows in favor of which election participants the advantage will be created. For example, in proportion-

al party elections, some formulas are more favorable to small and less popular parties, since they enable them to really compete with large and well-known ones, which expands the political spectrum of the future parliament. Other formulas, on the contrary, work in favor of larger parties, increasing their advantage and taking outsiders out of the game. Personal voting by the majoritarian system ensures that the interests of the regions are reflected in the parliament, but may result in insufficient representation of the minority or opposition forces. And finally, the result of applying each formula can be adjusted with a variety of additional tools. For example, such as the electoral threshold, the presence or absence of electoral blocs, the existence of an electoral deposit and other factors that strengthen or weaken political competition.

The combination of different electoral tools, objectified in the electoral legislation, can be used for manipulative purposes to form a certain composition of the parliament. Take, for example, the divisor method created by the Belgian politician Marquis P. G. Imperiali in 1921. In it, a series of integer divisor numbers does not begin with one, as in most other methods, but with two. According to Imperiali himself, the method was specially designed to distort proportionality and involves the transfer of one or more mandates to the leader list at the expense of outsiders. When forming a national parliament consisting of hundreds of deputies, the advantage of several seats may not play a significant role (although it happens in different ways). But regional parliaments often consist of only two or three dozen deputies, and two additional mandates can completely change the entire alignment of forces. Of course, these mandates do not appear out of nowhere, but are subtracted from the result of other lists of candidates. For large parties (first of all, for the leading ones), the increase can be up to 10–15% (and in some cases even more than 20%); for parties of less popularity, the election result worsens by 1.5–2 times, provided the very question of their entry into parliament is not raised.[1] Thus, the degree of distortion under certain circumstances can reach a third of the distributed deputy mandates.[2]

1 A.V. Ivanchenko, A.V. Kynev, A.E. Lyubarev, *Proportsional'naya izbiratel'naya sistema v Rossii* (Proportional electoral system in Russia. History, current state, prospects) // http://www.vibory.ru/Publikat/PES/pril-2-1.htm (accessed: 07/16/2017).

2 For model calculations of the distribution of deputy mandates when using various electoral formulas, see for more details: E.N. Poroshin, *Izbiratel'noe zakonodatel'stvo i rezul'taty vyborov* (Electoral legislation and election results: interconnection and interdependence).*Konstitutsionnoe i munitsipal'noe pravo* (Constitutional and municipal

What is meant by certain circumstances? For example, the value of the electoral threshold (barrier), which is the minimum percentage of votes established by law required by the party list of candidates to participate in the proportional distribution of mandates.[1] Although the electoral threshold itself cannot be unequivocally attributed to the mechanisms for reducing the representativeness of the parliament. On the contrary, its original function is to form not only a representative, but also an efficient parliament, from participation in the activities of which very small political groups are excluded. The latter, by their presence, at best will not harm, at worst and more likely, they can cause fragmentation and instability of the parliament.[2] This is a filter that allows only those political forces that are really significant for society to enter the parliament.

According to its original idea, the electoral threshold should resolve the contradiction between justice (in the form of representation of the maximum proportion of voters) and expediency (in the form of an effectively functioning legislature).[3]An excessively high threshold upsets this balance towards injustice in the form of a parliament representing the interests of a smaller part of the electorate, and inexpediency with an excessive reduction in the number of factions and a decrease in the fierceness of discussion. The share of votes that are not taken into account when summing up the voting results is significantly increasing. In a certain scenario, this share can reach an almost absolute majority.[4] Thus, the effectiveness of the will of citizens as one of the main advantages of the proportional system over the majority system (and especially the majority system of relative majority) is nullified. Raising

law). No. 6. (2010), 24–30. Moscow, Iurist.

1 *Izbiratel'noe pravo i izbiratel'niy protsess v RF* (Electoral law and the electoral process in the Russian Federation) / ed. A.A. Veshnyakova, 113.

2 A.V. Kynev, *Vybory parlamentov rossiyskikh regionov 2003–2009* (Elections of parliaments of Russian regions 2003–2009. The first cycle of the introduction of a proportional electoral system). Moscow, Center "Panorama" (2009) 40.

3 Veshnyakov,*op.cit*. note 30, 113.

4 For example, according to the results of the elections of deputies of the State Duma of the Russian Federation of the 2nd convocation (1995), the associations that got into the Duma won a total of only 50.5% of the votes, that is, almost half of the voters who participated in voting under the proportional system did it in vain. *See:* E.E. Skosarenko, The electoral system of Russia: myths and political reality. Moscow, Formula of Law (2007), 93.

the electoral threshold can be used as a means of political struggle. With a high threshold, minority parties are deprived of the opportunity to enter the legislative body, and their mandates will be distributed among majoritarians, strengthening the already significant positions of large parties.

But everything is not so simple. While Imperiali's divider method and selective threshold alone are quite effective, when used in combination, they mutually reinforce each other's negative effects. Calculations show that if the threshold is completely canceled when elections are held according to the proportional electoral system using the Imperialimethod of divisors, the distortion of the election results is multiplied. The state, it would seem, removes the threshold on the way to the parliament of less popular associations. However, in this scenario, the Imperiali method gives an even greater advantage to the leading list of candidates precisely at the expense of outsiders, who become an additional source of votes redistributed in favor of the favorite. It turns out to be a paradoxical situation. Formally abolishing the electoral threshold, the legislator, using the Imperiali method, creates such conditions for the distribution of mandates, when in order to actually enter the parliament and receive at least one deputy mandate, it is required to receive more votes than to overcome the threshold. The difference between the canceledthreshold and its actual value can be up to several percent in favor of the latter.

An even greater effect of raising the electoral threshold increases when blocking is prohibited. When creating an electoral bloc, several parties or other associations, instead of participating in elections one by one, with separate lists of candidates, form a single list. The distribution of places within such a list is decided by agreement between the block participants. Blocking allows several small parties to consolidate their voters to increase the aggregate result and, if necessary, to overcome the barrier. Accordingly, with the prohibition of the creation of blocks, each list of candidates is forced to act on its own. In this case, the overestimation of the electoral threshold even by a couple of percent becomes a serious problem for them. Votes cast for lists that did not overcome the threshold are lost and are not taken into account in the election results. However, they are taken into account indirectly. One way or another, according to the results of the elections, one hundred percent of the deputy mandates should be distributed, so the votes that did not receive independent representation are automatically distributed among the winning parties in proportion to their result. Ultimately, this leads

to a distortion of the results, when a party that does not get half of the votes can get an absolute majority in parliament. Thus, manipulation of the composition of the deputy corps is quite possible by changing the formula for the distribution of deputy mandates. The above examples demonstrate how, by changing literally one or two provisions of the electoral law, it is possible to decide the fate of the parliamentary majority, not let a party into parliament and create a disproportionate advantage for the other.

The described mechanisms, of course, do not cover all the ways in which the electoral legislation influences the composition of the future parliament. The state can regulate the system of public control over elections, the procedure for protecting violated rights, the status of election commissions organizing and conducting elections and counting their results, citizens' access to information about candidates and parties, and many other aspects of the electoral process. However, consideration of these mechanisms allows us to see global trends in the development of electoral legislation. These trends consist in the fact that in the whole world there is a gradual rejection of obsolete qualifications of active and passive suffrage. The electoral process as a whole is built in such a way as to prevent non-competitive advantages of some participants over others. Finally, the development of electoral formulas continues to follow the path of searching for an ideal model that takes into account the will of voters as much as possible and transforms it into election results adequate to the state of society. But, unfortunately, this approach is not the only one. This is what happens in democracies. Authoritarian regimes are looking for other electoral formulas for their own purposes.

A retrospective review of changes in the Russian electoral legislation as a whole indicates that the course towards reforming the electoral system over the past two decades has been ill-conceived and chaotic (more precisely, situational). This course cannot be called a real reform, since any reform always contains some initially goals, boundaries, parameters and principles. And if the goal in relation to the place and role of the parliament was clearly defined, then the ways to achieve it were not only not strategically calculated, but in general there is a feeling of misunderstanding by the performers of the essence and interconnection of constitutional and legal phenomena. They just didn't seem to have a holistic vision of the process. As a result, the level of democracy, together with the population's confidence in the state, has declined sharply in the country. The constitutional principles of democracy and

political competition were distorted, the electoral culture, the culture of democratic discussion and the legislative tradition were damaged. Parliamentarism as a system actually collapsed. Or at least it was hit so hard that it would take a lot of time and effort to recover. Special legislative conditions were created for unfree and unfair elections, contrary to international electoral standards. As a result, the representative nature of the parliament was eroded, and the efficiency and quality of lawmaking decreased.

In the course of the transformation of electoral regulation, the legislator sometimes "shied away" from one extreme to another, changing the rules on the go and haphazardly, which led to a radical change in course or to movement in a circle. As already mentioned, this also applies to the choice of the very model of the electoral system, and the sudden return in 2014 of the possibility of voting "against all" in municipal elections. Naturally, provided that such a rule is adopted "on the ground."[1]

For almost thirty years of the history of modern Russian elections, the formula for the distribution of deputy mandates in elections to the State Duma has changed twice. First, in 2005, from a mixed independent system (half of the deputies were elected according to the proportional system according to the Hare quota with closed lists and a 5% threshold, with the other half in single-member districts according to the majoritarian system of relative majority), the Duma switched to a fully proportional system (the same closed lists with the Hare quota, but already with a 7% threshold). And in 2014, after only two federal campaigns in 2007 and 2011, the mixed system was returned, although due to the change in a number of related characteristics, such as the turnout threshold, protest voting, the possibility of blocking, etc., it cannot be called identical. Such "jumps" back and forth over a fairly short period of time can have one of two explanations. Perhaps the first transition was made with significant errors, which required a "rollback" to the previous version of the system. However, the results of the 2007 and 2011 elections cannot be called failures for the "party of power." Or, the second version, and the transition to a new system, and a quick return to the old one were purely situational. This explanation seems to be more reason-

1 Federal Law No. 146-FZ of 04.06.2014 "On Amendments to the Federal Law "On Ensuring the Constitutional Rights of Citizens of the Russian Federation to Elect and Be Elected to Local Self-Government Bodies" and the Federal Law "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation"."

able. The transition to a proportional system occurred at about the same time as the tightening of legislation on political parties, which led to a reduction in their number. At the same time, proportional elections are easier to control administratively—they are, so to speak, more centralized. In turn, the reverse transition to a mixed system coincided with a fall in the level of support for the "party of power," when the required electoral result became easier to achieve using the majority system with its "winner takes all" principle. On the other hand, the level of administrative control over the elections has become sufficient to "release" part of the decisions to the regions relatively painlessly for the result.

Chaos supplemented the regional electoral legislation, which, contrary to the codification claims of the center, introduced its own regulation, sometimes exponentially worsening the implementation of the principle of forming representative bodies as a result of free and fair elections. Thus, in 2005–2008, in a number of Russian regions, the methodology for distributing deputy mandates during elections under the proportional electoral system was changed. If previously the regions traditionally copied the method used in elections to the State Duma, the Hare quota with the rule of the largest remainder, now it has been replaced by various divisor methods. Among them is the Imperiali method. When applied in conditions where there is one clear favorite in the political arena, this method artificially increases the lead of the leading party at the expense of outsider parties. In other words, it purposefully distorts the proportionality of the elections.

In large elective bodies, the redistribution of one or two deputy mandates usually does not have a significant impact on the balance of power between factions. In small assemblies, on the contrary, the transfer of two mandates from one faction to another can fundamentally change the entire political landscape. For example, in the elections to the Moscow City Duma in 2009, according to the Imperiali method, with a 7% electoral threshold,[1] only 18 seats were distributed. 15 of them were received by the United Russia party, and 3 more by the Communist Party. With the same ratio of votes received by the parties, the Hare quota with the largest remainder rule at the 5% threshold used in federal elections would not only reduce United Russia's result to 11 seats, but would also give two seats to Just Russia and the Liberal Democratic Party. That is, in

1 Paras. 1, 4 and 5 Art. 77 of the Law of the City of Moscow dated 07/06/2005 "Electoral Code of the City of Moscow." *Vedomosti* of the Moscow City Duma. No. 8. August 19, 2005.

this case, the issue would be, among other things, about the passage of two more political parties into the Duma.

In addition to Moscow, the Imperiali method was adopted in a number of subjects of the Federation, including St. Petersburg, the Republic of Mari El, Moscow and Samara regions.[1] Calculations for the next elections following the amendments show that in each subject the change in the electoral formula led to a serious change in the election results.[2] With the same ratio of votes, one or two mandates were additionally transferred to United Russia, which provided it with an advantage. To date, of all the regions listed, the Imperiali method in the distribution of deputy mandates has been preserved in the Moscow and Samara regions, despite the adoption of a new edition of regional laws,[3] as well as in the Republic of Mari El.

1 Art. 56 of the Law of St. Petersburg dated June 15, 2005 No. 252–35 "On Elections of Deputies of the Legislative Assembly of St. Petersburg." Bulletin of the Legislative Assembly of St. Petersburg. No. 9. September 29, 2005; paragraph 25 of Art. 4 of the Law of the Republic of Mari El of March 16, 2009 No. 5–3 "On Amendments to Certain Legislative Acts of the Republic of Mari El on Elections and Referendums." *Mariyskaya Pravda*. No. 49. March 21, 2009; Art. 1 of the Law of the Moscow Region dated November 29, 2006 No. 207/2006-OZ "On Amendments to the Law of the Moscow Region "On Elections of Deputies of the Moscow Regional Duma"."*Ezhednevnye novosti. Podmoskov'ye,* No. 223 November 30, 2006; para. 2 of Art. 60 of the Law of the Samara Region of July 10, 2003 No. 64-GD "On the Election of Deputies of the Samara Provincial Duma." *Volzhskaya kommuna*, No. 124. July 12, 2003.

2 A.E. Lyubarev, *Metod Imperiali, kak i ozhidalos', srabotal v pol'zu "EdinoyRossii"* (The Imperiali method, as expected, worked in favor of United Russia.) Website of the Interregional Association of Voters // www.votas.ru/imperial-2.html (accessed 04/13/2018).

3 Part 2 Art. 57 of the Law of the Moscow Region dated 06.06.2011 No. 79/2011-OZ "On Elections of Deputies of the Moscow Regional Duma". *Ezhednevnye novosti. Podmoskov'ye,* No. 99. June 7, 2011; para. 2 of Art. 82 of the Law of the Samara Region of April 18, 2016 No. 56-GD "On the Election of Deputies of the Samara Provincial Duma."*Volzhskaya kommuna*, April 20, 2016 No. 97 (29643).

PART THREE

MEANS OF ATTAINING THE GOALS AND TASKS OF AUTHORITARIAN POWER AND THEIR CONSOLIDATION

Chapter 1.
Ways of Transforming the Electoral Field to Achieve Certain Goals and Objectives of Power

In order to build authoritarianism, Russian ruling groups successfully created and/or used for their own purposes the "rules of the game," which were designed to establish and consolidate the most favorable mechanisms of domination for them and strengthen informal ruling "winning coalitions" around the leaders of the country.

General characteristics of the administrative-resource electoral system

By the electoral field, we understand not only the normatively established framework for elections, but all the terms and conditions of the electoral process. When authoritarian regimes enter the stage of defense (holding power) and consolidate, the legislative rules of the game may not be enough. The real ratings of the authorities fall and opposition sentiments grow. Moreover, elections are such a catalyst for creativity, when legal ways are found for any state trick that limits the competitive environment. And this is understandable, since life is primary in relation to law, it is richer and more diverse than legal regulation. No matter how hard authoritarian or totalitarian rulers try to arrange the environment according to the principle "only what is allowed is allowed," no one has ever succeeded in this. It was from this truth that the well-known Soviet meme "the severity of Soviet laws is compensated by the optionality of their implementation" grew. Therefore, no matter how cunning the state was, creating the most favorable legal conditions for the implementation of its electoral plans, this was always not enough, and therefore, it was necessary to invent additional ways to achieve what was planned.

For these purposes, the effect of legislative amendments was repeatedly strengthened by a whole set of extra-constitutional administrative practices, the possibility of the existence of which was often incorpo-

rated into the content of normative legal acts. As a result, the electoral system of Russia, functioning within the framework of the electoral law specially designed for unfree and unfair elections, was called the administrative-resource system. In fact, if we give them a precise definition, all Russian administrative practices in the aggregate are politically corrupt (earlier, all this was described as "dirty" election techniques[1]). Depending on the specific tasks, within the framework of the general goal of eliminating political competition, the specialists of Transparency International-Russia carried out their political science and legal classification,[2] according to which they were identified:

- *a regulatory resource* that involves the use of decision-making power that is directly or indirectly aimed at promoting specific political interests (for example: using antitrust regulatory powers to prevent a merger in the interests of an entrepreneur who finances an opposition party; abuse of the power of an election commission to refuse registration of an objectionable candidate, influence on the formation of the composition of election commissions at various levels, etc.). In other words, the artificial creation of unfavorable or, conversely, preferential bureaucratic conditions for interested parties involved in political competition. It can be almost anything: increased (or weakened) financial control over electoral accounts by state banks; tax audits; control (or lack of such) of the information field (media, social networks); response (or non-response) to complaints from participants in the electoral process; issuance of certificates, copies, documents, etc.—that is, everything that the state can somehow "reach" in the course of implementing redundant rules and procedures established for the electoral process;
- *an institutional resource* involving the use of the labor of subordinates, that is, persons who are dependent on their higher-ups, to support political goals that are shared by the leadership—the involvement of civil servants in election events to collect signatures, work in the headquarters of candidates and parties, develop elec-

1 *See* A.A. Maksimov, *Chistie i gryaznie tekhnologii vyborov* (Clean and dirty election techniques).Moscow, Delo (1999).

2 *See* E.A. Panfilova, S.N. Sheverdyaev, *Protivodeistvie zloupotrebleniu administrativnym resursom na vyborakh: problem i perspektivy* (Countering the abuse of administrative resources in elections: problems and prospects). Moscow, De Novo (2005), 9–13.

tion documents, conduct election campaigns research, preparation and dissemination of campaign materials; use of the premises of government bodies, state and municipal enterprises and institutions to accommodate the headquarters of candidates and parties, for holding meetings with voters, holding election events, storing campaigning and other election materials (in cases where access to these resources is denied to alternative candidates and parties); use of the infrastructure of government offices and state and municipal enterprises and institutions (telephone lines, office materials and equipment, Internet access, use of computer equipment, use of specialized databases);

- *media (information) resource*—the use of dependent media for the purpose of one-sided agitation in favor of pro-government political forces (for example: direct or indirect censorship of news about the course of the election campaign; refusal to provide equal airtime or print space; unequal distribution of information outside the airtime or print space officially allocated for campaigning);
- *financial resource* as a kind of administrative resource, which involves the use for election purposes of dominant political forces, budgetary funds, funds of state companies and public non-budgetary funds and funds of private entrepreneurs dependent on the regulatory resource. During the period of opening and initial filling of electoral accounts of candidates and electoral associations, observers, for example, repeatedly recorded the presence in authorized banks (having the right to open and service electoral accounts) of organized groups of mostly elderly voters who made deposits in the same amount as "donations from individuals" into certain accounts, which was handed out to them as cash by the leader in the group;
- *force and law enforcement resource*—the possibility of using law enforcement agencies endowed with powers of coercion. One of the most striking examples of such use is the events during the settlement of a court dispute on the removal of a strong candidate from the electoral race in the spring 2002 presidential elections in Ingushetia. Then, during the consideration of this dispute in the Supreme Court of the Republic, the unfinished and unnumbered case was groundlessly and illegally seized by armed people from the deliberation room of the judge and transported by plane to the Supreme Court of Russia, which literally the next

day began to consider it and made the decision necessary for the authorities.1Over the past 20 years, we have all repeatedly observed the use of force in the electoral process. These can be official warnings from the prosecutor's office, the initiation of criminal cases, the organization of investigative actions at the place of residence of candidates and at election headquarters, the seizure of office equipment, an attack on election headquarters in order to destroy signature sheets, the organization of investigative checks on obviously unfair complaints, and much more.A special form of using the power resource is *non-interference in the prevention of violations of the electoral legislation*, organized with the help of an institutional or coercive resource;

- *the judicial resource* is a particularly dangerous administrative resource in a situation where the judicial system is dependent on the executive branch, which makes it possible to legalize any law enforcement, security and administrative practices of authoritarian regimes.

O. V. Mikhailova also mentions *a coercive resource*, which, in contrast tothe law enforcement one, is characterized by ensuring mass turnout, as well as deliberately distorting the voting results.[2] We are talking about a centralized delivery of a dependent electorate to voting places (sometimes coupled with the organization of "carousels"—multiple voting of the same voters at different polling stations with their data entered into additional voter lists). There are frequent cases of organized and controlled voting by military personnel, including double voting, when a military unit has "its own" polling station, and then, at the request of the command, released military personnel also vote at "civilian" polling stations. Observers constantly face complaints about demands from leaders to send them photographs showing how the ballots are marked. There are many complaints about forced early voting and pressure from election commissions during mobile voting at home. In recent years, in connection with the organization of multi-day voting and the possibility of voting "on stumps," the practice of voting at workplaces under

1 Personal observation (E.L.), and see also https://lenta.ru/articles/2002/04/05/ingushetia/.

2 O.V. Mikhailova, *SMI i nabliudateli o khode izbiratel'noy kampanii 2004 goda* (Mass media and observers about the course of the 2004 election campaign). Project "Informatics for Democracy—2000+": report; abstract; proposals of the participants / 4th scientific-practical. conf. "Elections 2004." Moscow, Fund "INDEM" (2004), 44.

the control of the administration is spreading. The introduction of DEG (remote electronic voting) immediately led to the use of a coercive resource in this direction, which, in the face of system shortcomings, may turn out to be extremely promising for the state in achieving authoritarian goals. The effective use of a coercive resource is possible only if there is no responsibility for such actions (recall how the article on the types of violations of the electoral legislation was abolished from the Law "On General Principles…").

But still, *the legislative (rule-making) resource* is always singled out separately and first of all as the main and independent type of administrative resource, since it is associated with the use by the dominant political forces of their opportunities to participate in the legislative process in order to adopt laws that promote their political interests. By the legislative resource is understood the formation during the elections of a special composition of the parliament dependent on the executive branch (the political level of the administrative resource), which will legitimize the goals and objectives of the authorities at the technical level. In the democratic model of power, the term "abuse of power" is usually not applied to legislative activity. However, the practice of authoritarian regimes shows that lawmaking, carried out by artificially created legislative bodies dependent on the executive branch, is precisely such an administrative resource for the implementation of predetermined goals and objectives. Remember the epigraph to this book: "In order to be elected, one must have power, and in order to have power, one must be elected." The legal creation of a pseudo-legal basis for political domination, obviously, should be considered as an integral part of it, and, moreover, the leading one.

The formation of the personal composition of the parliament for predetermined goals is also a form of political corruption. Violation in the form of abuse committed by officials at the political level, in any case entails "a significant violation of the rights and legitimate interests of citizens or organizations or the legally protected interests of society or the state." Especially if there is an adoption of laws that impede the de-

velopment of political competition.[1] Because political decisions should be exclusively the result of free political competition.[2]

Elections are the most important institution in any state. That is why the procedure for organizing and holding elections should be determined exclusively by law as the highest form of legal regulation. And this is how the method of formalizing the rules for holding elections in the Constitution of the Russian Federation is determined (part 4 of article 81, part 2 of article 96). These rules do not imply other options for their adjustment, with the possible exception of the interpretation by the bodies of constitutional control and the precedential decisions of specially authorized courts (for example, the ECtHR, by virtue of Article 3 of Protocol No. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, enshrining the right to free and fair elections). Therefore, the main administrative resource is the legislative one. And that is why the personal composition and the degree of dependence of the parliament on the will of the main political actors is of such importance for the authorities. But as the authoritarian regime ages and the population gets tired of it, legislative ways to regulate the electoral field may not be enough to retain power. And then it is formed in some consolidated way by means of all administrative resources. In such situations, along with the law, a whole set of legal, pseudo-legal and extra-legal forms is created, aimed at achieving the goal.

Today, the following ways of creating *special legal conditions for organizing and holding elections* in Russia can be distinguished, which in practice become their legal expression:

- direct change in legislation, replacing the constitutional foundations of the electoral process;
- blocking public and legislative initiatives aimed at modernizing and improving the electoral system;
- interpretation of the electoral legislation by the bodies of constitutional control to the detriment of the electoral rights of citizens;

1 *See also, Konstitutsionno-pravovye osnovy antikorruptsionnykh reform v Rossii i zarubezhom* (Constitutional and legal foundations of anti-corruption reforms in Russia and abroad: educational and methodological complex) (textbook). Ed. S.A. Avak'yan. Moscow, Yustitsinform (2016), 90–122.

2 A. Sajo, *Self-defense of the constitutional state* //http://polit.ru/article/2004/09/09/shajo/.

- replacing legal norms with quasi-normative acts (instructions, methodological recommendations, etc.) and making these acts mandatory;
- precedential decisions of courts of general jurisdiction and the creation on their basis of a stable negative judicial practice in the application of electoral legislation;
- arbitrary law enforcement based on the use of an administrative resource, not related to changes in the regulatory framework, but creating a system of business habits (customary law);
- reduction of grounds and opportunities for the application of liability for violations of the electoral legislation;
- changing the meaning and content of the activities of election commissions.

Direct change of legislation

In the first part of this book, we analyzed in detail the dynamics of changes and the classification of amendments to the Russian electoral legislation. This dynamic indicates that the legislative resource was used to the maximum extent for authoritarian purposes. Since 2002, the Law "On the Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation" has been amended more than a hundred times[1]—1,564 amendments have been made to it, 752 amendments to the Law "On Elections of Deputies…", and to the Law "On Political parties," 314 amendments. In total, 2,630 amendments were made to the electoral legislation, 166 of them since May 2021.[2] However, even without counting the number, one can feel the difference in legal regulation quite significantly, simply by picking up two versions of the paper version of any electoral law—a small booklet of the 90s and a thick modern volume. Very visual!

With the help of electoral rules that quickly change to meet the requirements of the next political moment, a parliament modified as necessary for the implementation of the authorities' tasks is formed. In this case, the state abuses its rule-making powers in order to predetermine the future composition of the electoral race, although, according to

1 A. Buzin, *Kto i kak menyaet izbiratel'noe zakonodatel'stvo* (Who changes the electoral legislation and how?) https://www.golosinfo.org/articles/144252.

2 The number of corrections was so great that the authors, although considering their calculation reliable, still admit the possibility of some minor flaws.

the position of the Constitutional Court, one of the main requirements for electoral legislation is its stability as "a guarantee of the equality of citizens in the exercise of active and passive suffrage."[1] That is, the Russian regulation of the procedure for organizing and holding elections is extremely far from the standards of normality, just as its content in terms of ensuring the constitutional principles of democracy, political and ideological diversity, a multi-party system and equality of citizens before the law is very far from perfect.

However, the instability of the legal field and the volatility of legislation are a common feature of authoritarian systems. This is due to the fact that the bureaucracy writes laws for itself. If it competes with anyone, then only with itself. There are no external checks and balances. In a democratic state, legislation is incomparably more stable, because everyone who is at least to some extent interested in it is involved in the discussion process. It is incredibly difficult to push a new law through such a sieve. In our case, the executive branch has the opportunity to implement almost any of its ideas. Which is exactly what it does.

Along with the permanent authoritarian transformation of the legal field, the legislative resource was used to *block public and legislative initiatives* that arose as a natural response of society to the narrowing of the competitive political space. In parallel with the process of transformation of the electoral legislation, experts, opposition politicians, and public organizations developed various proposals aimed at improving the electoral system and holding fair and equal elections. These initiatives concerned both certain aspects of the organization of election campaigns (for example, the return of the line "against all" on the ballot) and changes in the main parameters of the system. Including the electoral formula and even the codification of the electoral law.[2] However,

1 Ruling of the Constitutional Court of the Russian Federation of July 3, 2014 No. 1565-O at the request of a group of deputies of the State Duma on checking the constitutionality of the Law of the City of Moscow "On Amendments to the Law of the City of Moscow of July 6, 2005 No. 38 "Electoral Code of the City of Moscow" and the Law of the City of Moscow dated April 23, 2003 No. 23 "On the Moscow City Electoral Commission"." Bulletin of the Constitutional Court of the Russian Federation (2014) No. 6.

2 The "Golos" Association proposes to adopt the Electoral Code of the Russian Federation. Rosbalt, Feb. 28, 2011 // http://www.rosbalt.ru/moscow/2011/02/28/823738.html (Accessed 05/13/2018). For the text of the draft code, see: "The Electoral Code of the Russian Federation—the basis for the modernization of the political system of Russia," Report of the chairman of the working group A.E. Lyubarev. Ed. A.E.

none of these initiatives were implemented by the specially constructed parliamentary majority.

The proposal to return the line "against all" to the ballot was submitted to the State Duma three times, by a group of opposition deputies and by the legislative assemblies of two constituent entities of the Federation. And three times these legislative initiatives failed to pass even the first reading. Subsequently, the line "against all" was nevertheless returned, but in the most truncated form—only at the municipal level and at the discretion of the regional legislator.

A similar fate, as expected, befell more ambitious proposals, such as, for example, the transition to a mixed-memberproportional electoral system. When in 2013 the "wise men of the Duma" decided to return from a fully proportional system to the previously used mixed-memberparallelsystem, Deputy Dmitry Gudkov, together with experts from the Committee for Civil Initiatives, prepared a draft amendment that assumed mutual accounting of the results obtained by parties under proportional and majoritarian systems.[1] With this procedure for determining the results of elections, a party that simultaneously nominated candidates on the list and in individual constituencies could not get more seats in parliament than

a) candidates from that party who won in single-member constituencies, or
b) from the percentage of votes received by the list.

That is, a mixed-member proportional system would make it possible to eliminate the possibility of a cumulative effect from the shortcomings of both electoral systems in use and would ensure a fairer representation of opposition parties in majoritarian elections.[2] However, all the amendments proposed by Gudkov were rejected, because, un-

Lyubarev. Moscow, GOLOS // http://files.golos.org/docs/4587/original/4587-kodeks-sbornik-2011.pdf (accessed 05/13/2018).

1 *Gudkov i Kudrin nashli Gosdumu svyazannoy* (Gudkov and Kudrin found the State Duma bound). Gazeta.ru, May 14, 2013 // https://www.gazeta.ru/politics/2013/05/13_a_5319585.shtml (accessed 5/13/2018).

2 For more information about the proposed amendments, see *Sovmestno s KGI A. Kudrina vnesli 126 popravok v zakon o vyborakh* (Together with the KGI, A. Kudrin introduced 126 amendments to the election law) // https://dgudkov.livejournal.com/252553.html (accessed: 05/13/2018); What is a mixed-memberproportionalelectoral system // https://dgudkov.livejournal.com/252878.html (accessed 05/13/2018).

like the amendments, which increase the ability of the authorities (actually not divided into branches and lined up in a vertical) to influence the course and result of the elections and reduce the opposition's ability to take real part in them, they were a direct threat to a controlled parliament.

Several bills have been "stuck" for many years in the Duma Council, which simply does not put them to a vote. An interesting case is the one with the presidential draft "hanging" for eight years. It was introduced by Dmitry Medvedev shortly before the inauguration of Vladimir Putin, who returned to the presidency in April 2012, and by inertia passed the first reading, and then was put on hold. The draft provided for the party's right to recall its members from election commissions with a decisive vote. The Duma did not dare to reject the president's project, although it easily rejected the same project submitted by the "Socialist-Revolutionaries" in 2014 (while the leading committee gave different opinions on these two projects). The rest of the pending bills are mainly related to the municipal filter, on which the Administration has not yet made a decision.

Senator Vladimir Lukin proposed extending to Moscow and St. Petersburg the requirement that at least 25% of the deputies of regional parliaments be elected under a proportional system. This is not just a natural demand, it is a demand to abolish an extremely harmful norm, which, after its introduction in 2013, was immediately used by the Moscow authorities. It is in the capitals that party organizations are most developed, and therefore it is in the capitals that the proportional system is most in demand. The rejection of the proportional system in Moscow is clearly the legislators playing along with the main stakeholder of the election results—the executive branch. The draft was rejected in the first reading.[1] And there are many more such examples.

Particularly indicative is the situation with the development of the draft law "Code of Elections and Referendums in the Russian Federation (Electoral Code of Russia)." On the sixth attempt (the previous ones were in 1992, 1994, 2000, 2004, and 2007), at the initiative of the Russian Foundation for Free Elections and the CEC[2], in 2018, the Faculty of Law of Moscow State University named after M. V. Lomonosov officially

1 Buzin, *op.cit*. note 7.

2 The Central Election Commission is interested in the Electoral Code. *Kommersant*. Oct. 29, 2018 // https://www.kommersant.ru/doc/3785414.

began work on its development.[1] The project envisaged the consolidation into a single act of the current federal regulation of the conduct of elections, including the president and deputies of the State Duma, the fundamentals of organizing elections at the level of subjects of the Federation and local self-government, as well as holding referendums (with the exception of a federal referendum regulated by a separate federal constitutional law). In essence, the Code was supposed to replace a number of existing electoral laws.[2] And although ten years before the start of work on this project, another version of the Electoral Code was already prepared, created by the expert group of A.E. Lyubarev under the auspices of the Golos Movement[3] (recognized as a foreign agent), which not only combined all the federal regulation of elections, but assumed a qualitative reworking of the main parameters of the electoral system and the abolition of a number of restrictive and prohibitive norms, the matter did not get off the ground. The code, and even two, are already ready. Time has inexorably moved to the '20s of the 21st century, and nothing has changed.

1 Letthere be a Code of Laws on Elections and Referendums in Russia! / Russian Foundation for Free Elections, 07/05/2018 // http://www.rfsv.ru/law/izbiratelnyi-kodeks/kodeksu-zakonov-o-vyborakh-i-referendumakh-v-rossii-byt; The development of the draft Electoral Code of Russia is entering a new stage / Russian Foundation for Free Elections, 20.08.2019 // http://www.rfsv.ru/breaking-news/razrabotka-proekta-izbiratelnogo-kodeksa-rossii-perekhodit-na-novyi-etap.

2 With the adoption of the Electoral Code of Russia, it is assumed that the federal laws "On the Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation" of 2002, "On the Election of Deputies of the State Duma..." of 2014, "On the Election of the President of the Russian Federation" of 2003, and "On ensuring the constitutional rights of citizens to elect and be elected to local governments" lose force. In addition, the code must include provisions relating to elections to state authorities of the constituent entities of the Russian Federation and local self-government contained in the federal laws "On the general principles of organizing legislative (representative) and executive bodies of state power of the constituent entities of the Russian Federation" and "On the general principles of organizing local self-government in the Russian Federation."

3 *Izbiratel'niy kodeks RF—osnova modernizatsii politicheskoy systemy Rossii* (The Electoral Code of the Russian Federation is the basis for the modernization of the Russian political system). Report of the head of the working group A.E. Lyubarev. The text of the draft bill as amended on Jan. 8, 2011. Moscow, GOLOS (2011) http://files.golos.org/docs/4587/original/4587-kodeks-sbornik-2011.pdf.

Interpretation of the electoral legislation by constitutional review bodies

One of the legal ways to transform the electoral legislation is the interpretation of electoral laws by the Constitutional Court of Russia. And this is natural and normal, since the main goals of the Court are to protect the foundations of the constitutional order, the fundamental rights and freedoms of man and citizen, as well as to ensure the supremacy and direct effect of the Russian Constitution.[1] In the context of the erosion and substitution of the constitutional foundations of the electoral process, it is the Constitutional Court that is entrusted with the task of identifying this negative transformation and counteracting it. Since the parliamentary coup of 2002, electoral disputes have been the subject of consideration by the Court about 200 times, but only 18 times the consideration ended with the adoption of a decision on the merits. No, of course, it cannot be said that the Court has not fully coped with the task assigned to it, that it has always been led by the legislator or the executive branch. Common sense and the constitutional idea were sometimes present among its decisions. For example, when it substantiated the constructive significance of protest voting for the formation of elected bodies,[2] or confirmed the right of voters (and not just candidates and electoral associations) to a judicial appeal against violations at their polling stations,[3] or created additional

1 Art. 3 of the Federal Constitutional Law of July 21, 1994 No. 1-FKZ "On the Constitutional Court of the Russian Federation." SZ RF. July 25, 1994. No. 13. Art. 1447.

2 Decree of the Constitutional Court of the Russian Federation of Nov. 14, 2005 No. 10-P "On the case of checking the constitutionality of the provisions of paragraph 5 of Article 48 and Article 58 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation", para. 7 of Article 63 and Article 66 of the Federal Law "On Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation" in connection with the complaint of the Commissioner for Human Rights in the Russian Federation." SZ RF. Nov. 21, 2005. No. 47. Art. 4968.

3 Decree of the Constitutional Court of the Russian Federation of April 22, 2013 No. 8-P "On the case of checking the constitutionality of articles 3, 4, paragraph 1 of part one of article 134, article 220, part one of article 259, part two of article 333 of the Civil Procedure Code of the Russian Federation, subparagraph "z" of Clause 9 of Article 30, Clause 10 of Article 75, Clauses 2 and 3 of Article 77 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation," Parts 4 and 5 of Article 92 of the Federal Law "On Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation" in connection with the complaints of citizens A.V. Andronov, O.O. Andronova, O.B. Belov and others, the Commissioner for Human Rights in the Russian Federation and the regional branch of the political party "A

guarantees for a judicial appeal against decisions of election commissions to refuse to register a candidate,[1] or when it obliged election commissions to notify candidates for deputies that their documents contain incomplete information or do not meet the requirements of the law for the execution of documents.[2]

At the same time, in a number of key cases, its position seems to be at least controversial, indecisive and clearly not up to the lofty constitutional purpose. Absolutely shameful, for example, is the Ruling on the refusal to accept for consideration the complaint of Vladimir Kara-Murza, Jr., who challenged the constitutionality of the provision of the Law "On Basic Guarantees…", according to which citizens of the Russian Federation who have citizenship of a foreign state do not have the right to be elected. Contrary to the direct and clear provisions of the Constitution that every citizen of Russia has on its territory all the rights provided for by the Constitution (Part 2 of Article 6), that a Russian citizen can have foreign citizenship and that the presence of such citizenship does not detract from his rights and freedoms (Part 1 and 2 of Article 62), despite the presence in the Constitution of a closed list of restrictions on passive suffrage (Part 3 of Article 32), the Court found that the provision of the law "in the part providing for the prohibition of the election of citizens of the Russian Federation who have citizenship of a foreign state to public authorities, does not contain uncertainty and cannot be consid-

Just Russia" in Voronezh Oblast'. SZ RF. May 6, 2013. No. 18. Art. 2292.

1 *Vyyavlena nekonstitutsionnost' normy, na osnovanii kotoroy sudy ne stali rassmatrivat' administrativniy isk k izbirkomu* (The unconstitutionality of the norm on the basis of which the courts did not consider an administrative claim against the election commission was revealed). *Advokatskaya gazeta*, Mar. 31, 2020 // https://www.advgazeta.ru/novosti/vyyavlena-nekonstitutsionnost-normy-na-osnovanii-kotoroy-sudy-ne-stali-rassmatrivat-administrativnyy-isk-k-izbirkomu/; Resolution of the Constitutional Court of the Russian Federation of March 24, 2020 No. 12-P "On the case of checking the constitutionality of the provisions of Article 19, paragraph 7 of Part 1 of Article 20, paragraph 7 of Article 21 and Part 4 of Article 240 of the Code of Administrative Procedure of the Russian Federation, as well as paragraph 7 of Part 4 Article 2 of the Federal Constitutional Law "On the Supreme Court of the Russian Federation" in connection with the complaints of citizens A. A. Bryukhanova and E. L. Rusakova" // http://publication.pravo.gov.ru/Document/View/0001202003260013.

2 Decree of the Constitutional Court of the Russian Federation of March 12, 2021 No. 6-P "On the case of checking the constitutionality of clause 1.1 of Article 38 and clause 1 of Article 39 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation" in connection with the complaint of citizen S. S. Tsukasov."

ered as violating the constitutional rights and freedoms of the applicant." Moreover, it "established" this not by Decree, but by aRuling on the refusal to accept the complaint for consideration.[1] That is, as if "everyone understands everything, but I don't want to leave traces of the official recognition of such a norm that complies with the Constitution."

In another judicial act, the Court, although it recognized the inadmissibility of a lifelong deprivation of electoral rights, admitted the possibility of its going beyond the terms of a criminal record.[2] In fact, this decision of the Constitutional Court of the Russian Federation can safely be called the second in terms of severity of harm inflicted on the Russian electoral system, after the Ruling on the complaint of Vladimir Kara-Murza. Back in 2006, the legislator established a ban on standing for persons sentenced to imprisonment for grave and especially grave crimes and who have an unexpunged or outstanding conviction on the voting day. In 2012, this qualification was made for life and received retroactive effect: the right to be elected was deprived of the right to persons "who had *ever been* sentenced to imprisonment for committing grave and (or) especially grave crimes" except in cases of subsequent decriminalization of the elements of the offense were deprived of the right to be elected.

A year and a half after its adoption, this norm became the subject of a dispute in the Constitutional Court of the Russian Federation. The court recognized the indefinite ban as unconstitutional, which is certainly good. However, at the same time, the Court, firstly, considered it admissible to establish the qualification itself according to the criterion of conviction for committing a grave or especially grave crime for

1 Ruling of the Constitutional Court of the Russian Federation of December 4, 2007 No. 797-0-0 "On the refusal to accept for consideration the complaint of citizen Vladimir Vladimirovich Kara-Murza on violation of his constitutional rights by the provision of para. 31 of Article 4 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right to participation in the referendum of citizens of the Russian Federation." *Rossiyskaya gazeta*. *Federal'niy vypusk* No. 4553 (0). Dec. 26, 2007.

2 Decree of the Constitutional Court of the Russian Federation of October 10, 2013 No. 20-P "On the case of checking the constitutionality of subparagraph "a" of paragraph 3.2 of Article 4 of the Federal Law "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation," part one of Article 10 and part six of Article 86 of the Criminal Code of the Russian Federation in connection with the complaints of citizens G.B. Egorov, A.L. Kazakov, I.Yu. Kravtsov, A.V. Kupriyanov, A.S. Latypov and V.Iu. Sinkov." SZ RF. Oct. 28, 2013. No. 43. Art. 5622.

longer than the term of a conviction. Based on this position, the legislator subsequently replaced the life qualification with the current construction, under which the qualification is valid for 10 and 15 years after the removal of a conviction for grave and especially grave crimes, respectively.

Secondly, the Court gave an interpretation of part 6 of article 86 of the Criminal Code of the Russian Federation that the removal or cancellation of a criminal record annuls all legal consequences associated with a criminal record. Now only the consequences established by the Criminal Code itself are annulled—in other laws, the state is free, in its discretion, to establish the consequences of a criminal record, including beyond its term. For example, in the electoral legislation, this was expressed in the obligation to report information about any convictions ever held.

There is another less known, but very bad decision of the Constitutional Court, by which it approved the possibility of making changes to the main parameters of the electoral system on the eve of the elections.[1]

In January 2014, less than eight months before voting day (and five months before the start of the campaign), the electoral system for the elections to the Moscow City Duma was changed: instead of a mixed one (a combination of the majoritarian with relative majority and the proportional one with closed lists),a completely majoritarian electoral system was introduced. A group of State Duma deputies challenged these amendments, referring to the violation of the stability of the main components of the electoral legislation—the electoral system and the constituencies.

The Court saw no legal uncertainty in this matter. The electoral legislation prohibits the introduction (or, more precisely, the entry into force) of amendments that change the main elements of the electoral system, only for the period of an already ongoing campaign— such amendments are to come into force after the end of the campaign and be applied in the next election. This approach is contrary to the Guidelines on

1 Ruling of the Constitutional Court of the Russian Federation of July 3, 2014 No. 1565-0 at the request of a group of deputies of the State Duma on the verification of the constitutionality of the Law of the City of Moscow "On Amendments to the Law of the City of Moscow of July 6, 2005 No. 38" Electoral Code of the City of Moscow and the Law of the City of Moscow of April 23, 2003 No. 23 "On the Moscow City Electoral Commission," Bulletin of the Constitutional Court of the Russian Federation (2014). No. 6.

Elections adopted by the Venice Commission, which prohibit revision of the main parameters of the system less than a year before the elections. Despite this, the Court did not consider it possible to limit the discretion of the legislator.

In a number of cases, the Constitutional Court abstained from resolving acute electoral issues.

For example, until 2015, regular elections to the State Duma were held on the first Sunday of the month in which the constitutional term for which the previous convocation was elected expired. Since 1993 Duma elections have been held in December. This was one of two exceptions to the single voting day rule introduced in the 2000s. The second (and still remaining) is the election of the President of the Russian Federation. In 2015, the legislator amended the final provisions of the new version of the Law "On Elections of Deputies…", establishing that the next elections should be held on the third Sunday of September 2016, that is, almost three months ahead of schedule.

Officially, the new election date was explained by the desire to bring the Duma elections to a common date with a single voting day in September, although the single voting day falls on the second, not the third, Sunday of the month. A more logical position is that such a transfer would lead to a "drying up" of voter turnout and, thereby, to an increase in the percentage of participation of the administratively dependent electorate.

The Federation Council asked the Court to interpret Articles 96 and 99 in terms of changing the constitutional terms of office of the State Duma. Despite the obvious unconstitutionality of the postponement, the Court ultimately evaded its critical assessment, declaring it admissible if several evaluation criteria were met: "For constitutionally significant purposes, in advance, does not entail deviations from the reasonable frequency of the regular elections of the State Duma and the continuity of its activities and is minimally insignificant."[1]

Or this: the Law "On Basic Guarantees of Electoral Rights…" contains a list of actions that qualify as election campaigning—direct appeals, expression of preference, description of the consequences of electing or not electing a candidate, etc. Until 2003, this list was open: the last item on it was "other actions aimed at inducing or encouraging voters to vote."

1 Decree of the Constitutional Court of the Russian Federation of July 1, 2015 No. 18-P "On the case of the interpretation of Articles 96 (Part 1) and 99 (Parts 1, 2 and 4) of the Constitution of the Russian Federation." SZ RF. July 13, 2015. No. 28. Art. 4335.

At the same time, both then and now, the electoral legislation prohibits media workers from campaigning in the course of their professional activities.

The appeal to the Constitutional Court pursued the goal of obtaining a clear distinction between campaigning and information in the media. However, the resulting solution only exacerbated the confusion. The court declared the clause on "other actions" to be unconstitutional, which, however, did not make the list of "options" for campaigning closed: it still contained no less vague "activities that contribute to the creation of a positive or negative attitude of voters."[1] However, at the same time, the Court stipulated that illegal campaigning activities can only be intentional. In other words, media campaigning is only campaigning when it has a campaigning goal. And proving such a goal is a matter of evaluation and discretion.

But even when the Constitutional Court adopted something constructive on the issue of voting rights, it often resulted in nothing. For example, two government bills submitted to the Duma on the basis of decisions of the Constitutional Court have been shelved for many years and have not been put to a vote. These are a bill related to the Decree of the Constitutional Court that a member of the territorial commission may have a residence permit in another country ("Malitsky's case"), which has been before the Duma for more than ten years, and a project implementing the Decree on the possibility of appealing the election result by a former candidate in case of obstruction by election commission officials of the nomination and registration of a candidate, introduced in 2019. But the Duma not for the first time (recall the situation with the referendum law) considers it possible to ignore the decisions of the Constitutional Court. Apparently, with its unstable position, it deserved just such an attitude.

1 Decree of the Constitutional Court of the Russian Federation of October 30, 2003 No. 15-P "On the case of checking the constitutionality of certain provisions of the Federal Law "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation"." SZ RF.Nov 3, 2003. No. 44. Art. 4358.

Substitution of legal norms by quasi-normative acts. A Ministry of Election Affairs

Suchquasi-normative acts include various kinds of resolutions, methodological recommendations, explanations and instructions adopted by the Central Election Commission of Russia and the election commissions of the constituent entities of the Federation. The law really gives the Central Election Commission the right to issue binding instructions "on issues of uniform law enforcement,"[1] and they actively use this. Even more than actively. Federal legislation does not recognize such authority for regional commissions, although in practice they still adopt their instructions. There are a lot of regulatory, semi-normative and recommendatory acts of election commissions. Scholarly treatises have been written about them.[2]

Election commissions also interpret electoral laws.[3] They also publish guidelines…[4]

1 Para. 13, Art. 21 of the Basic Guarantees Law of 2002.

2 *Pravovye pozitsii izbiratel'nykh komissiy Rossii* (Legal positions of the election commissions of Russia). Ed. S. V. Kabyshev. Moscow, Formula Prava (2016).

3 For example, Decree of the Central Election Commission of the Russian Federation of September 21, 1999 No. 15 / 114-3 "On clarifications on the procedure for exercising the electoral rights of military personnel and law enforcement officers during the preparation and conduct of elections of deputies of the State Duma of the Federal Assembly of the Russian Federation of the third convocation," Decree of the Central Election Commission of the Russian Federation of March 23, 2007 No. 203/1272-4 "On Clarification of the Procedure for the Application of Clause 1.1, Subclauses "v. 1," "v. 2" paragraph 24, subparagraphs "b. 1", "b. 2" of paragraph 25, subparagraphs "z" and "i" of paragraph 26 of Article 38 of the Federal Law "On the Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation," Resolution of the Central Election Commission of the Russian Federation dated Nov. 01, 2007 No. 51 / 432-5 "On clarifications on the procedure for the activities of foreign (international) observers and on the certificate of a foreign (international) observer during the elections of deputies of the State Duma of the Federal Assembly of the Russian Federation of the fifth convocation" and a number of other explanatory acts.

4 A special type of interpretive act is formed by acts of a regulatory nature. For example, Decree of the Central Election Commission of the Russian Federation of April 7, 2005 No. 142/975-4 "On Approval of Methodological Recommendations for Organizing the Activities of Electoral Commissions of the Subjects of the Russian Federation and the Control and Auditing Services Established Under Them to Conduct Audits on the Use of Budgetary Funds Allocated to Electoral commissions, referendum commissions for the preparation and conduct of federal elections and referendums."

The acts of the commissions regulate in detail individual, already excessively bureaucratic electoral procedures. For example, they approve the forms of documents that are mandatory for use by candidates and parties and specify the setof documents required for nomination—all the way up to the procedure for certifying a copy of a candidate's passport and explaining which "paper" can be used to confirm which legal fact of his biography. Despite the fact that the law omits such details, the violation of the requirements of quasi-normative acts is actually perceived by the courts as a violation of the law: since the law contains general provisions that the commission specified within its powers, then the law is subject to application in the manner established by the act of the commission, both courts and the commissions themselvesbelieve. In addition to the forms of documents, the commissions traditionally determine the procedure for the workflow of financial documents, opening and maintaining an electoral account, compiling financial statements, providing free airtime and free print space for campaigning, etc., etc.

But the CEC does this in such a way as to complicate the verification of electoral violations as much as possible. For example, in the regulation of video surveillance during elections, which has been carried out in Russia since 2012, mainly in federal campaigns, as well as in individual regional campaigns. From election to election, the number of precinct and territorial commissions equipped with cameras varies, the rules for access to broadcasts change. However, one block of questions has consistently remained defective throughout the ten years. This is a question about subsequent access to video recordings from the sites. Such access can be obtained only with the permission of the CEC or the EC of the subject of the Federation and only for a certain time interval corresponding to the alleged violation. Access to complete records that could, for example, verify voter turnout is a priori impossible. Any application for access to records may be rejected on formal grounds.

Or here is an example of a classic abuse of a rule-making resource for the purposes of arbitrary quasi-normative regulation: during 2020, several amendments were made to the electoral legislation introducing new methods of voting (remotely, in areas adjacent to your residential building, or by mail), expanding the possibilities of home and early voting, as well as allowing for multi-day voting. A feature of all these amendments is that the issues of choosing voting methods in specific elections and the rules for conducting such voting are given by law to the Central Election Commission (a kind of deliberate blanket rule). Under the con-

ditions of such legislative freedom, the CEC independently, by its resolution, decides what kind of voting, how and in what time frame to conduct it.

For example, in 2020, the CEC allowed four options for early voting: at the polling station, at home, in areas adjacent to the residential building, and at the exit toward another population centerwhere there is no voting place. At the same time, early home voting can be held simultaneously with any other "early voting." That is, if earlier the presence of observers at the same time both at the polling station and at the exit was necessary only on voting day, now it is required for several days.

Also, the resolution reduced the protection against fraud during"early voting." Ballot papers for each day and each voting method were to be packed in separate safe packages. If, when such a package was opened during the vote count, it contained more ballots than were issued, the ballots were not automatically invalidated (as, for example, in the case of portable boxes on a regular voting day). Then a control recount was carried out according to the lists of voters, during which the members of the commission had much more opportunities to "correct" something.

Such a seemingly simple document as a working notebook of a member of the precinct election commission deserves additional attention. It is adopted each time for each specific election and regulates in detail literally every breath at the polling station. Being essentially a reference book compiled to help members of the commission, it often literally replaces the law on the site, showing "the ultimate truth." At the same time, it is not even formally approved by the decision of the Central Election Commission.

All this is clearly superfluous and unnecessary, a kind of legal rubbish that greatly complicates the life of candidates, turns elections into a set of stupid bureaucratic procedures that cannot be fully implemented, and deprives them of political competitive meaning. Such excessive normativity is an unconditional sign of the legal system of an authoritarian state. If we analyze almost any normative legal act in such a state, we will see only specific rules of conduct that have no real purpose and usually exist in the form of precise, non-ambiguous or dispositive application of prescriptions.[1]

1 M.G. Tirskikh, *Pravo v gosudarstvakh s avtoritarnym politicheskim rezhimom* (Law in states with an authoritarian political regime), *Sibirskiy Iuridicheskiy Vestnik*, (2011) No. 3(54), 113.

Thus, the CEC turned from an election commission into a full-fledged Ministry for Election Affairs. It is on the basis of its quasi-normative acts that the work of all election commissions in the country is organized, the results of which are reaped by voters who have less and less confidence in their state and its representative bodies.

Creation of special judicial practice

"Precedential" decisions of the courts of general jurisdiction also actually became one of the sources of legal regulation of the electoral process. Not being precedents in the exact meaning of this term, such decisions set a certain general trajectory of law enforcement in the face of an insufficient or ambiguous regulatory framework. In some cases, only due to the established judicial practice, it is possible to determine the degree of permissible behavior. At the same time, defects in legal regulation give the courts excessive discretion, up to and includingthe adoption of mutually contradictory decisions in similar circumstances.

So, for example, it was on the basis of court decisions that many rules for the use of intellectual property rights in election campaigns were formed. Electoral laws contain only a prohibition on violation of intellectual property law in the course of election campaigning and sanctions for such violations in the form of denial of registration, cancellation of a decision on registration, or cancellation of registration of a candidate or party list.[1] The ban itself is a reference to the provisions of the fourth part of the Civil Code of the Russian Federation and does not imply any electoral specifics of intellectual property regulation. However, it arises from the very fact of litigation about copyright in the absence of claims from the right holders.

As an example, we can cite the practice of disputes over the use of social network logos in campaigning. Their use without concluding a license agreement with the copyright holders has been recognized as a violation of intellectual property law for several years,[2] although

1 Subpara. "k" para. 24 and subpara. "i" para. 25 of Art. 38, paragraph 1.1 of Art. 56, subpara. "d" para. 7 and subpara. "d" para. 8 of Art. 76 of the Basic Guarantees Law of 2002.

2 *See*, for example: A candidate for deputy was removed from the elections for using social media logos. Lenta.ru, March 11, 2013 // https://lenta.ru/news/2013/03/11/cand/ (accessed 05/18/2018); YABLOKO candidate was removed from the election for using social media icons. RODP "Yabloko." Aug. 31, 2015 https://www.yabloko.ru/regnews/vladimir/2015/08/31 (accessed: 05/18/2018).

the networks themselves allow the use of their logos for informational purposes–to indicate a method of communication with a person. However, in 2016 this practice was changed by the decision of the Supreme Court of the Russian Federation, unexpectedly recognizing the difference between propaganda and informational use of the logo, allowing the use of the latter without concluding a separate license agreement with the copyright holder.[1]

Such hemming and hawing by the courtsspeaks of the opportunism of the decisions made. The adoption by the Supreme Court of reviews of the practice of considering electoral disputes, and the systematization of practice in the decisions of the Plenum of the Court partly makes it possible to bring practice to uniformity.[2] But, firstly, many significant issues have not yet been reflected in the reviews, and secondly, the development of legal regulation is by no means the task of the judicial system.

The Lev Shlosberg precedent. We specifically provide a detailed analysis of the legal situation that has arisen around the dispute over the legality of the cancellation of the registration of Lev Shlosberg as a candidate for deputy, since the court decision using double retroactive force is, of course, a precedent. Why Schlosberg? Because the recalcitrant Pskov Yabloko deputy dared to run for the federal parliament, from which all Duma "troublemakers" were expelled in advance and "to avoid problems" were forced out of the country—the father and son Gudkovs, and entrepreneurs Sergei Petrov and Ilya Ponomarev. Even by himself,

1 Appellate ruling of the Supreme Court of the Russian Federation dated Sept. 14, 2016 in case No. 50-APG16-21 / The text of the decision is published on the official website of the Supreme Court of the Russian Federation http://vsrf.ru/stor_pdf.php?id=1479176 (accessed: 5/18/2018).

2 *See, for example*: Review of judicial practice on issues arising in the consideration of cases on the protection of electoral rights and the right to participate in a referendum of citizens of the Russian Federation, confirmed, Presidium of the Supreme Court of the Russian Federation on Dec. 20, 2017 // https://vsrf.ru/documents/thematics/26261/ (accessed5/18/2018); Review of judicial practice on issues arising in the consideration of cases on the protection of electoral rights and the right to participate in a referendum of citizens of the Russian Federation,confirmed, Presidium of the Supreme Court of the Russian Federation on March 16, 2016 // http://vsrf.ru/Show_pdf.php?Id=10735 (accessed 5/18/2018); Decree of the Plenum of the Supreme Court of the Russian Federation No. 5 dated Mar. 31, 2011 "On the Practice of Court Consideration of Cases on the Protection of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation." *Rossiyskaya gazeta*. No. 5451 (75). Apr. 8, 2011 // https://rg.ru/2011/04/08/verhovn-sud-dok.html (accessed 05/18/2018).

without being a duma deputy, the uncompromising Schlosberg was extremely dangerous for the warm Duma swamp "without discussion." Maybe if he didn't dare to go to the Duma and stayedhome in Pskov, there would be no problems. However, even from Pskov, he knew how to create problems for the center. What happened?

On January 23, 2021, mass public events were held in many Russian cities in support of AlekseyNavalny and in defense of freedoms. It is unlikely that anyone could have imagined then that, in addition to thousands of detainees and dozens of criminal cases, another consequence of these actions in six months would be the removal of dozens of opposition candidates in the elections to the State Duma and regional legislative assemblies.

One of the actions on January 23 was a procession in the center of Pskov, in which more than a thousand people took part and which took place virtually without an organizer—he was detained the day before. At the end of the main event, a group of about 50 participantsended up near the city's "Hyde Park"—a special site where public events can be held without prior approval. It was at this moment that the deputy of the Pskov Regional Assembly, Lev Shlosberg, suggested that the protesters go to the "Hyde Park," a place where unconditional freedom of assembly is protected by law.

It was for this episode that the Pskov City Court on January 29 found Lev Shlosberg guilty of organizing an illegal public event (a "march" of several dozen people to the "Hyde Park," where the police eventually did not let them in) under Part 2 of Article 20.2 of the Code of Administrative Offenses of the Russian Federation, a spontaneous movement of several dozen people along the path in the park for less than a hundred meters, calling Schlosberg its "actual organizer."

A little more than six months later, this court decision became the basis for the cancellation of Schlosberg's registration in the elections to the State Duma by the Moscow City Court. But what do elections have to do with it, you ask? At that point, absolutely nothing. However, the law in Russia can change rapidly and unpredictably. In early May, literally a month after the start of the trial to recognize Aleksey Navalny's opposition structures as extremist, a bill was submitted to the State Duma that would deprive citizens of passive suffrage (that is, the right to be elected in elections at any level) for involvement in the activities of extremist and terrorist organizations.

The bill had many defects, the vast majority of which, however, successfully passed all stages of the legislative process in record time. The law introduced two categories of persons involved in the activities of extremist structures. The first includes the founders and heads of an organization and its structural divisions. They are recognized as "involved" automatically, without a separate court decision: a court decision that has entered into force and recognizes the organization as extremist is enough. The last detail is important; we will return to it later. Founders and leaders are deprived of the right to be elected for five years from the date of entry into force of such a court decision.

The second category of "involved" consists of members, participants and employees of the organization and other persons. To recognize them as "involved," a separate court decision that has entered into legal force is required, establishing the legal fact of involvement. Moreover, the involvement can be expressed in almost any interaction with "extremists": financial support (transfer of donations), approval statements (even posts and reposts on social networks), participation in events and "other actions" so beloved by the legislator, allowing to endlessly expand the circle of grounds at the discretion of government agencies.

In summary: in order to lose the right to be elected, "others involved" require not one, but two court decisions that have come into force simultaneously: on recognizing the organization as extremist and on establishing the person's involvement in its activities, and the period of deprivation of the right is three years.

To top it off, the new law is worded in such a way that it applies retroactively, that is, to events that occurred before it was passed. We are talking about the timing of establishing involvement—when a person had to get involved in the activities of an extremist organization in order to be deprived of their rights. For "others involved" such a period is one year until the organization is recognized as extremist; for founders and leaders, three years. Translating from legalese into Russian, if an organization was recognized as extremist in June 2021, a citizen will be recognized as involved in its activities if he took part in its events in the period from June 2020 to June 2021.

It is obvious that all the January actions (the organizer of which the court recognized as the banned organizations of Aleksey Navalny) fall within the specified interval. In essence, citizens are being disenfranchised for actions that did not have such legal consequences at the time they were committed. A participant in the action in January 2021 or, for

example, a donor who sent a donation in October 2020 did not know and could not know that these actions would lead to being recognized as involved in extremism. This is the retroactive force of the law, with the help of which election commissions and courts, one after another, struck candidates from the Duma elections in 2021.

But there is a limitation in the use of retroactive force, laid down by the June law itself and solemnly ignored by the election commissions and courts. The fact is that the law, which allows to deprive the passive electoral right for involvement in an extremist organization, entered into force on June 4, 2021, on the day of its publication, which means that it can only be applied to legal relations that arose after its entry into force. Again, translating from legalese into Russian, both court decisions—both on recognizing the organization as extremist, and on establishing the involvement of a person in its activities— should come into force after June 4. This in no way cancels the general unconstitutionality of restricting rights with retroactive effect, that is, for actions that at the time they were committed did not have such consequences. But even for such unconstitutional restrictions, there is a procedure for their application.

Let's get back to the case of the deregistration of Lev Shlosberg in the elections to the State Duma. He was charged with "other involvement" in the activities of an extremist organization. According to the plaintiff, and then the courts of three instances, this is confirmed by the decision of the Pskov City Court of January 2021, the same in which Shlosberg was called the "actual organizer" of the march, without even trying to take account of what happened at the event. But this decision happened a few months before the new amendments to the electoral legislation came into force, which means that it could not be used. The same applies to other opposition candidates, whose involvement in the "extremists" was established by the January and February court decisions, by which future candidates were brought to administrative responsibility.

There is another significant detail in the case of Lev Shlosberg: on August 3, he was already registered by the district commission as a candidate for the State Duma in a single-mandate district, and on August 5, by the Central Election Commission as part of the federal list of the Yabloko party.

According to the law, the registration of a candidate that has already taken place can be canceled by the court due to his lack of passive suffrage only due to newly discovered circumstances. These are circum-

stances that existed at the time of registration of the candidate, but were not known to the election commission. This means that both the court decision on establishing involvement and the court decision on recognizing the organization as extremist should not only exist, but should also enter into force no later than August 3, the date of registration of Lev Shlosberg as a candidate in a single-mandate constituency.

But the Pskov decision on the procession near the Hyde Park, which the courts used as establishing involvement, is not such a decision. There is no other decision on involvement, and it is impossible to establish it otherwise than at the suit of an authorized state body (and not another candidate for deputies) according to the norms of the law. And even if you establish it regardless of the law, then it will in no way come into force on August 3; in the real world, unlike the text of the law, time does not flow backwards.

There was also no decision on recognizing the organization as extremist on August 3: the decision of the Moscow City Court on the structures of Alexei Navalny came into force only on August 4, after the registration of Lev Shlosberg.

As a result, neither of the two decisions required by law to recognize a citizen as deprived of the right to be elected by the courts exists.Like it or not, the "puzzle," even such an unconstitutional one, cannot be solved. But, as they say, if someone wants it very much, even something worse than that used to be accepted by our courts.[1]

Creation of a system of special customary practices

The systematic use of the administrative resource in the electoral process has led to the formation of a stable law enforcement practice that is not based on the legal framework. And not only on the legal basis, but on the law in general. This practice, in fact, has become a "business practice," a sort of customaryrule not enshrined in law, but applied everywhere. For example, the absence of a direct reference to the right of observers and commission members with advisory votes to film at polling stations has long been interpreted as a direct ban. The situation was similar with the right of public observers to move around the polling station, the right to get acquainted with the documents of the election commis-

1 E. Poroshin, *Obratnaya politicheskaya sila* (Reverse political power). *Novaya Gazeta*, Sept. 6, 2021, No. 99 https://novayagazeta.ru/articles/2021/09/03/obratnaia-politicheskaia-sila.

sion, the right to make comments, etc. The absence of a direct mention of these actions in the law was interpreted negatively, as a prohibition. The result of the violation of all the missing "prohibitions" in most cases was the removal of observers from the sites, which in itself also became a habit.

There are many such small examples. Such business practices as a creative power of the authorities in achieving the goal of limiting political competition and obtaining the desired electoral result are characteristic not only of election commissions. Many departments "frolic" in this field. Particularly creative in this incarnation is the Ministry of Justice, which is responsible for registration and control of the activities of political parties. The legalization of its illegal practices is entrusted to the judicial system, which successfully copes with the task.

So, for example, Aleksey Navalny, starting in 2012, tried to register his party and was refused nine times. Initially, he wanted to register a party called "People's Alliance," but political strategist Andrey Bogdanov, who is the founder of eight registered political parties, very quickly renamed one of them, the "Native Country" party, "People's Alliance," so that the name was taken. After Bogdanov's People's Alliance was registered with the Ministry of Justice, Navalny renamed his organization the Progress Party. He attempted to register this name six times, but was refused. In March 2018, the Ministry of Justice renamed as the Progress Party another party associated with Andrey Bogdanov, Civic Position. The third name of Navalny's party was Russia of the Future. Now the Ministry of Justice needed a new creative trick.

According to a statement from the Ministry of Justice, signed by Vladimir Titov, director of the department for non-profit organizations, state registration of the Russia of the Future party was suspended for three months, since a number of provisions of the charter of the party of Aleksey Navalny contradicted the Federal Law "On Political Parties." The Ministry of Justice has eight complaints about the text of the charter. The comments relate to accounting, and issues of interaction between the leadership of the party and its regional branches. The department also revealed errors in the numbering of paragraphs of the charter. For example, in the sixth paragraph, the Ministry of Justice requires a detailed description of "the procedure for appealing by party members of decisions and actions of its governing bodies, its regional branches and other structural divisions." The seventh complaint generally resembles a closed loop paradox: in order to hold a general meeting of the regional

branch of the party, it is necessary to gather the members of the party registered in its regional administration, which can only be created by a general meeting of the branch. The department's last complaint concerned a violation of the numbering of the charter, although the Ministry of Justice must check the document for compliance with the law, which the violation of the numbering obviously does not contradict.

In May 2019, the Zamoskvoretsky Court of Moscow dismissed a complaint about the refusal of the Ministry of Justice to register the party. The ministry again explained that a party with that name already exists. In fact, Mr. Bogdanov (apparently at the urgent request of the Ministry of Justice) for the third time renamed one of his parties, the Party of Free Citizens, to exactly the name indicated in Navalny's statement. It seems that the folders with documents of Bogdanov's parties are in the Ministry of Justice on a separate special shelf labelled "On Demand" and are promptly used one after another in emergency cases. Navalny's party has not yet been registered.[1]

It turns out that it seems so easy to rename an already registered party. Andrei Bogdanov managed to do this three times without problems or delays. But no, it turned out that this is not so for everyone. The Ministry of Justice treats "ours" and "them" closely and on a case-by-case basis, and, intentionally abusing its powers, in its hard work it is clearly guided by the principle of "hold tight and don't let go." Therefore, when the new, not very "politically reliable" co-founders Dmitry Gudkov and Ksenia Sobchak came to Andrei Nechaev's "Civil Initiative" party, the Ministry of Justice was on the alert.

In the summer of 2019, the party held a congress and by two thirds of the votes changed its charter, introducing a second co-chairman and seriously increasing the powers of the political council; Dmitry Gudkov was elected chairman of the party by secret ballot and voted for a new name: Party of Change. This was preceded by a six-month effort to get the minutes of the regional chapter meetings in order and nominate delegates from 53 entities. The Ministry of Justice did not have a single complaint about the quorum, the choice of delegates, voting and the conduct of all procedures at the congress. The congress was completely legitimate, and its decisions were legal. It is legal to elect new members of

1 *"Rossiya budushchego" otlozhili* ("Russia of the Future" was postponed). *Kommersant*. July 18, 2018 // https://www.kommersant.ru/doc/3689663; The court recognized the refusal to register Navalny's party as legal. *Kommersant*. October 15, 2019 // https://www.kommersant.ru/doc/4126076.

the political council, it is legal to vote by secret ballot for the choice of the chairman of the party, it is legal to vote for changes in the charter and name. In each of these votes, the requirement for the approval by two thirds of the overall number of delegates was met.

But the Ministry of Justice refused to rename the party. For example, it had a complaint about the absence of a party program in the documents. Although the regulations of the Ministry of Justice say that in order to amend the Charter, only four documents must be submitted: an application in the form prescribed by law, a decision to amend, the Charter in a new edition, and receipts for payment of the state fee. And this happened five times. Five times the party filed documents on renaming, five times the Ministry of Justice refused it for a variety of reasons, and the same Zamoskvoretsky Court (having jurisdiction over the location of the Ministry of Justice) confirmed the legitimacy of the refusals. Such is the "customary practice." The party has not been renamed yet.

In practice, such an expansion of the powers of state bodies testifies to an excess of the limits of state intervention in the relations of democracy, to a decrease in self-restriction of power by law and, as a result, to a violation of the principle of the legal nature of the state.[1] The effect of interference, achieved through uncontrolled changes in the rules for organizing and holding elections, is greatly enhanced by the creation of a special system for restricting the protection of voting rights.

However, the discriminatory nature of law and the personalized nature of legal prescriptions is another typical specific feature of an authoritarian state. The discriminatory nature of law means the actual impossibility of formal equality for all social categories of the population, which is inherent in the law of democratic states. An authoritarian state, characterized by the power of a limited circle of people, predetermines the need to create a social support for the ruling group.[2]

Reducing the grounds and opportunities for the application of liability for violations of electoral legislation

In the first part of the book, we considered in detail the issue of the importance of having a list of electoral violations in the legislation,[3]

1 *See* for more details: A. Sajo, *Self-limitation of power (a short course in constitutionalism),* 57–76.

2 Tirskikh, *op.cit.* note 32.

3 *See* Chapter One, 35–36; para. 1 Art. 93 of the Law "On Elections of Deputies…" of

the relationship of such a list to legislation establishing liability, and the problem of implementing this liability as the main form of protection of electoral rights. We also talked about how this list appeared in the electoral legislation in 1997 and how it was removed from it in 2002. It was naturally withdrawn, since a programmed electoral result cannot be obtained without violations, and the presence of such a list greatly complicates the life of the organizers of such a result. Most of the electoral "customarypractices" that have already become commonplace, which, in fact, are nothing more than gross violations of electoral rights actively practiced in modern Russia, were reflected in this list. If it had been preserved in the current legislation, the situation with the observance of electoral rights could well have become different. But everything happened the way it happened, and, as we understand it, not by chance. Instead of a list in the law, only a general reference rule on criminal, administrative and other liability remained without a description of the grounds. But the matter was not limited to the reduction of grounds for liability. The list of subjects able to appeal electoral violations has also undergone changes. The Central Election Commission was also deprived of the right to apply to the Supreme Court with a statement in defense of the rights of a significant number of citizens.

A special issue is appealing against violations committed by candidates and electoral associations. They can be appealed either by the election commission organizing the elections, or by an opposing candidate or party. Parties not participating in the campaign, other public associations, non-profit organizations and, finally, citizens are deprived of the right to a voice in this matter. For example, they cannot defend their right to receive truthful information about candidates, appeal violations of election campaigning rules, or, say, independently oppose the registration of a candidate with a hidden criminal record. The only thing that in the end, and even then by a special decision of the Constitutional Court, citizens were allowed to do was appeal against violations recorded at the polling station where they themselves voted. From the point of view of the legislator, this limits the legally protected interests and rights of ordinary voters. In all other cases, only a special entity can be an applicant. Thus, the elections have been turned into a kind of "get-together of insiders," in which even the state is almost completely free

1999.

of the obligation to control the observance of the principle of free and fair elections.

Changing the meaning and content of the activities of election commissions

Initially, the status of election commissions in post-Soviet Russia was interpreted by scholars as public-state or public-municipal. Indeed, the procedure for their formation and activities differs significantly from state bodies. By definition, this is a special independent joint body created to prepare and conduct elections for deputies of representative bodies and elected officials. The position of election commissions in the system of bodies of state power and local self-government is defined by law only in general terms. Only the Central Election Commission of the Russian Federation and the election commissions of the subjects of the Federation are defined by it as state (national) bodies. The rest are assigned to the subjects of the Federation. But, despite the requirement of federal legislation, many subjects still have not defined in their laws the status of territorial election commissions and municipal commissions. And where there is uncertainty, there is always the widest scope for bureaucratic creativity in favor of its creator.

With the centralization of the entire life of the state, the powers, role and positions of all six types of commissions were differentiated and changed, primarily in the direction of the verticalization of the system, and the transfer of the center of gravity to the center. The normative-administrative functions of the CEC were growing, which was steadily turning it into a ministry for elections. The redistribution of powers, primarily oversight ones, was carried out to the detriment of the lower commissions, which increasingly became dependent on the relevant executive authorities. As a result, the legal status of election commissions established by law in general terms is very different from their real status, but at the same time it is completely commensurate with the general state trend of forming a special state mechanism aimed at preventing political competition and retaining power.With the introduction of the term "single system of public authority" and the actual destruction of independent local self-government, the real status of grassroots election commissions will be finally built into this system. With a high degree of probability, the commissions will completely turn into a type (subdivision) of the executive branch in charge of organizing and holding elections.

The transformation took place gradually. Initially, in order to achieve the desired goal, firstly, the procedure for the formation of commissions was adjusted—the possible proportion of state and municipal employees who are in a position dependent on the authorities was increased in their composition. The wording of the article of the Law "On Basic Guarantees…" of 1994 on the personal composition of the members of the CEC has mysteriously changed. In that version (in Article 12) it was said that the members of the CEC "should have a higher legal education or a degree in law." Now it all sounds much more modest: "Members of the Central Election Commission of the Russian Federation must have a higher education." And really, why make it so complicated? Whoever needs to will come, explain, help, and arrange. Yes, and problems can arise with boring lawyers on the subject of loyalty and complaisance. After all, the CEC was excellently "led" for the good of the country by atmospheric physicist Vladimir Churov, and now process engineer Ella Pamfilova is no less successfully coping with the task.

Secondly, the commissions themselves were entrusted with the execution of certain state powers to control political parties, powers inherent in the bodies of justice. Here is an example: the simplification of the procedure for registering political parties after the decision of the ECtHR in the *Republican Party* case led not only to a multiple increase in their number, but also to problems in the process of ensuring equal representation of parties in the composition of election commissions. According to the CEC of Russia, 77 political parties were registered in the Russian Federation in 2015, while the mechanism for ensuring the representation of parties in the composition of election commissions was formulated at a time when the number of parties was an order of magnitude lower. The requirement to observe equal representation of parties in the composition of election commissions is enshrined in the resolution of the CEC of Russia only in relation to precinct election commissions. As a result, during the formation of territorial commissions in 2015, out of 12,654 candidates from 65 parties received, 11,278 members from 62 parties were appointed to the commissions.[1]

Finally, the oversight powers of the commissions within the framework of the election campaign and the rights of its individual members were limited. Now, for example, commissions are not required to con-

1 N.Iu. Turishcheva. *Aktual'nyie voprosy pravovogo statusa izbiratel'nykh komissiy* (Topical issues of the legal status of election commissions), *Zhurnal Rossiyskogo Prava* (2016), No. 7, 19–28.

sider the dissenting opinions of members when making decisions. In fact, the commissions have become "hostages" of the administratively dependent part of their composition and representatives of pro-government parties that form a confident majority. The logical result was the direct management of the commissions by the executive authorities.

Contrary to the law, the executive bodies often directly exercise the powers vested in the commissions. For example, in accordance with the law, it is the election commission that "ensures that voters are informed about the timing and procedure for the implementation of electoral actions, the course of the election campaign" (para. 16, article 26 of the Law on "On Elections of Deputies…"). But at the by-elections of the State Duma deputy for the 204th constituency, by order of the prefect of the Southern Administrative District of Moscow, the Plan for Information Support of the Elections was adopted and implemented, for the implementation of which financial resources were allocated from the prefecture. At the same time, the prefecture did not even notify the commission of the adoption of such a plan and the allocation of funds.

One of the main forms of influence of the executive power on election commissions was the creation of so-called work groups under the commissions. In fact, these work groups arbitrarily perform functions which are in the jurisdiction of the commissions, organize instruction for members of lower commissions, observe at the polling stations, and take part in summing up the results of the territorial commissions. Work groups consist mainly of employees of executive authorities. Representatives of the work groups attend the meetings of the commission and participate in its decision-making.

And what types of work groups were not "invented" in the field! On the receipt of documents, on information disputes, on the consideration of citizens' appeals, on control over the GAS (automated system) "Vybory," on the organization of training for members of election commissions, and on the collection and systematization of information on the amount and other conditions of payment for the production of printed campaigning materials submitted by organizations, individual entrepreneurs performing work (providing services) for the production of printed campaign materials… There are even groups called KRS (control-review service), groups for ensuring the control and realization of voting groups of disabled citizens, and groups for the destruction of documents containing personal data and other confidential information.

And then such messages appear in the media, for example: "The work group of the Yekaterinburg election commission recommended that the initiative group be denied registration of a referendum on the construction site of St. Catherine's Church."[1] Or these: "A meeting of the work group of the electoral committee of the Novgorod region was held, at which recommendations were made on the candidates for members of the electoral committee and chairmen of the territorial election commissions (TECs)." That is, not commissions, but their work groups, consisting of officials, decide all the issues of electoral law in our country. Doesn't it remind you of anything? Or have they already forgotten how the "Soviet way of doing things" turned into an "executive committee" way?

Moreover, there are unique theoretical justifications for such a practice. It turns out that "the legal nature of the working group for the acceptance and verification of documents of the election commission is natural law, arising from the natural law Doctrine of Necessity. The absence of de facto competence of the working group to make this or that decision does not affect the competence of the decisions of the election commission."[2] A new word in science—the natural-legal nature of the status of a self-proclaimed body. Really!

But it seems that it could not be otherwise. "When developing a democratic society, we are faced with a "vicious circle", which includes the "problem of electoral bodies": the legitimation of democratic power through free, fair and genuine elections can only be carried out by electoral bodies independent of the authorities, and on the other hand, independent electoral bodies can be created in the presence of democracy and civil society.[3] And so long as the goals and objectives of the state are the seizure and retention of power, we will tread in this vicious circle.

1 https://www.kommersant.ru/doc/4010879.

2 A. Shidlovsky, Legal nature of the working group of the election commission // https://zakon.ru/blog/2020/12/21/pravovaya_priroda_rabochej_gruppy_izbiratelnoj_komissii.

3 A.E. Buzin, *Problemy pravovogo statusa izbiratel'nykh kommissiy* (Problems of the legal status of election commissions), abstract of dissert., cand. of legal sciences. Moscow (2004), 4.

Falsifications

Taken together, the application of all the described methods led to a powerful cumulative effect, expressed in the creation by the state of favorable conditions for multiple violations of electoral legislation and falsification of voting results in favor of pro-government candidates. The number of violations and falsifications is consistently growing. According to the calculations of mathematical statistician Sergei Shpilkin, in 2007 the number of "anomalous" votes for United Russia was 13.8 million; in 2008, 14.8 million; in 2011, 15.3 million; and in 2012, 11.0 million. In the 2016 elections, the same methodology gave 12.1 million "anomalous" votes. If we exclude "anomalous" votes, then the result of "United Russia" would be equal to 40.5%.

Another mathematician, Alexander Borgens, after analyzing polling stations across Russia in the 2021 parliamentary elections, came to the conclusion that 14 million "anomalous" votes were cast for United Russia. Where votes were not distributed suspiciously, United Russia got 36.85% of the vote. Officially, throughout Russia, the CEC counted United Russia at 49.82% of the vote.[1] Shpilkin's calculations supplement Borgens' conclusions: with an honest count of votes, United Russia in the 2021 elections should have received a third less, and the Communist Party almost three times more, and these two factions in the Duma could be comparable in size. In addition, more than half of all the votes of the "party of power" are anomalous, that is, most likely falsified. The median level of anomaly-free support for winners in single-member districts (nearly 90% of them from United Russia) is 33%, *i.e.*, similar to the level of support for the ruling party under the proportional system.[2]

Experts say that we are witnessing a change in the former electoral position, in which a certain "volume" of falsifications was perceived as the norm. There have always been regions like Chechnya, Dagestan, and the Kemerovo region, where the results were made up, but today we are experiencing a moment when the technology of rewriting protocols has spread throughout the country—and this is already a disaster for whatever remained of the trust in the electoral system.

1 34% to United Russia, 26% to the Communist Party and 7.5% to New People: mathematician Alexander Borgens calculated what the election results would be without anomalies // https://www.currenttime.tv/a/edinoy-rossii-26-kprf/31474361.html.

2 *Novaya real'nost': Kreml' i Golem* (A New reality: Kremlin and Golem. What do the election results say about the socio-political situation in Russia) / ed. K. Rogov. Moscow, Liberal Mission Foundation (2021), 42.

Over the past 20 years, the Central Election Commission (CEC) has never slowed down the publication of preliminary results: usually by three in the morning more than half of the ballots are processed and the picture expected by morning is more or less clear. This time, only 35% of the processed ballots were provided with data by the specified time. Talk about the fact that there are many protocols, parties, difficulty in counting—this is all just nonsense. Many times we have simultaneously held elections for governors, municipal and regional assemblies, and they always coped, but now for some reason they have stopped. In parallel, an even more scandalous story is unfolding with electronic voting, to summarize and provide the results of which is a matter of a few minutes.

"There has been an obvious decrease in the level of publicity, openness and transparency of the electoral system," stated the Golos movement (recognized as a foreign agent), the only independent network of observers working in the elections. Its representatives documented almost 3.8 thousand violations, most of them recorded on photos and videos.

Among such violations are mass ballot stuffing; multiple voting by the same people; possible bribery of voters; ballots with pre-signed signatures or marks for "United Russia"; distribution of passports to residents of Donetsk and Lugansk right on the voting day; lack of control over the inviolability of ballots between voting days; involvement of state employees in "observation"; manipulations of commissions' documents, intimidation of observers, etc. "Golos (recognized as a foreign agent) has not encountered so many reports of opposition to observers and members of commissions for at least five years, not to mention the facts of the use of violence and threats," the Golos movement said. For the first time in many years, OSCE observers refused to work in elections in Russia due to restrictions and unacceptable requirements of the Russian authorities.[1]

1 *Parlamentskiye vybory v Rossii vpervye sostoyalis' v trekhdnevnom formate* (Parliamentary elections in Russia were held for the first time in a three-day format, during the voting numerous violations, manipulations and gross falsifications were recorded) https://www.golosinfo.org/articles/145495.

Chapter 2.
How an Authoritarian Power Attains Its Goals and Objectives: A Mathematical Perspective

Andronik Arutyunov, Sergey Shpilkin

It seems fitting to begin this chapter with a well-worn but apt quote from Galileo: "Must we not confess that geometry is the most powerful of all instruments for sharpening the wit and training the mind to think correctly?" It is no coincidence that the great minds of the past found themselves thinking about the foundation on which serious knowledge should stand. A thorough understanding and accounting of almost any process, whether of nature or society, needs to involve a variety of mathematical tools: we are not aware of any other ways to describe the world so that the description has both predictive and explanatory power. Even in high school, the methods of algebra and geometry prove useful in understanding the world as it is viewed by the natural sciences, especially physics and chemistry. More elaborate examination also requires a more advanced toolkit, and for the analysis of social and political processes that arise from the actions of many individuals, one cannot do without the methods of probability theory and mathematical statistics, to which we will now turn.

Results of elections are neither the mean of the will of the public, nor even the mean of the will of the electorate. At the end of the day, elections reflect the will of voters who have gone to the polls. There can be all sorts of reasons for going: because the heart or civic duty calls, because the boss told you to, because "everyone goes, and I go," because there's music and pastries at the polling station, because somebody paid you, because you could not stay silent anymore… The reasons are many, but one thing is certain: election results are always a combination of turnout and expressed will. The presence of "dark matter" voters who do not go to the polls (between 35 and 65% in the Russian federal elections from 2000 to 2021) gives rise to numerous speculations about their political

preferences: whether they are completely conformist and agree with the current government, and thus do not consider it necessary to cast their ballots; or, on the contrary, they are in radical opposition to it and do not want to "participate in a farce." However, evidence does not support such an extreme difference between the political preferences of the "silent" and voting populations.[1]

Sophisticated vote counting procedures mandated by law are designed to ensure votes are cast and tallied correctly. In turn, neglect and legislative erosion of those procedures create favorable conditions for manipulation of votes (especially when turnout is low) and falsification of results. But even under an authoritarian regime that has reshaped the electoral system to fit itself, so as to assure a parliamentary majority in advance, the election results can be analyzed and their integrity defended.

In this chapter, we want to demonstrate a simple idea: it is possible to use the methods of mathematics to understand the results of elections, and in particular their reliability. Moreover, these methods allow us not only to pinpoint "anomalies," but often to identify and build models of their causes, the probable mechanisms for their implementation, and (within certain limits) to restore the real picture even if the voting was adulterated.

We shall start with a general question: how can we study "from the outside" what is happening within a large system that does not provide comprehensive access to its internal workings? The electoral system is just that. We only get to look at rather particular aggregate outputs: turnout, its hourly dynamics, and the total number of voters for the candidates, all broken down by polling station. At the same time, based on the reports of independent observers, there is reason to believe that these outputs may be significantly distorted in many precincts (but not all of them). It is important that the distortions are not universal: the presence of a certain proportion of polling stations with authentic results provides, on one hand, a basis for assessing the true outcome, and on the other, grounds for identifying fraudulent stations. It is also important that we have access to data detailed enough to see what is going on at polling places—that is, at the level where the actual fraud may be perpetrated (or not). This is precisely what allows us to separate "clean"

1 S. Shpilkin, *Fenomen gubernatorskikh vyborov 2017 goda v Sverdlovskoy oblasti: razgadka* (The 2017 gubernatorial elections in Sverdlovsk Oblast: The key to the mystery) // https://www.golosinfo.org/articles/142188.

results from "tainted" ones (those that were subjected to administrative intervention) based on their statistical characteristics.

Before proceeding to a detailed analysis of the problem, it is necessary to make several stipulations. First, numerical results alone cannot prove anything, since it is always necessary to establish a causal link. For example, even if we discover a correlation between weather fluctuations on Mars and the progression of US presidents, there is clearly no causal relationship between them. Second, large-scale statistical analysis, as a rule, does not allow for conclusions about specific violations at a particular polling station. Deviations from the mean (including significant ones) are always possible, but (as we will explain below) these deviations cannot be entirely arbitrary. Roughly speaking, if among a hundred similar polling stations (for example, ones located in residential areas of similar socioeconomic status across a city) the turnout ranges from 40 to 50%, and at one of them we observe a turnout of 38%, this may well be a random fluctuation. But a polling station with a turnout of 10% is already an anomaly and calls for some sort of explanation. It is with the help of mathematics that we can understand which values are abnormal, and which are, so to say, within reason. Normally, mathematics plays the role of an expert witness, pointing out anomalies, and a court would decide whether there had been fraud in any particular case. (For example, mathematical modeling serves as a standard argument in gerrymandering cases in the United States).[1] However, even in the absence of a functioning independent judiciary, statistical methods make it possible to assess the overall extent of falsification, and in some cases prove its presence with utmost certainty.

Instead of delving into electoral mathematics immediately, let us start with an unrelated example that has become extremely important to the layman in the last few years: the effectiveness of COVID-19 vaccines. To see for yourself that most of the vaccines in use throughout the world (Pfizer, Moderna, Sputnik-V and others) do work and provide a reasonably high level of protection, you do not have to read complicated articles in medical journals. It is indeed quite enough to independently (!) study readily available public data.

We, of course, do not mean anecdotes and rumors about "an acquaintance" getting sick after being vaccinated, or about media personalities

1 Dustin G. Mixon, Using Mathematics to Combat Gerrymandering // https://math.osu.edu/osu-department-mathematics-newsletter/spring-2021/using-mathematics-combat-gerrymandering.

who got ill and died after getting the vaccine. In this regard we want not only to recite the name of the age-old fallacy, "post hoc ergo propter hoc," but also to note that this way of reasoning implicitly ignores the larger picture. If a person in an accident is seriously injured while wearing a seat belt (or even by a seat belt!), this does not mean that seat belts are harmful: using a belt is significantly safer. Almost always in an accident, an unbelted person will be more injured than a belted one. The same with vaccination: if a person died after receiving a vaccine, this does not mean that they would have survived the disease without it.

The correct question about the effectiveness of vaccines can be stated as follows: "Does the presence of vaccination reduce the risk of catching the disease or, for those who have nevertheless caught it, the risk of higher severity?" Meanwhile, it is completely meaningless to compare the number of those vaccinated and unvaccinated who ended up in hospital, since such a comparison ignores the percentage of vaccinated people in the general population.

Applying conditional probabilities (Bayes' theorem) immediately shows that, since the percentage of vaccinated persons "in the hospital"[1] is less than the percentage of those vaccinated in "total," the vaccine is effective in reducing the likelihood of being admitted to the hospital, that is, the vaccinated need medical attention less often, confirming that vaccination is effective.

Let us examine this question in more detail. Recall Bayes' rule:

$$P(A|B) = \frac{P(B|A)P(A)}{P(B)}$$

Here $P(A \mid B)$ denotes the conditional probability, that is, the probability for the event A to occur provided that event B occurred. Suppose that A denotes "going to the hospital" (that is, its probability is the proportion of those who ended up in hospitals), and event B is the person being vaccinated (its probability being the proportion of those vaccinated). In this case, the probability of being admitted to the hospital while vaccinated, $P(A \mid B)$, is calculated by knowing the proportion of those vaccinated in the hospital, $P(B \mid A)$, the proportion of those who fell ill, $P(A)$, and the proportion of those vaccinated, $P(B)$. Thus we are led to

1 For example, according to the Johns Hopkins Institute, collected on arcgis.com // https://www.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6.

divide $P(B \mid A)$ by the proportion of those vaccinated, which is somewhat counterintuitive. It is easy to confirm using public data that $P(A \mid B)$, the proportion of hospitalizations among the vaccinated, is markedly less than $P(A)$, the overall proportion of cases. It is telling that the data necessary to study the effectiveness of the Russian-made Sputnik-V vaccine has to be obtained not from the Russian Ministry of Health (which essentially does not provide any), but from the ministries of health of Argentina, Hungary and other countries that use it.

Hypothetically, such a difference could be explained by factors other than pharmacology. For example, the generally more responsible vaccinated population could also be using other protective measures (masks, distancing). However, there is no evidence pointing towards any alternative causes of this sort. Therefore, according to Occam's razor, one has to conclude that vaccination is effective as a way to reduce the likelihood of a severe progression of the disease.

Another question that regularly occurs in the public space is the percentage of deaths and the alleged immunity from or propensity for infection of various subgroups of the public. There is, for example, the notion that smokers are less likely to get sick than non-smokers. On the other hand, there were numerous references to mortality rates of almost 30–40% in nursing homes and among the elderly. Without playing down the gravity of the virus, we note that without further clarification, this sort of reasoning is unsound, since the elderly are in any case a higher-risk population, while an incorrect sample had been used to confirm the alleged immunity among smokers. However, the "hospital-average mortality rate" is also a deceptive statistic. The actual probability of complications for an elderly, smoking, obese diabetic will in any case be many times higher than for a young person who exercises regularly. As the saying goes: "I eat cabbage; the lord, meat; so on average, we eat cabbage rolls."

The above considerations must be taken into account not only when analyzing vaccines, but also when studying any opaque system, including elections. In general, we would very much like to convince our readers that statistics and probability theory are an essential tool for understanding the processes taking place in the modern world.

Getting back to electoral procedures, we shall first discuss a few illustrative examples. Consider for the moment only the voter turnout. That is, for now we will concern ourselves with only one question: whether the voter came to the polling place or not. In this situation, each voter can be assigned a random variable that takes on the values one (came)

and zero (did not come). The turnout is the ratio between the overall number of voters who came to polling stations (or, equivalently, the sum of the corresponding random variables) and the number of voters on the rolls. If 1000 people are registered at the polling station, 600 of them came and 400 did not, we get 600/1000, that is, a turnout of 60%.

This is in fact a Bernoulli process. We flip a +1 with probability p and a 0 with probability $1 - p$, where p is numerically equal to the average turnout (by the definition of expected value). Assuming that people vote independently, we get that the probability of the turnout reaching 100% on a given precinct is p^{1000} (with the exponent equal to the number of registered voters). For any value of p that is even slightly below unity (not only for a realistic $p = 0.60$, as in the example above, but also for, say, $p = 0.99$), this probability will be indistinguishable from zero. Meanwhile, in the official results of Russian elections, we routinely encounter polling stations with thousands of voters and a turnout of 100%—for examples the reader can turn to the results of the 2016 federal parliamentary elections in Kemerovo Oblast. At the same time, nearby precincts inside the same settlement have a turnout of, say, 80 or 60%. A difference of this magnitude can have one of two explanations: either the quantity p, which characterizes the general propensity of the local electorate to go to the polls, does in fact vary that much across neighboring precincts, or the tallies at one of the polling stations are inaccurate. Based on a combination of general common-sense considerations (for example, the knowledge that borders of precincts within a city are drawn fairly randomly and arbitrarily) and concrete evidence (for example, video recordings of ballot box stuffing), it is the second option that seems most plausible.

Let's move on. Within the formal framework proposed above, where a Bernoulli random variable is assigned to each voter, the turnout at a polling station is also a random variable: a binomial one, rescaled to the range from zero to one (from 0 to 100%). Given that a typical precinct in an urban area has around 1500–2500 people registered, such a random variable is indistinguishable from a Gaussian one with a mean of p and a variance on the order of 1–2 percentage points. If we consider a set of polling stations having roughly the same size and serving similar populations (that is, with similar values of the parameter p)—within the same city, for example,—then turnout can still be described by a random variable distributed as a mixture of narrow Gaussians with somewhat different means and variances; but in the absence of strong

factors that would influence the value of p in a wildly varying (and preferably discrete) fashion in different precincts, the turnout distribution still retains its bell shape and remains pretty narrow.[1] Therefore, if we see an average turnout of about 55 to 65%, for example, while at a particular nearby precinct we observe a turnout of, say, 5%, that is already an anomaly that demands an explanation. What happened? A localized election boycott, an epidemic, a natural disaster, or a procedural error? In this case, grounds for doubting the veracity of the election results arise when the results are analyzed using probability theory, which gives us the necessary tools: variance, expectation, the Chebyshev inequality, and the various limit theorems.

In the above example, we can calculate the variance directly, so the Chebyshev inequality gives us an upper bound on the probability that the turnout will deviate from the average, inversely proportional to the size of the deviation divided by the variance. Specifically, the inequality is as follows:

$$P(|X - \mu| > a) < \frac{\sigma^2}{a^2}$$

Here σ denotes the standard deviation of the random variable (the square root of its variance). From this inequality, we get that the probability of a fluctuation of more than three root-mean-square deviations (that is, when $a \geq 3\sigma$) is about 10% at most. Accordingly, in our example, a precinct with a 5% turnout can only appear with a vanishingly small probability (in the mathematical sense of the word), since it would be much farther away than three standard deviations. Could this happen? Theoretically, it could, but the probability is extremely low. As small, for example, as the probability of a plane crash.

Of course, comparing results this way requires caution. For example, with an average voter turnout of 60%, the presence of a limited number of polling stations with a turnout of 100% could have a reasonable explanation: there do exist small polling stations serving only a few people, perhaps in rural areas where "the whole *kolkhoz* votes;" there is voting at polar and research stations, etc. However, if we examined the polling stations located across the residential areas of a large city, excluding any "exceptional" ones (hospitals, prisons, etc.), and we saw that all of them

1 B. Ovchinnikov, *Sto vosem'desyat chestnykh gorodov* (One hundred and eighty honest cities) // https://trv-science.ru/2012/02/sto-vosemdesyat-chestnykh-gorodov/.

had a turnout of 60%, except that one has 5%, that would be a substantial red flag.

Note that it is possible for the voting patterns in different regions to be polar opposites. For example, half of the country could be boycotting the election while the other half participates enthusiastically. Such cases, in theory, could well produce bimodal distributions and other oddities.[1] However, "miracles" of this kind must have a rational basis in sociology. For example, a switch from a historically very narrow to a very wide (though still unimodal) distribution of polling stations by turnout occurred after 2015 in Venezuela, when voters opposed to the Maduro regime (concentrated in what were once the more prosperous areas) decided to boycott the election. But it is unlikely that the distribution in the presence of an observer is completely different from the distribution in the absence of one in the same region. A good example of such a difference, and not even with human, but with "mechanical" observers, namely KOIBs (a kind of optical ballot scanner), took place in Moscow during the 2007 parliamentary and the 2008 presidential elections.[2] For instance, in 2007 the average turnout on polling stations using KOIBs was around 55%, and the "bell" of the distribution was localized in the range between 40 and 70%. Accordingly, a significant excess of polling stations without KOIBs with a turnout of more than 70% would seem to be an anomaly. That anomaly becomes even more curious when the turnout distribution among polling stations with KOIBs is more or less symmetrical, while in polling stations with ordinary ballot boxes it is miraculously asymmetric and skewed specifically towards higher turnouts. For a more rigorous argument, one can take the initial turnout data, calculate the expected value and the variance of the corresponding random variables, then apply the Chebyshev inequality mentioned above. Ultimately, we come to the conclusion that either the theory of probability does not work on Russian soil, or there has been large-scale stuffing during the voting. Observe that in the 2008 presidential election, the difference between polling stations with and without KOIBs becomes even more extreme. At the same time, after the Bolotnaya Square

1 Iu. Neretin, *Stoit li otvechat' fal'sifikatsiey matematiki na fal'sifikatsiyu vyborov?* (Is it worth responding to falsified elections with falsified mathematics?) // https://www.mat.univie.ac.at/~neretin/grafiki/graphik.html.

2 A. Shen, *Vybory i statistika: kazus "EdinoyRossii" (2009–2020)* (Elections and Statistics: The Case of "United Russia" (2009–2020)), P. 11. Fig. 7, 8 // https://arxiv.org/pdf/1204.0307.pdf.

protests of 2011–2012, the distribution of turnout in Moscow reverted to full compatibility with mathematical laws.

Let us dwell in more detail on the idea of describing the behavior of an individual voter (hence the polling station as a whole) by a random variable. The justification of this thesis is to be found in sociology rather than mathematics. Upon analyzing elections in countries of all kinds, with very different political situations, one clearly sees that always and everywhere, with the exception of specific, easily explained cases, the distribution of polling stations by turnout largely fits a universal mold: a smooth, perhaps slightly asymmetric bell curve.[1] Nowhere except in Russia do we see anything like the infamous "Churov's saw"[2] (a plot with huge peaks on "pleasing" integer turnout values of 60, 65, 70, 75, etc. percent). So one has to choose between two possibilities: either statistics in Russia does not work the same way as in the other countries of the world, or the elections are rigged. Claiming that electoral statistics do not follow mathematical laws is akin to a child claiming that a neighbor's window was broken because of a meteorite, and not because the child hit it with a ball. In principle, that is possible, but it requires extraordinary evidence.

I hope that we have succeeded in illustrating more or less convincingly that statistical analysis can be adequately applied to election results. We reiterate that in a normal political system, reasoning along these lines should be admitted as evidence by the courts whenever election results are called into question. However, when legal roadblocks have been deliberately erected in the way of direct election observation, sometimes to the point of making it virtually impossible, the use of mathematical statistics becomes practically the only tool allowing us to catch the crooks stealing our votes red-handed and to assess the scale of the theft.

Anomalies in statistics of Russian elections and estimates of falsifications

Taking into account the above broad considerations on the applicability of statistical methods to elections, let us proceed to an analysis of

1 Borghesi C., Raynal J.-C., Bouchaud J.-P. Election Turnout Statistics in Many Countries: Similarities, Differences, and a Diffusive Field Model for Decision-Making // PLoS ONE. — 2012. — Vol. 7, no. 5. — Art. e36289. — DOI: 10.1371/journal.pone.0036289.

2 L. Kaganov, *Pro Gaussa i propagandosov-razoblachiteley* (On Gauss and the debunker propagandizers) // http://lleo.me/dnevnik/2011/12/13.

the Russian electoral realities in particular. In addition to general mathematical and statistical ideas, the analysis heavily relies on the specific features of the Russian electoral system and on the available data, as well as on the experience and knowledge accumulated during the post-Soviet period by election analysts, observers, independent members of election commissions and volunteers watching live streams from polling places.

The election data available to us is multidimensional in an essential way: for each polling station there is data on the number of registered voters, the number of ballots cast for each candidate, the number of invalid ballots, as well as the approximate turnout reported throughout the election day. Each precinct is also inextricably embedded among its neighbors (spatial context), has a record of previous and simultaneous elections (temporal context), etc. This multidimensionality, on one hand, facilitates the identification of possible anomalies, and on the other, makes it necessary to pre-process the data for visualization in order to provide an overview of the voting before getting into the details. In our analysis, we visualize polling station data as two "projections" presented in a two-panel chart. An example of such a chart for the vote on amendments to the Constitution of the Russian Federation is shown in Fig. 1 (below).

The right panel shows a scatterplot of polling stations with the turnout on the horizontal axis and the results of the candidates on the vertical axis. Each precinct corresponds to as many points as there are candidates (in this case, there are three "candidates"—"Yes," "No," and an invalid ballot). The choice of these axes is not accidental: both of these parameters are important for reporting and therefore indicate the extent of administrative influence. The left panel shows the votes for each candidate, binned into 1%-wide intervals by the final turnout at the polling station; the shaded part shows the difference in shape at high turnouts between the vote distributions of the candidate with administrative support ("administrative" or "A-candidate"—in this case, the "Yes" candidate) and of the other candidates (in this case, "No" and an invalid ballot).

The A-candidate part of the scatterplot in the right panel looks like a "comet" consisting of two fundamentally different parts: a compact "nucleus" localized around a turnout value of about 45% and a result of about 65% and a "tail" extending towards 100% turnout and result. At the same time, the tail, unlike the nucleus, exhibits a distinctive grid pattern: precincts tend to concentrate around integer percentages, especially multiples of 5%. Another important detail is that the final official values of turnout and result (shown by the crosshairs) fall "into the mid-

dle of nowhere"—between the nucleus and the tail, where the density of polling stations is significantly less than in either the former or the densest part of the latter. That is, it turns out that there are uncharacteristically few "country-average" polling stations, much fewer than polling stations with higher or lower values of turnout and result.

All this suggests that two different mechanisms are responsible for forming the distribution of precincts by turnout and result: one for the nucleus, and another, different one for the tail. The key to understanding the nature of the tail is the grid pattern—the increased density of polling stations around percentage values that are "pleasing" from a human point of view. As discussed in the previous section, the turnout at a polling station, being the sum of decisions of independent voters, is a random variable whose spread is naturally bounded from below by the width of a binomial distribution for the typical turnout and voter population, which in any realistic situation will be on the order of one percentage point. Meanwhile, the observed pattern corresponds to the polling stations concentrating in narrow intervals some tenths of a percent wide—as if we were able to draw a millimeter grid on paper with a paint brush. An article[1] coauthored by one of the authors, using the data from the Russian federal election campaigns of 2000–2012, shows that the probability for such patterns to arise in the course of free voting is astronomically small; however, as we can see, they continue to appear.

What mechanism could provide such fine positioning of results and turnouts around "pleasing" percentages? It is obvious that this mechanism is somehow related to the decimal system, because in other number systems the "pleasing" percentages are not in any way noteworthy. For example, if seven-fingered aliens using base-7 notation looked at the diagram on the right, they could conclude that it was produced by beings who ascribe special significance to the numbers 5 and 10. And we know of such beings: humans. That is, the "decimalized" structure is caused by human influence. At the same time, as already mentioned, no influence at the level of freely voting voters (such as a voter mobilization campaign) could achieve the desired totals with the requisite accuracy of tenths of a percent, due to the statistical nature of those totals. We are led to the conclusion that the grid pattern in the tail of the distribution is

1 Kobak D., Shpilkin S., Pshenichnikov M. Integer percentages as electoral falsification fingerprints // Annals of Applied Statistics. — 2016. — Vol. 10, no. 1. — P. 54–73. — DOI: 10.1214/16-AOAS904. — arXiv: 1410.6059 [stat.AP].

a consequence of an influence affecting the turnout and result already at the polling-station level, that is, falsification.

The general shape of the tail in the diagram also fits into the falsification paradigm: the result of the A-candidate increases with turnout, and the results of other candidates decrease accordingly. This corresponds to the simplest possible approach to falsification: adding extra votes for the desired candidate, either as real ballots or in the final protocols. We are quite convinced that this does occur, both by observers on the ground and especially by live streams from polling stations. When ballots are added for the administrative candidate, two things happen: the polling station moves to the right on the turnout axis (with all its "points" on the scatterplot, for all candidates), while the vote percentage of the administrative candidate increases (because votes were added for him) and the results of the other candidates decrease (because the extra votes for the A-candidate increased the total number of votes—the denominator of the vote percentage). Thus, the points of the A-candidate move up and to the right, and the points of the other candidates move down and to the right, which is indeed what we observe in the right panel.

Under this assumption, it becomes clear how the "pleasing" results and turnouts emerge: the polling station staff will add votes not until an arbitrary threshold, but until the turnout or result of the administrative candidate reaches a value that seemed desirable to them (or perhaps was mandated from above). And here another important property of statistics of large collections of numbers appears: even if the share of stations which make up figures this way is small and they all operate independently, at the country level the pattern becomes visible.

It is important that the increased density of polling stations at integer percentages is solely a property of the tail of the "comet" in the right panel, and not of its nucleus. This justifies our assumption that the nucleus and the tail in the diagram are formed in different ways. Moreover, this is not the only anomaly exclusive to the precincts in the tail. Their protocols also contain abnormally many numbers ending in 0 and 5, which is likewise typical of numbers that were made up and not of numbers that were obtained from a random process, such as voting. In addition, there are other patterns in the tail that are impossible with free voting. For example, the cluster of points around 63% turnout and 78% result of "Yes" (next to the black crosshairs) accounts for essentially all the polling stations in the city of Kazan, with the exception of a few that were covered by independent observers (turnout there ranged from 32

to 40%) and several others that reported turnout just under 100%. As in the case of the grid discussed above, this cluster is too tight to have been formed as a result of free voting at polling stations, which means that we are witnessing a pervasive falsification of results on the scale of a city of a million inhabitants.

Let us now turn to the left panel of the diagram. It contains a histogram of votes for candidates binned by precinct turnout (i.e. the number of votes cast for candidates in the precincts, grouped into 1% intervals of turnout at closing time, spanning from an integer percentage to the next one; the turnout value of 100% is counted as its own interval). In effect, this is the weighted projection (marginal distribution) of the two-dimensional distribution on the right panel onto the turnout axis. The thin dotted line shows the distribution of "No" votes and invalid ballots, scaled to match the distribution of "Yes" votes at low turnouts. We see that in the range of turnouts that correspond to the position of the nucleus on the right panel, the shapes of these two distributions coincide, yet they diverge in the tail region. If we assume that the tail consists of the precincts where vote stuffing in favor of the administrative candidate took place, then under fairly general assumptions, the number of fraudulent votes for the A-candidate is given by the area of the shaded region between the two histograms—the A-candidate one (red line) and the scaled one (grey line).[1] This area is indicated in the legend of the left panel (26,929 thousand anomalous votes). If the fraud is of a more complex nature (for example, the turnout and the results are simply made up), the number of anomalous votes calculated in this way ceases to be a good quantitative estimate of the amount of fraud, but remains a useful index for the extent of it and is suitable, for example, for comparative and historical analysis, to which the next section will be devoted. In addition, we note that the grid pattern on the right turns on the left into a "Churov's saw"—a jagged distribution with peaks at turnout values proportional to 5%.

Remark 1. From a mathematical point of view, the analysis of election data containing falsified (distorted) values can be considered as a problem of robust (to distortions of input data) statistics. Such problems arise when processing data which may have been partly distorted—for example, by measurement errors, external factors, or contamination by

1 For multi-colored graphs, see the book page on the publisher's website https://freeuniversity.pubpub.org/vybory. In the printed version of the book, the first histogram is the top one, the gray one goes below. —Publisher's note.

data of a different nature. Well-known examples of robust estimators are the median and the interquartile range, which provide robust replacements for the mean and the standard deviation, respectively. The method that is used here to estimate the number of anomalous votes (and, accordingly, the election results sans falsifications) can be viewed as a specialized offshoot of robust statistics that takes into account a priori knowledge on the nature of the expected distortions.

Remark 2. One can ask whether we are being too bold when we declare the entire tail in the right panel of the diagram to consist of fraudulent precincts, even though statistical anomalies like the percentage grid, however rigorously proved, only affect a small part of those stations. When doing so, we take into account a variety of circumstances in addition to the presence of statistical anomalies. First, unlike the nucleus, the tail can appear and disappear at the regional level depending on political circumstances: for instance, in Moscow it was observed from 2007 to 2011 and disappeared overnight after the mass protests in the winter of 2011–2012 (reappearing only in the 2020 constitutional plebiscite). In the Komi Republic, the tail disappeared after the arrest of Governor Gaiser and, by way of collateral damage, the chairman of the republican election commission. In Khabarovsk Kray, the distributions lost their tails after Governor Furgal won the election against the administrative candidate. Conversely, in Samara Oblast, the size of the tails increased sharply after Governor Merkushkin arrived with his team from Mordovia. Across the municipalities of Moscow Oblast, tails appear and disappear in a haphazard way as the municipal governments change. The list of examples can be continued, and all of them will indicate that the tail is affected by the government, not society as a whole. Second, turnouts and results characteristic of the tail are nowhere to be seen when independent observers are present. Third, in the rare cases of court-determined fraud at polling stations, we see how the fraudulent voting results from the tail turn upon correction into real ones in the nucleus.[1] Fourth, the high turnouts of the tail precincts are contradicted by live video streams where those were recorded.[2] In accordance with the principles of "duck typing"

1 https://novayagazeta.ru/articles/2021/06/30/vserossiiskaia-stolitsa-falsifikatsii.

2 A. Gabdulvaleev, *Nurlatskiy fenomen, ili Obolvanenniy gorod* (The Phenomenon of Nurlat, or the Fooled City) // https://kazan.bezformata.com/listnews/nurlatskij-fenomen-ili-obolvanennij/23187111/ (republished from https://a-gabdulvaleev.livejournal.com/15549.html).

(if it walks like a duck and quacks like a duck, then it must be a duck) and "the thirteenth stroke of the clock" (the thirteenth stroke of a clock casts doubt on the previous twelve), all these points (and still others that have gone unmentioned here) make it possible to classify as fraudulent not only those parts of the tail for which the presence of falsifications has been proven—statistically or otherwise—but also their "neighbors" on the diagram, with similar values of turnout and result. Of course, with this approach, it is possible that the purportedly fraudulent polling stations will in fact include a certain number of "honest" ones where the turnout and the result have, for some reason, strongly deviated from the normal values, but given the insufficient coverage by independent observation and the absence of judicial protection, with statistics remaining the only way to analyze election results, this is the best approach we have.

History of federal election fraud from a statistical viewpoint

In this section, we provide a brief overview of fraud in the federal elections of 2000–2021 in terms of the anomalous vote index described above, which allows us to quantify the evolution of administrative interference in the electoral system. The federal voting data of 2003–2021 are officially available on the Web at izbirkom.ru; the data of the elections of 2000 posted there are unlisted, but can be located using search engines. All datasets are available from the authors upon request.

1. 2000 Elections of the President of the Russian Federation

The distribution of the results of the administrative candidate (Vladimir Putin) at the polling stations in the turnout-result axes is a compact cluster around the official result (black crosshairs), while the distribution of votes for the administrative candidate is shaped almost the same as the distribution of votes for other candidates. The number of anomalous votes is minimal by Russian standards—less than 3 million—although subtracting it from the number of ballots and the number of votes for Putin gets the latter dangerously close to a runoff (Fig. 2).

2. 2003 Elections to the State Duma of the 4th convocation

In the parliamentary elections of 2003, a "comet's tail" appears near the result cluster of the administrative candidate (United Russia), pointing in the direction of increasing turnout and result, and the official result migrates from the center of the comet's nucleus to its edge. In turn, from a certain point the distribution of votes for United Russia by turnout deviates upward

from the distribution of votes for other parties. Such a picture corresponds to extra votes being added for the A-candidate on some of the polling stations—as a result, the corresponding points of the A-candidate on the left diagram move to the right (the turnout grows) and upwards (the result of the A-candidate grows). The number of anomalous votes is approximately 4 million out of the 23 million total cast for United Russia (Fig. 3).

3. 2004 Elections of the President of the Russian Federation

In the presidential elections of 2004, the tail grows and develops structure: an increased concentration of data points appears at "pleasing" turnouts, that is multiples of 5%. On the plot on the left, this corresponds to the "teeth," later dubbed "Churov's saw" after the head of the Central Election Commission from 2007 to 2016. The number of anomalous votes for the A-candidate (Vladimir Putin) reaches 8 million.

The appearance of "Churov's saw" marks an important turning point in the evolution of the electoral system: the emergence of centralized demand for a "pleasing" election result. Since then, this phenomenon has persisted in one form or another in all federal elections. The same is borne out by another phenomenon apparent in the right panel—a sharp jump in the density of precincts between 49 and 50% (in fact even between 49.9 and 50.0%): it is evident that polling stations systematically "pulled" the turnout over the 50% mark, even though this quantity had no legal significance for an individual precinct: the elections would have been valid if the turnout had merely exceeded 50% in the country as a whole (Fig. 4).

4. 2007 Elections to the State Duma of the 5th convocation

In the parliamentary elections of 2007, the "tail" grows further, and the number of anomalous votes for United Russia reaches 12 million. It was these anomalous votes that provided United Russia with a qualified majority in the new parliament (Fig. 5).

5. 2008 Elections of the President of the Russian Federation

In the presidential elections of 2008, the number of anomalous votes exceeds 14 million, and "Churov's saw" manifests not only in turnout, but also in the result of the A-candidate (Dmitry Medvedev)—the tail becomes checkered. This federal campaign was the first to see mass manipulation of votes in Moscow (with the number of anomalous votes around 1 million) (Fig. 6).

6. 2011 Elections to the State Duma of the 6th convocation

Until recently, the parliamentary elections of 2011 shared with the presidential elections of 2008 the title of the most "anomalous." The number of anomalous votes once again exceeded 14 million, and "Churov's saw," having been subject to some public discussion, weakened in the distribution of turnout, but grew stronger in the distribution of the result of United Russia (horizontal lines in the "comet's tail"). The anomalous votes provided United Russia with a simple majority in parliament (Fig. 7).

7. 2012 Elections of the President of the Russian Federation

After the mass protests in the autumn and winter of 2011, the intensity of administrative manipulation slightly decreased in the 2012 presidential elections, and the number of anomalous votes decreased by a third. From that moment up until 2020, electoral fraud in Moscow was almost completely absent (Fig. 8).

8. 2016 Elections to the State Duma of the 7th convocation

During the 2016 elections, in the wake of the protests of 2011–2012, electoral manipulation was moved out of the cities, farther away from observers. As a result, the "two-humped Russia" was born—United Russia received a good half of its votes not in the main "nucleus" of the polling stations, but in the "tail." As a result, half of the votes for United Russia in party-list proportional representation came from polling stations amounting to 23% of the total voting population of Russia, and the other half, from the rest of the polling stations with the remaining 77% of voters. The official election result ended up far outside the main cluster. Anomalous votes provided UR with 50% of the proportional-representation seats (Fig. 9).

9. 2018 Elections of the President of the Russian Federation

In the presidential elections of 2018, vote manipulation was again toned down, and the number of anomalous votes decreased to 10 million (Fig. 10).

10. 2020 Vote on amendments to the Constitution

The 2020 nationwide vote was held on a newly introduced multi-day schedule, and in principle one would expect some new statistics. For example, easier access to ballot boxes could have widened the distribu-

tion of turnout without changing the balance between the supporters and opponents of the amendments, and this has indeed been observed in some regions. However, at the level of the entire country, the picture ended up familiar qualitatively, though it surpassed everything seen to date quantitatively. Judging from the overall picture and reports from the field, week-long advance voting was used simply as a convenient way to add "yes" votes without any interference.

For the first time in the history of federal campaigns, the volume of the nucleus, measured in registered voters, turned out to be less than the volume of the tail. If we take the 57% turnout mark (to be on the safe side) to be the border between the nucleus and the tail, then approximately 34% of registered voters fall into the nucleus and approximately 66% into the tail. The results of the voting are: in the nucleus, the turnout is 44%, with 65% voting for the amendments; in the tail, the turnout is 80%, with 82% voting for the amendments (Fig. 11).

This is when the so-called "Moscow voting standard," which had originated as a response to the protests of 2011–2012, "broke down": in about a third of the city's polling stations, the tallies were falsified.

11. 2021 Elections to the State Duma of the 8th convocation

The elections of deputies to the State Duma in 2021 were held on a three-day schedule. They were accompanied by a widespread deployment of electronic voting, which is subject to a whole number of concerns beyond the scope of this analysis—only "paper" voting is considered here. The number of anomalous votes for United Russia approached 14 million and accounted for more than half of all paper votes cast for United Russia. Thanks to this, United Russia yet again received half of the proportional-representation seats, although in reality it could have counted on a third.

As far as the turnout sans falsifications, 38%, this vote revisited the record low of 2016, and as far as the proportional-representation result of United Russia, 33%, it surpassed the previous low of 34% from 2011. Taken together, those mean that UR received the smallest absolute number of votes in the history of federal voting. The official turnout and UR result (black crosshairs in the right panel) ended up well off into the wilds: there are hardly any polling stations in the vicinity. On the whole, these results show a full divorce between the official election results and political reality (Fig. 12).

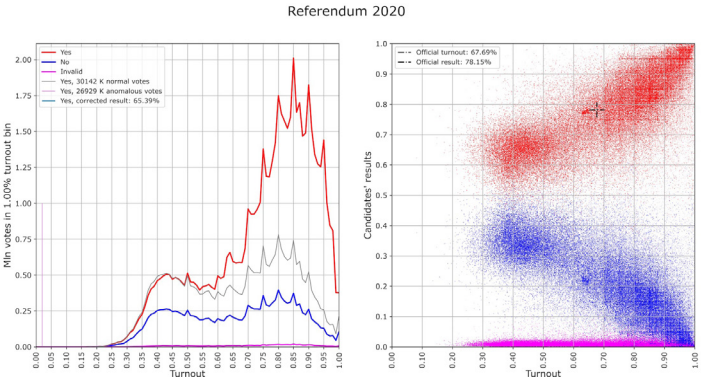


Fig. 1

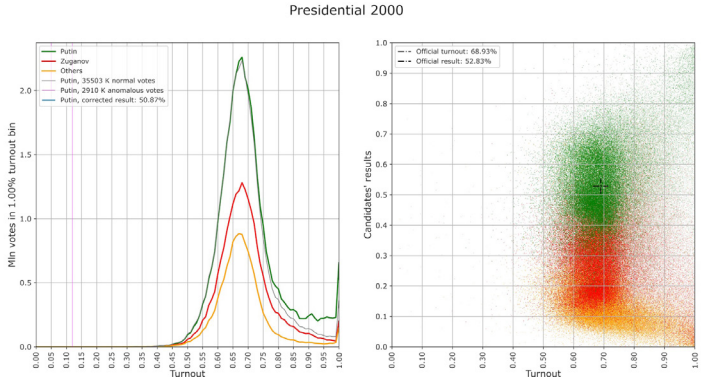


Fig. 2

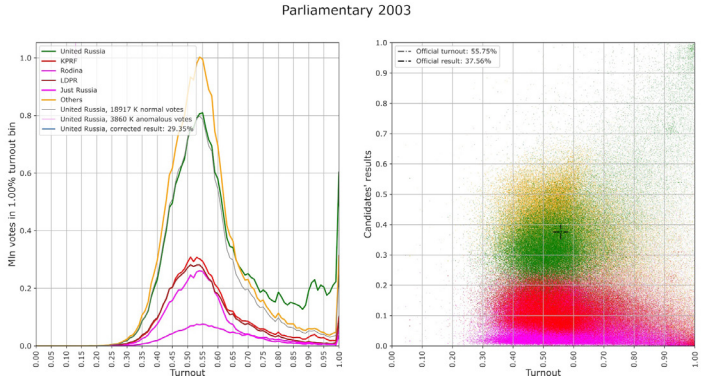


Fig. 3

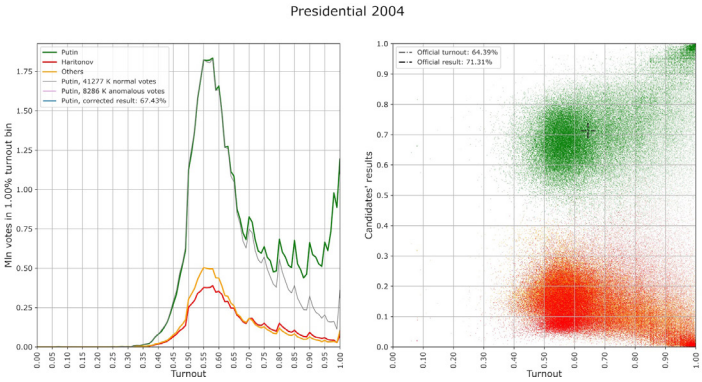


Fig. 4

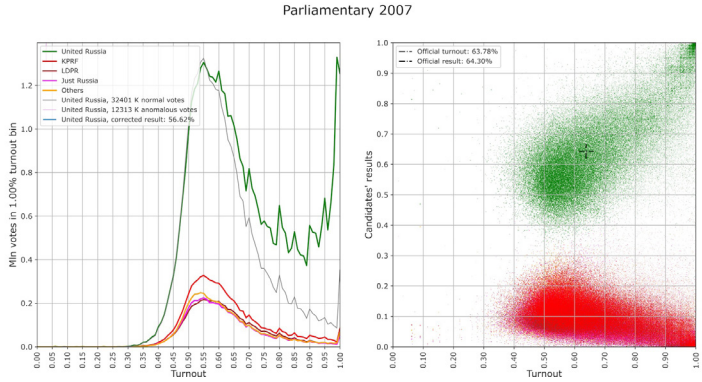


Fig. 5

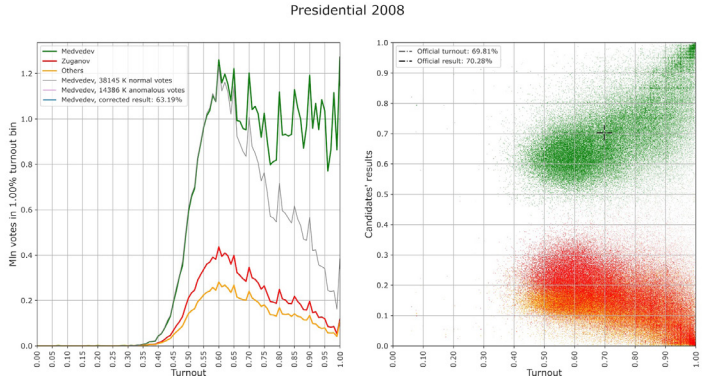
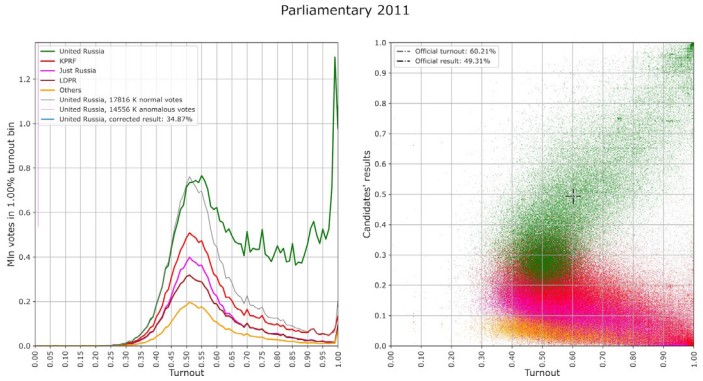


Fig. 6



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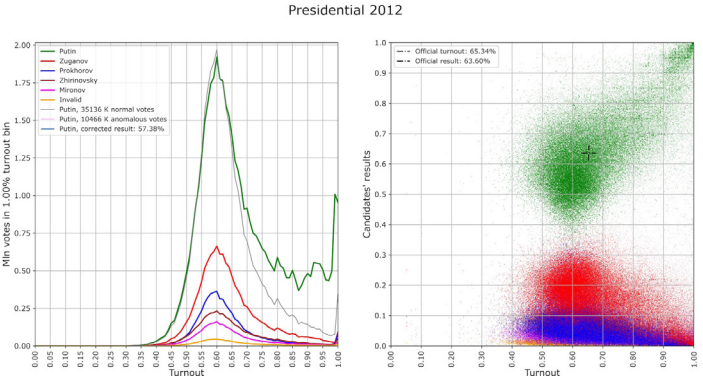

Fig. 8

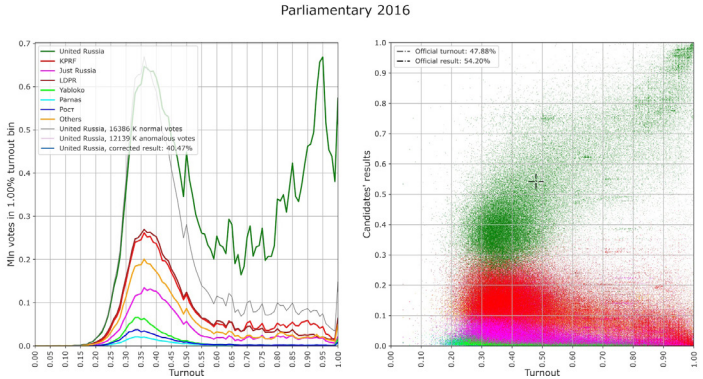

Fig. 9

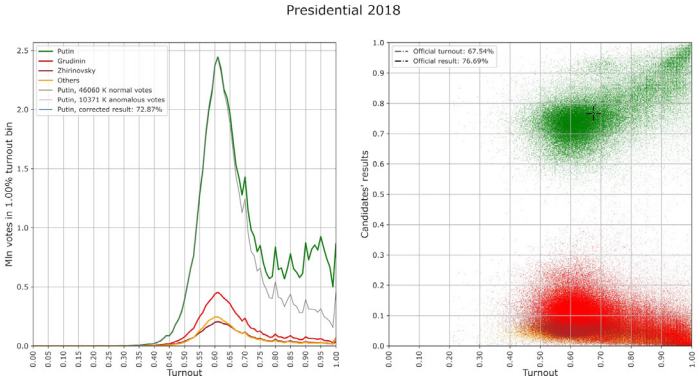

Fig. 10

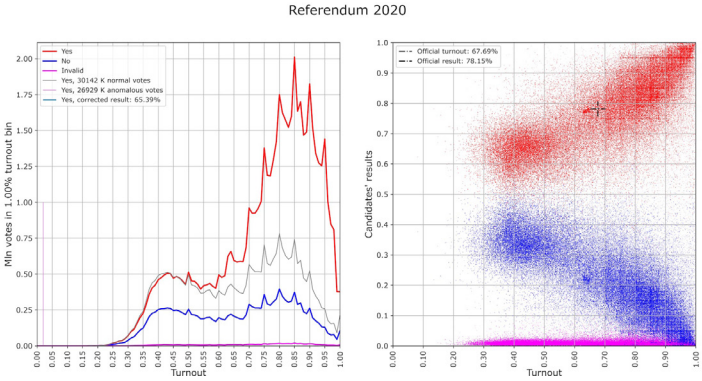

Fig. 11

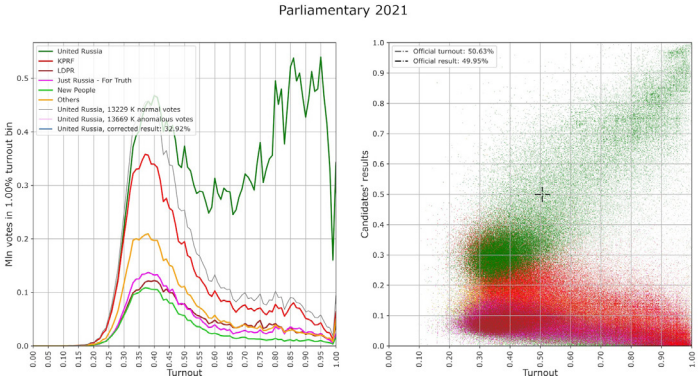

Fig. 12

What Can Be Done?

Elena Lukyanova

This book was completed less than a month before the Russian invasion of Ukraine. In other words, right before the war that changed everything. It changed things all over the world, but primarily in Russia. The near future of Russia has become, to put it mildly, highly uncertain. What happened, of course, somewhat changes our conclusions.

The preliminary results of the state of the Russian society after a month of war were expressed by sociologist GrigoriyYudin. He believes that people in Russia have accumulated a huge amount of aggression, fear, and loss. And unpredictability increases, which is a good base for the formation of mechanistic solidarity. A large number of people are in a state of denial of what is happening—they are trying to pretend that life is going on as usual. Everyone knows what is happening, but many stubbornly chase this understanding away from themselves, resorting to internal suppression, which accumulates heavy energy.

One of the ways to release it is to join a "bunch" and direct aggression against those who are not part of it. In this case, there will be terror, giving even more incentives to join the unity of the majority. Accumulated aggression can also turn in a different direction: unsuccessful external aggressions often lead to civil wars. Can a general military conflict escalate into a civil war on the territory of Russia? Another option: militaristic hysteria can turn into a systemic collapse and revolution. But what will never happen for sure is the former peace. All the gigantic negative energy that is accumulating now will definitely need an outlet.

We are at a crossroads when authoritarianism can turn into totalitarianism:

> Authoritarianism rests on passivity, its task is to push people out of political life. People can engage in their private life, but they are prohibited from undertaking any collective actions (regardless of who benefits). Do not sup-

> port or protest: "When you are needed, they will tell you." At the same time, you can think about anything and even talk, the main thing is to do nothing. Totalitarianism, on the other hand, presupposes mobilization. It requires that individual consciousnesses be connected to the totality. Personal views and opinions cease to be the subject of your own decision. You either belong to the totality or you are its enemy and target. Now we are frozen in an unpleasant point, when there are symptoms of transition from the first state to the second state."[1]

In such a situation any forecast cannot claim to be reliable.

Before the war, we had the following results: for 20 years, all democratic instruments, procedures and institutions capable of limiting and bringing to its senses autocratic power were completely destroyed, neutralized or simulated. The architects of this system were two post-Soviet presidents, who established a rule of individual power and imposed their interests on the public as being higher than an awareness of citizens' interests and seeking a consensus in such a complex and large country as Russia.

The configuration of the rest was arranged in such a way that it allowed this power to do whatever it wanted and to bring to life the most incredible, extremely dangerous fantasies—dangerous not only for Russia, but also for the whole world, fantasies based on unjustified ambitions, myths, delusions and unprofessionalism.

A few days before the start of the war that Russia unleashed in Ukraine, political philosopher Kirill Martynov wrote on his Facebook page:

> As a result of the institutional conditions of Russian political life, a war is taking shape. The whole question is when it will become a reality.
> The threat of war is the only means of conversation left by the Russian government. With whom? Naturally, with those from the former Soviet republics, which are not yet in the EU, but persistently try to distance themselves from the suffocating Russian embrace. Propaganda suggests believing that a fascist occupation regime has been established in Kiev, that such a state as Ukraine does not exist (as well as other "small countries," by the way), and that Russians and Ukrainians are one people who will applaud the farcical restoration of the USSR.
> These myths exist within an archaic system of world views in which "great countries" divide "spheres of influence" and "control their satellites" for

1 Conversation between sociologist Grigoriy Yudin and Karen Shainyan, the main points of which were recorded and posted on social networks by Boris Grozovsky.

> the sake of "civilizational choice." The Kremlin wants a new Yalta conference, and even better a new Congress of Vienna—they would also assume the rejection of Western interference in human rights issues in Moscow-controlled territories.... What kind of resistance will Ukraine offer, what assistance will the EU, the US and NATO provide to the Kyiv government, will a broad antiwar movement arise in Russia and Belarus?

The war was supposed to make propaganda collide with reality. And it did. As a result, we saw a new reality. What do we do in this reality? "The answers to these questions are connected, among other things, with our personal choice, that is, they literally depend on us. The tactical goal of Russian citizens in this war today is not to be left alone in the face of propaganda and the militaristic machine of the state, but to create new public institutions to replace the destroyed ones. Dictatorships are afraid of uniting people and will prevent this by squeezing us abroad and putting us in prisons." Therefore, the question "what to do?"—is by no means idle and is very difficult.

The collision of myths with reality in the conditions of massive propaganda and forced state restriction of access to alternative sources of information caused an unexpected effect for specialists—a massive psychological block from the cognitive dissonance between the eighty-year-old preaching of peace through the glorification of victory in the Great Patriotic War and the realities of the Russian invasion of Ukraine. Further, I present the last part of this book in the form in which it was formulated before the beginning of the "special operation." In fact, everything that was written will need to be done. With one single, but, alas, very serious amendment: the depth of deformation of the psyche and consciousness of the population has changed a lot. Therefore, serious psychological rehabilitation is required first.

A Road Map

"Oh, it's not an easy job to drag a hippopotamus out of the swamp" (K. Chukovsky). GrigoryMelkonyants, co-chairman of the Golosmovement for the protection of the rights of voters, commented on the message that this book was completed with this quote. Indeed, there is no end to the work here. But, as they say, what the eyes fear, the hands do. Every work has a beginning and an end. The main thing is to have a roadmap and not shy away in horror from potential difficulties. Of course, it is now difficult to foresee in detail what obstacles and "hacks" will appear along the way, but a roadmap can be sketched. Finishing the book, we return to its very

beginning: we need a lever and a fulcrum that will make it possible to move the authoritarian boulder firmly rooted in Russian soil.

Naturally, any action will be justified when a window of opportunity opens, or even just a vent window. In conditions of war, such a situation can develop suddenly, and it should not be missed.

The main points of such a roadmap, in our opinion, are several:

- to suspend, until the full subsequent abolition by a legitimate representative body, all legal norms and other censorship practices that restrict freedom of speech and the media. Apply during the transitional period the Law of the Russian Federation "On the Mass Media" as amended on Dec. 27, 1991. Restore the activities of independent media;
- to conduct a full-scale explanatory campaign "What was it?" or "How did we get to such a point?" What were the true goals and objectives of the Russian political regime and the means to achieve them since 2000. How, for example, did it become possible that the highest representative body of the country unanimously voted for war and unconditionally sent Russian soldiers to fight on foreign territory? Why can a person be held accountable for providing premises for the training of election observers? And so on;
- form a provisional legislative body for the transitional period, empowering it to determine electoral rules, procedures and strict liability for violation of electoral rights up toand including the formation of a new parliament;
- suspend the activities of existing election commissions;
- prepare and adopt one-time rules for holding free elections of the transitional period;
- form temporary election commissions;
- carry out large-scale propaganda work about how citizens' future depends only on the citizens themselves, that it is vital for them to come to the polls and vote;
- conduct a competitive, free, publicly controlled election campaign, and draw up honest voting results;
- form a transitional parliament on an alternative basis;
- bring the electoral legislation in line with democratic standards;
- start the installation of a normal remote electronic voting system.

Leaving the main organizational part to the politicians, we will focus on only a few points on this map where scholarly expertise is important.

These are points about changing the opinion of the population about the essence of the current government, about their opportunities to correct the current situation and about "bringing to life" the electoral legislation mutilated by authoritarian and corrupted goal-setting. Moreover, it must be said right away that the first two points are immeasurably more difficult to implement than the third.

Call everything by its proper name. Political corruption, its ends and means. It is no coincidence that first Boris Nemtsov, and then the Anti-Corruption Foundation (FBK) branches, became the Kremlin's main target during the struggle to retain power. Everything that we have studied in this book, all the transformations of the electoral legislation and the political processes accompanying it, are examples of political corruption, the signs and results of which were investigated and published by Nemtsov and the FBK. On January 31, 2015, Boris Nemtsov wrote on his Facebook page: "The task of the opposition now is enlightenment and truth. And the truth is that Putin is war and crisis." By this time, Nemtsov had already written and readied for publication the report "Putin and the War."[1] Twenty-seven days later, Nemtsov was shot dead under the walls of the Kremlin. And Nemtsov's associates published the report and made it publicly available in May of 2015. This was far from the first report prepared by his team, and each such document was nothing more than an investigation and disclosure of the facts of political and economic corruption, which is the basis of this government. Some of the reports: "Putin. Results" and "Putin. Results. 10 years" were distributed to people in a million copies.[2] The Nemtsov case was continued by Alexei

1 *Putin i voina* (Putin and the war) // https://www.putin-itogi.ru/putin-voina/.

2 Report *"Putin. Itogi. 10 let."* ("Putin. Results. 10 years") consisted of nine chapters, including "Corruption is corroding Russia," "An endangered country," "Raw material appendage," "The Caucasian dead end," and "Oh, roads." It notes that corruption in the country has reached catastrophic proportions, the country's dependence on raw materials has increased, social stratification has grown by 15%, and the authorities are implementing "multi-billion dollar scams" ("Winter Olympics in the subtropics," the Nord Stream and South Stream gas pipelines, hosting an Asian-Pacific Economic Cooperatioin(APEC) summit on Russkiy Island). A separate and smallest half-page chapter "Medvedev. Results" is dedicated to President Dmitry Medvedev. It says that for the entire time he was at the head of state, Mr. Medvedev "accounted for" only three critical results: changing the Constitution, as a result of which the term of office of the president was increased from four to six years; the erroneous recognition of the independence of South Ossetia and Abkhazia, provoking the growth of separatist sentiments within Russia; and the agreement "Gas in exchange for the Black Sea Fleet," under which Russia will pay 4 billion dollars a year

Navalny through the FBK organizations, which increased in number throughout the country. Then the political optical sight focused on them. It is terribly unprofitable for the regime (both scary and unprofitable) for its true background to be known both inside the country and abroad: as soon as we begin to look at the entire history of the Putin regime from the point of view of political corruption, it acquires a different sound and a different context.

If we try to set out as compactly as possible the typology of political corruption, depending on the main areas of its application, in combination with the characteristic corrupt methods used, and combine them according to the main goals that corrupt officials are trying to achieve, then the list of types may be as follows:

1) electoral corruption (including the use of administrative resources, vote count fraud, ballot box stuffing, vote buying, etc.)—to ensure a certain composition of the people's representative bodies;
2) nepotism (including political patronage) and buying of positions in non-elected government positions;
3) legislative corruption (including illegal lobbying) in the form of the technique of "state privatization" for "purchase" or provision of potentially corrupt government decisions;
4) misappropriation of public funds using political procedures or to achieve political goals (including through the methods of "bureaucratic" racketeering)—to acquire property for personal purposes or to solve group corruption tasks;
5) abuse of power for political purposes (including bypassing legally established democratic procedures)—to strengthen personal or group power, to ensure support for a high official status.1

Political corruption at the stage of using public power by political actors who have come to power is called the privatization of power. Iu.Nisnevich defines the privatization of power as the appropriation by persons holding public political positions of all coercive powers and

for the lease of a base in Sevastopol. *See Vladimiru Putinu snova podveli itogi* (Vladimir Putin summed up again). *Kommersant*, June 15, 2010 // https://www.kommersant.ru/doc/1386245.

1 *See for more details*, *Konstitutsionno-pravovye osnovy antikorruptsionykh reform v Rossii i zarubezhom* (Constitutional and legal foundations of anti-corruption reforms in Russia and abroad: educational and methodological complex) (textbook), Moscow,Yustitsinform (2016), 101–102.

rights of public power, the complete elimination of political opposition through legislative and other normative formation of political orders and rules, as well as personnel appointments in the structure of public power.[1] We have analyzed all this using the example of the creation of special electoral rules.

Unlike all other types, only political corruption is not episodic, but is of a comprehensive systemic nature and uses the infrastructure of the entire political process, rather than a separate department or a separate public position, to achieve corruption goals (including for illegal retention of power, strengthening political status, wealth accumulation, etc.). Its special danger also lies in the fact that under the conditions of republican government it is carried out by political subjects authorized to make decisions on behalf of the people. Therefore, such a government, as a rule, does not advertise its corruption goals and is forced to imitate democratic processes, replacing them in fact with authoritarian practices.

That is, almost everything that we analyzed in our book is political corruption. The equation of corruption, derived by the classic anti-corruption researcher, American economist Professor Robert Klitgaard, "Corruption = Monopoly + Freedom of action – Accountability,"[2] is a formula for authoritarian power.[3]

This formula means that corruption always occurs when the following conditions are combined:

1) the decision that a corrupt official would like to "buy" for his own benefit is made by only one subject (monopoly);
2) the boundaries of the powers of the subject-monopolist are blurred (not fully defined), there are no criteria and no clear procedure for making a decision (freedom of action);
3) there are no effective tools for monitoring the quality of decisions made (accountability).

1 *See for more details*, Iu. A. Nisnevich, *Korruptsiya: instrumental'naya kontseptualizatsiya* (Corruption: instrumental conceptualization. Sociological research)(2016). No. 5, 61–68.

2 R. Klitgaard, *Controlling Corruption*.University of California Press, 1988, 230.

3 *See for more details*: E. Lukyanova, I. Shablinsky, *Avtoritarizm i demokratiya* (Authoritarianism and Democracy). Moscow, Mysl' (2019), 295–318.

Professor V.V. Luneev defines political corruption as a form of political struggle for power.[1] D. Acemoglu and co-authors went further: through formal modeling, they analyzed the relationship between corruption and the political process and drew an analogy between *kleptocratic regimes and regimes of personal power* as focused on the use of power for profit.[2]

Political corruption is called extractive institutional corruption. This term refers to the synthesis of administrative and political corruption, when the political elite or class uses the apparatus of the state as a tool to extract resources from society, while the spread of corruption reaches such a scale and level of structure that government decisions are not made in the interests of society, and even not in the interests of private business, but solely in the interests of corrupt bureaucratic structures. Institutional extractive corruption is not a by-product of the development of the socio-political system, but is intentionally used as the main pivotal mechanism providing the increase of the controllability by a corrupt state system in the face of the risk of losing the threads of control for extracting rent and for controlling power and wealth under the threat of any pressure. As a result, it can transform into a corrupt state system and even into a mafia state.[3]

In order to use the resources of public power for the purpose of personal or group material enrichment, this power must first be won and then held in one's hands by creating *an appropriate political regime*. Various types of political corruption serve as tools for solving this problem. This is, first of all, electoral and legislative corruption, because only with the help of electoral corruption as a central element of political corruption is it possible to seize representative power, through which, by means of legislative corruption, formal legal support for the activities of

1 V.V. Luneev, Corruption: political, economic, organizational and legal problems (abstracts). — State and law. 2000. No. 4. S. 102.

2 D. Acemoglu, Why Not a political Coase theorem? Social Conflict, Commitment, and Politics. *Journal of Comparative Economics*(2003) Vol. 31. No. 4; D. Acemoglu, J. Robinson, Economic origins of Dictatorship and Democracy. London, 2006. D. Acemoglu, J. Robinson, T. Verdier, Kleptocracy and Divide and Rule. *Journal of the European Economic Association*. 2004 Vol. 2. No. 2–3; *see also*E.A. Lazarev, Corruption and political stability: an institutional perspective. *Politia*(2011). No. 1 (60), 53–54.

3 S. Rose-Ackerman, Corruption and the state. Causes, consequences, reforms / transl. from English. O. A. Alyakrinsky. Moscow, Logos (2003), 149–150, 175–179; I. Amundsen, Political Corruption: An Introduction to the Issues. Working paper(1999), 3, 7; Lazarev, *supra* note 9, 57.

the corrupt regime takes place. Further, other types of political corruption can be used to retain power and achieve corruption goals.

And all this should be explained in detail and clearly, with evidence and examples, and using the maximum amount of media and other resources, explained to the citizens of Russia. We need to prepare for this educational campaign now.

Everything depends only and exclusively on ourselves. This is the hardest part of the roadmap. It is actually much more complicated than opening one's eyes to the concept, content and true goals of the regime. The question "What to do?" is difficult not just because it is difficult to correct the current electoral legislation in Russia. This would be simple. But how to prove to people who are disappointed in their state and do not trust any government that only their will and their real participation can change the situation in the country? How to get rid of the learned helplessness syndrome? How to convince that the state is a service that we order for ourselves with our own money and the quality of which we have the right and the obligation to evaluate ourselves. A poor-quality service should inevitably lead to a change in the contractor. Everything else is the work of the devil. A citizen with a capital C is a person who is responsible for assessing the quality of government services. Corruption, authoritarianism and repression—all this is the price of non-participation of the population in politics for 20 years. The state, feeling uncontrolled and unpunished for any actions, enthusiastically goes beyond its powers and begins to commit excesses. As a result, distrust of the authorities and the deepest disappointment in the effectiveness of attempts to influence both its replacement and changes in the country over 20 years have become a special feature of the Russian national psychological type. However, it's not worth guessing. When changes begin, processes in a number of cases become uncontrollable and unpredictable—we observed this effect in the USSR at the turn of the 1990s, especially since the percentage of the democratically educated population today is much higher than it was 30 years ago. If the youth come to the polls in a consolidated manner and bring the older members of their families to the polling stations, they may not have to do anything. Nevertheless, one must be prepared for the need for yet another serious explanatory psychotherapeutic campaign.

Bringing "to life" the electoral legislation. Robert Klitgaard's corruption equation is also an anti-corruption equation. That is, if power is regularly replaced (lack of monopoly), if a clear and defined list of powers

is established, conditions for administrative discretion are minimized (legal certainty), strict regulations and procedures for the activities of authorities and officials are created (lack of freedom), and external control mechanisms are established from other (special and/or governing) bodies, and from the media and civil society institutions (accountability), then the space for corrupt behavior narrows or disappears altogether.[1] Translated into legal language, the anti-corruption equation will look something like this: "Regular turnover of power + Power limited by law + System of checks and balances." The first condition of this equation is rooted in free and fair elections, so the electoral legislation must be brought into line with the requirements of freedom and justice without fail and quickly. There is no question here of in what way to pass the amendments through a parliament formed according to undemocratic rules and, which in fact is not a representative body. Actually, in no way at all. Even if the old parliament suddenly changes its opinion when the regime changes (as can be expected), it will still not become a parliament, since its personal composition was originally formed for other tasks. Therefore, a transitional parliament, which will take on the heavy burden of clearing the Augean stables of the current Russian legislation from twenty years of authoritarian accretions, is necessary in any case.

Despite many years of permanent transformation of the electoral legislation, it is not very difficult to "bring it to life." If we summarize in a single table (as we have proposed in this book) the entire volume of many years of anti-democratic accretions, then this dirt can be quickly and systematically removed from it in six steps covering all aspects in accordance with the groups of amendments that we elaborated and introduced at different times. That is, according to the classification:

- removal of restrictions on free and equal access to the elections of their collective and individual participants;
- abolition of inequality of subjects of the electoral process;
- the removal of election commissions from the system of executive authorities;
- restoration and development of opportunities for public controlover elections;
- adjustment of the electoral system as a whole and the formula for the distribution of deputy mandates in favor of the representa-

1 See, for example: S.V. Bondarenko, *Korrumpirovannye obshchestva* (Corrupt societies). Rostov-on-Don, Joint Stock Company Rostizdat(2002), 40.

tive nature of the parliament that most corresponds to the state of society;
- the abolition of authoritarian amendments indirectly relating to electoral law.

With this approach, only purely technical work will be required to rigorously compile a list of repealed normative acts adopted in different years.

Additionally and at the same time, it is necessary to create (or restore) a set of norms establishing a list of types of violations of electoral rights and responsibility for them, strengthening this set with special administrative and criminal procedural procedures.

Step-by-step program for the introduction of an adequate new regulation of law enforcement and control over its observance

Reviewing the manuscript of this book, the political geographer and political scientist Dmitry Oreshkin raised a problem that we have touched only in passing, but it is important. Important, including for those readers who, unlike lawyers, do not understand well what arbitrary law enforcement and the specifics of legal consciousness are. The law can be very correct. In fact, members of election commissions, law enforcement officers and judges are not necessarily guided by the law or, moreover, by the Constitutional Court. For them, the evaluation criterion when considering a specific case is often a departmental instruction, the practice of their colleagues, or the will of the boss. Lawyers by definition fight for benign formulations. But when it comes to practice, even if the correct formula can be carried out in parliament, in real Russian conditions this may well turn out to be a Pyrrhic victory.

I will cite Oreshkin's thoughts in full: "My thesis is simple: the norms of law do not live by themselves, but in a specific socio-cultural environment that cannot be described in legal language. We talk about *Common Legal Thinking* (CLT) and interpret it as "international democratic standards." I don't think the translation is entirely accurate. Rather, we need to talk about *Common Sense*—about "common sense" or "public, general sense." In a hidden form, it certainly includes the same socio-cultural basis, which is very different in different countries and eras. Therefore, a more accurate translation, it seems to me, is "generally accepted rules of law" (or something similar), with the understanding that they can be very different in different communities." This is what lawyers call legal

custom, which includes business practices. And in legal language, all this is quite well described. Only it is not called law, but the organization of law enforcement. Just as there is medicine, and there is a healthcare system.

Oreshkin continues,

> "This is important, either we proceed from some *international* standard (by default based on the European socio-cultural basis), or we assume that there is no single, universal and global CLT and different societies have their own concept of the norm. I do not know the solution, but it seems to me that in any case, the topic deserves a separate small discussion. Evidence depends on the point of view, and the view is based on the socio-cultural environment that raised and educated us.
>
> In the Khiva Khanate of the 18th century, the CLT was very different from the British. In Soviet Russia, this phenomenon was filled with a radically different content compared to Europeanized pre-revolutionary jurisprudence. With talk about "revolutionary legal consciousness," aboutthe"queen of trials" (*reginaprobationum*), about the "severe people's court." The Soviet CLT rolled back several centuries. And it turned out to be much more difficult to return to the "normal" (European or international) sense of justice than our democratic brethren thought in the "wild nineties." Personally, I observed this very closely and concretely just on the example of the elections, when the aunts and uncles in the election commissions of various levels (the lower and the more provincial, the more openly!) did not hesitate at all, but boldly corrected the voting results in a "useful," from their point of view, patriotic direction. And you never know what is written in the Law "On Basic Guarantees!.." Paper with paragraphs is one thing, and life is quite another. CLT in Moscow and Chechnya are two obvious differences, and I don't really understand how to deal with this.
>
> The question is why some sociocultural environments accept "electoral authoritarianism" as the norm, while others resist. We will not go far for examples: there are elections in Turkmenistan, and in Chechnya, and in Belarus—but everyone understands that they function in a significantly different way than in Britain or Germany. Are Turkmenistan and Chechnya a deviation in relation to the common European standard or their own separate standard? The truth lies somewhere between belief in institutions and belief in traditions. Not to say that it lies in the middle—but rather still closer to globalization, universalism and institutionalism.
>
> There is a line here that is incomprehensible to my weak mind: on the one hand, a clear simplification in the form of old-fashioned formalism with an admixture of *institutionalism* (lawyers who are convinced that it is worth adopting the right laws, establishing the right institutions and Constitution, and everything will work out by itself), and on the other hand, a similar sim-

plification in the form of *primordialism* (this is rather a disease of our brother geographer, who is used to watching how the same (by name) institutions—parliament, press, elections, etc.—are distorted and turned inside out when they fall into a different sociocultural environment). Geography is the science of territorial diversity, while jurisprudence, it seems, is just the opposite, about bringing legal norms to a single standard.

The easiest way is to reduce everything to the primordial template of the twentieth century—they say, "Asians / infidels / savages, what else would you expect from them..." But the examples of Lukashenka's Belarus and especially Hitler's Germany interfere (after all, great European culture—and how easily he twisted its neck!) On the other hand we have Singapore, South Korea and Japan. Although the last two were lucky to be under American occupation and under the associated forced introduction of Anglo-American legal institutions. By the way, the example of the Japanese parliament is very interesting, where in the early years various samurai clans were fighting each other with swords, and the invaders separated them until they learned the new rules.

Similarly, with Kosovo, where the completely Turkish (more than wild) political landscape has gradually somehow become accustomed to European rules—but again, under the power control of the West. That is, it seems to me (who, as a geographer, should rather be a primordialist and, following Kipling, repeat that West is West, and East is East, andnever the twain shall meet), it still seems that in the 21st century, institutions—especially in the presence of external deterrents—are stronger than tradition.

There is potential for in-depth consideration of this issue from at least two points of view.

Firstly, Russia itself as a whole, when viewed from above, as a kind of legal entity of an intermediate status, where two instinctive systems of priorities fight (two "*evidences*"), and in turn the conditionally "European" evidence takes over (this is Yeltsin's Russia of the 90s, the Russia of large post-industrial cities), then, again, conditionally, "Asian," "Kadyrovite," where the priorities of a remote province with a touch of the Middle Ages prevail.

Secondly, Russia is "internal," deeply heterogeneous and conflicting in the sense of *self-evident* attitudes dominating in different socio-cultural environments. And this is no longer a legal moment, but a purely political one: the self-evident priority of maintaining a single political space is pushing the country towards a totalitarian model with hyper-centralization and one-man management, to the infringement and impoverishment of the rights of the regions—and, as a result, to the degradation of law, the emasculation of the Constitution, marginalization, self-isolation and, finally to what we have today. (Not to mention macroeconomics.) And the democratization that came from the West, on the contrary, creates conditions for the economic growth of self-governing cities, raising the standard of living on the ground—but

automatically entails obvious risks of disintegration into feudal principalities under the leadership of autocratic comrades like Kadyrov or numerous LilliPutins, and not at all European-minded intellectuals like A.D. Sakharov or B. E. Nemtsov…

The electoral map shows this potential threat in all its glory: Putin is supported mainly by the provinces—with Chechnya, Tuva, Kalmykia or Kabardino-Balkaria at the head. And the largest cities do not go to the polls—in connection with which the share of support for Putin and United Russia in terms of the total number of voters (and not the number of those actually casting votes) is approximately two times less there."

Oreshkin is right. There is a very large set of issues here, to understand which there should be devoted a special interdisciplinary study. Perhaps then our "picture" will become clearer, both clearer and more reliable. It's great that legal research with elements of mathematics pushes colleagues to new thoughts. Here it only remains for us to clarify our ideas about the work that will need to be done in terms of adjusting law enforcement under the new electoral legislation. After all, even a very good law remains just ink on paper until it is implemented. Any legislative innovation will certainly stumble upon the specifics of its "Kaluga" and "Kazan" perception, as V. I. Lenin once wrote in a letter to Comrade Stalin for the Politburo "On 'double' subordination and legality."[1] Here, in such a large and complex country, it is time for us to introduce an additional corrective *RLT* (regional legal thinking) index and take it into account very carefully when carrying out the reform. Yes, a lot of things, taking into account RLT, will have to be done manually. Especially in established electoral sultanates. But nothing is impossible. Barbarism is cured by education, culture, and strict adherence to procedures.

May we have enough patience in this work and may good luck accompany us!

1 V.I. Lenin, On "double" subordination and legality.Full collectedworks. Vol. 45, 197–201.

What Can Be Done With Remote Electronic Voting?

Ekaterina Zvorykina

And why do anything at all with remote electronic voting (hereinafter DEG)? Modern, technologically advanced and even environmentally friendly: fewer trees are cut down for ballot paper. Praises are sung to it from every corner, voters enjoy the simplicity and convenience: you can vote at the touch of a button and do not need to go anywhere. Everything would be fine, but you need to understand that behind the beautiful idea lies the dishonesty of the customers of the DEG, who did not at all set themselves the goal of holding democratic elections in Russia.

In fact, the DEG is a tool that expands the ability of the voter to exercise active suffrage. But the quality of this tool, its reliability and compliance with the principles of suffrage depends on what technologies are used, how it is done, and how the DEG is created, implemented and used.

The history of the modern Russian DEG began in 2019, when the intention to use it in elections in Russia was first publicly announced. It is important to mention that up to this point there have already been attempts to introduce DEG, which hardly anyone will remember now.

Experiments on the use of DEG were carried out in selected regions in 2008–2009.[1] The first was an online survey in the Tula region, in which one could participate using a computer and a special disk.[2] According to the creators of the experiment, they adopted the methodology in ad-

1 *Postanovlenie TsIK Rossii ot 25.09.2008 No. 132/966-5 "O Kontseptsii razvitiya Gosudarstvennoy avtomatizirovannoy sistemy Rossiyskoy Federatskii "Vybory" do 2012 goda"* (Decree of the CEC of Russia dated Sept. 25, 2008 No. 132 / 966-5 "On the Concept for the Development of the State Automated System of the Russian Federation "Elections" until 2012." Legal reference database Konsul'tantPlius.

2 *Perviy opyt ispol'zovaniya internet-tekhnologiy v praktike otechestvennykh vyborov* (The first experience of using Internet technologies in the practice of domestic elections) / RCOIT // http://www.rcoit.ru/news/17622/ (accessed 03/12/2022).

vance, trained the organizers and conducted an information campaign for voters. The results of the experiment were recognized as successful and promising for municipal elections, but in the end they were not used.

In 2009, an experiment using different DEG technologies was carried out in five constituent entities of the Russian Federation.[1] In one experiment, respondents participated in the survey by voting on a mobile phone, in another, through an information kiosk, using a special social payment card, and in three others, the 2008 experiment was repeated with a special voting disk.[2] According to the organizers, the experiments went well: experts were involved in the preparation, citizens were comprehensively informed, all the principles of the electoral right were observed, and at the end sociological surveys were conducted and the opinion of the voters was revealed.

Now it is difficult to say how much of this is true, and what is the embellishment of reality for a beautiful report. Despite seemingly successful results, the experiments were consigned to oblivion. Nevertheless, election commissions should learn from their own experience: even on the formal side, with modern experiments using DEG, even half of what was tested during the "rehearsals" of 2008–2009 was not done.

After that, DEG was forgotten for 10 years. It is difficult to say why it was in 2019 that the authorities again showed interest in this tool, but the fact remains: in March, at the Moscow Civil Forum, they started talking about conducting an experiment on the use of DEG in the next elections to the Moscow City Duma. Most likely, by this time the voting system had already been developed, and it was impossible to create a workable system in seven months. But a rhetorical question arises: why did no one know about this? Why were future voters, candidates and observers confronted with the fact that a completely new and untested method of voting was used in real elections? The organizers a priori assumed that the result of the experiment would be successful, although in reality it could be unsuccessful. Obviously, the goal was to implement the DEG at any cost, and

1 *Postanovlenie TsIK Rossii ot 30.12.2008 No 143/1059-5 "O provedenii eksperimenta po elektronnomu oprosu izbirateley pri provedenii vyborov 1 marta 2009 goda"* (Decree of the CEC of Russia dated Dec. 30, 2008 No. 143 / 1059-5 "On conducting an experiment on electronic polling of voters during the elections on March 1, 2009." Legal reference database KonsultantPlius.

2 *Rossiyskiy opyt ispol'zovaniya tekhnicheskikh sredstv v khode regional'nykh i munitsipal'nykh vyborov 2008–2011 godov* (Russian experience in the use of technical means during the regional and municipal elections of 2008–2011). Moscow (2011), 328 pp.

this became clear both from the information campaign, more reminiscent of pre-election campaigning, and from the final results, which with a high probability deprived at least one candidate of his seat.[1]

Nevertheless, this is how the first modern DEG system, the Moscow one, appeared. In September 2019, it was used in three constituencies in the elections to the Moscow City Duma.

The Moscow system is the brainchild of the Department of Information Technology of the city of Moscow and Kaspersky Lab.[2] The CEC of Russia could not remain indifferent to the success of its regional colleagues and in October 2019 decided to develop its own DEG system as part of the new version of the governmental automated system (GAS) "Vybory." And again, its development remained a mystery to all potentially interested parties. Thus, opacity has been a feature of Russian DEG systems since their inception, although perhaps the system designers simply interpreted the secrecy of the vote too broadly.

The second, federal, voting system is being developed by PJSC Rostelecom and Waves Enterprise.[3] It was first used in 2020 in the voting on amendments to the Constitution of the Russian Federation.[4]

In 2021, the Moscow and federal systems were used on a single voting day in elections at all levels, from municipal to federal. In the future, the Moscow system may lose competition from the federal one, because, according to the chairman of the CEC of Russia, the DEG will be used only on the federal platform.[5]

1 We are talking about the candidate for the Moscow City Duma Roman Yuneman, who won the paper vote in his constituency, but lost the electronic one // https://www.kommersant.ru/doc/4088592 (accessed 03/12/2022).

2 *See*, *"Laboratoriya Kasperskogo" zaymetsya razvitiem sistemy distantsionnogo elektronnogo golosovaniya Moskvy* (Kaspersky Lab will develop the remote electronic voting system of Moscow // https://habr.com/ru/news/t/557304/ (accessed 03/12/2022).

3 *See*, *"Rostelekom" razrabativaet sistemu distantsionnogo elektronnogo golosovaniya po zadaniu Tstentral'noy Izbiratel'noy Komissii Rossii* (Rostelecom is developing a system of remote electronic voting on the instructions of the Central Election Commission of Russia) / https://news.rambler.ru/other/44690836-rostelekom-razrabatyvaet-sistemu-distantsionnogo-elektronnogo-golosovaniya-po-zadaniyu-tsentralnoy-izbiratelnoy-komissii-rossii/ (accessed 03/12/2022).

4 *See*, *Vserossiyskoe golosovanie poluchil elektronniy komponent* (All-Russian voting received an electronic component) https://www.rbc.ru/newspaper/2020/02/26/5e553b619a79472985c0008e (accessed 03/12/2022).

5 *See*, *TsIK: Onlain-golosovanie v budushchem budet provoditsya tol'ko na federal'noy platforme* (CEC: online voting in the future will be held only on the federal platform) https://

DEG systems enjoy unprecedented popularity among voters: their turnout is consistently over 90%,[1] despite the fact that, for example, in the elections to the State Duma in 2021, the total turnout was only 47.71%.[2] It is not clear why the DEG has become such a statistical anomaly—because of the unprecedented convenience of voting[3] or its use as a way to coerce state employees.[4]

Thus, today two DEG systems are used in Russia: federal and Moscow.[5] The technologies used in the systems are different, but both use blockchain.[6]

Blockchain[7] is based on the distrust of database participants in each other, on the idea that proof of the correctness of the recorded information is provided by the correct operation of mathematical algo-

www.gazeta.ru/politics/news/2021/09/22/n_16573178.shtml?updated (accessed: 03/12/2022).

1 *See, Distantsionnoe elektronnoe golosovanie v Rossii. Istoriya i osobennosti* (Remote Electronic Voting in Russia. History and features) https://tass.ru/info/13533535 (accessed 03/12/2022).

2 *See, Itogi golosovaniya na vyborakh v Gusdumu. Infografika* (Results of voting in the elections to the State Duma. Infographic) https://www.rbc.ru/politics/21/09/2021/61477f849a79473b3047d829 (Accessed 03/12/2022).

3 *See, Eksperty podtverdili vyvody VTsIOM o vysokoy populyarnosti elektronnogo golosovaniya v Moskve* (Experts confirmed the conclusions of VTsIOM about the high popularity of electronic voting in Moscow) https://polit.ru/news/2021/08/31/deg/ (accessed 03/12/2022).

4 *See, Eksperty o DEG: doveriya onlain-golosovaniu net* (DEG experts: there is no trust in online voting) https://roskomsvoboda.org/post/online-voting-2021-experts/ (Accessed 03/12/2022).

5 *See, Naskol'ko zashchishchena ot riskov sistema elektronnogo golosovaniya* (How secure is the e-voting system). // https://www.rbc.ru/politics/30/08/2021/612508c79a7947dd6489199f (date of access: 03/12/2022).

6 *See, Obzor sistemy distantsionnogo elektronnogo golosovaniya TsIK RF* (Overview of the remote electronic voting system of the CEC of the Russian Federation) https://vc.ru/rt/156189-obzor-sistemy-distancionnogo-elektronnogo-golosovaniya-cik-rf; Kaspersky Lab will develop the Moscow e-voting system // https://www.kaspersky.ru/about/press-releases/2021_laboratoriya-kasperskogo-zaimyotsya-razvitiem-moskovskoi-sistemi-elektronnogo-golosovaniya (accessed 3/12/2022).

7 Distributed registry technology, where information is stored simultaneously on different devices in the form of a chain of blocks with information that cannot be arbitrarily changed. *See, Tekhnologiya raspredelennogo reestra i blokchein* (Distributed ledger technology and blockchain) https://crypto.ru/raspredelennyy-reestr-i-blockchain/ (accessed 03/12/2022).

rithms without human intervention.[1] The advent of technology marked the possibility of the withering away of the controlling function of the state.[2] State control accompanies us from birth to death, testifies to our financial victories and defeats, from a successful real estate transaction to bankruptcy. It traditionally acts as an intermediary and witness to many events in the life of a citizen, including in the field of his rights and obligations, as well as changes in legal status. But what if a mathematical algorithm is much more reliable than an entry in state registers, because the blockchain will save all the information, won't confuse anything, won't forget, and won't take a bribe?

Blockchain is transforming areas traditionally riddled with government regulation. Systems for registering property rights are being created,[3] technology is being introduced into the work of notaries, and in some ways it completely replaces them.[4]

The complete withering away of the state and the worldwide spread of blockchain technology still look like a utopia. States are not ready to give power to technology. But the blockchain has already created the ability for many people and organizations to create horizontal connections, as well as use cryptocurrencies. The latter circumstance should be recognized as very sensitive for a state that rules over citizens, including through control over the national currency.

The developers of Russian DEG systems loudly declare the use of blockchain technology in elections, the invulnerability and irreplaceability of votes. But, unfortunately, this technology is still not a panacea. Its use alone cannot ensure that all principles of suffrage, such as the secrecy of the vote, are observed. Practice shows that even such worth of a blockchain as transparency and verifiability can be completely levelled

1 *See*, *Metod garantirovaniya doveriya v blokcheinakh* (Trust Guarantee Method in Blockchains) // https://habr.com/ru/post/338696/ (accessed 03/12/2022).

2 *See*, *Pochemu blokchein mog by unichtozhat' gosudarstvo, no ne sdelaet etogo* (Why blockchain could destroy the state, but won't) http://www.furfur.me/furfur/changes/changes/216495-blokchain (accessed 03/12/2022).

3 *See*, *Blokchein protiv biurokratii: elektonnoe gosudarstvo na osnove tekhnologii raspredelennogo reestra* (Blockchain against bureaucracy: electronic state based on distributed ledger technology) https://www.forbes.ru/tehnologii/343785-blokcheyn-protiv-byurokratii-kakim-dolzhno-byt-elektronnogo-gosudarstvo-na-osnove (accessed 03/12/2022).

4 *See*, *Notariat i blokchein—ideal'noe sochetanie?*(Notaries and Blockchain—An Ideal Combination?) https://cryptonews.net/ru/editorial/tekhnologii/notariat-i-blokcheyn-idealnoe-sochetanie/ (accessed 03/12/2022).

if two blockchains are used at the same time, and only one of them is accessible.

Ideal DEG

The creation and implementation of the DEG is a creative and innovative process, where there are no clear instructions on which technologies are right to use and which are not. DEG regulation will also differ from country to country. At the international level, the only clear guideline for the development, implementation and application of the DEG are Recommendations No. CM / Rec (2017) 5 of the Committee of Ministers of the Council of Europe "On the rules of electronic voting"[1] (hereinafter referred to as the Recommendations). They generally describe the following DEG standards: the need to comply with the principles of suffrage and how to comply with them; organizational rules for the introduction and application of the DEG; standards of openness and transparency regarding the DEG system and its application; requirements for regular testing of the DEG system; requirements for the reliability and safety of the DEG system.

Additionally, the contents of the Recommendations are disclosed by the Explanatory Memorandum[2] and Methodological Guides[3] to them.

When developing, implementing and using the DEG, the principles of suffrage and organizational standards must be observed as follows.[4]

1. *The principle of universal suffrage*: it is necessary to create a simple and understandable voting interface and ensure that persons with disabilities can vote independently.

1 See Recommendation CM/Rec (2017)5 of the Committee of Ministers to member States on standards for e-voting (Adopted by the Committee of Ministers on 14 June 2017 at the 1289th meeting of the Ministers' Deputies) // https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680726f6f (accessed: 12.03.2022).

2 See Explanatory Memorandum to Recommendation CM/Rec(2017)5 of the Committee of Ministers to member States on standards for e-voting // https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168071bc84 (accessed 12.03.2022).

3 See Guidelines on the implementation of the provisions of Recommendation CM/Rec(2017)5 on standards for e-voting // https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680726c0b (accessed 12.03.2022).

4 The description of principles and standards is not exhaustive, details and specifics are omitted.

2. *The principle of equal suffrage*: it is necessary to ensure the unique identification of voters; provide access to voting only after authentication; securely store the cast vote and prevent double voting.
3. *The principle of free participation in elections*: it is unacceptable to unlawfully influence the will of the voter directly or through the voting system; the voting system must ensure that the voter has the opportunity to cast a valid vote and ensure that it has been taken into account in determining the results of the vote.
4. *Secret ballot*: the secrecy of electronic voting is ensured at all its stages; the entire voting process must be such that it is impossible to tracethe connection between the voter and his vote; the vote must be and remain anonymous; disclosure of information about how and for whom voters voted before the end of voting is unacceptable.
5. *Regulatory and organizational requirements*: the introduction of electronic voting should be gradual and consistent; legislation needs to be changed before implementation; e-elections should be overseen by election administrations; the counting of votes must be available for observation.
6. *Transparency and Observation*: The e-voting system must be capable of being observed and verified; components of the voting system are disclosed for verification and certification; citizens are informed in advance about how the system works and how they can vote using it.
7. *Accountability*: it is necessary to develop technical, evaluation and certification requirements for the e-voting system, based on democratic principles and standards; carry out official certification before each use of the system; and ensure an open and comprehensive audit of the voting system.
8. *Reliability and safety*: before using, you need to make sure that the e-voting system is genuine and works correctly; all votes must be encrypted; the voting system should detect invalid votes.

What is the ideal DEG system from the point of view of the Council of Europe? Such a system is developed openly and gradually, with the involvement of external experts and the public. Certified and tested before each election. Legal regulation is developed and adopted in advance. All necessary information and documentation is published at least one year before the election. The DEG system itself ensures compliance with the principles of the electoral law, both in terms of the voting process, and in terms of the interface and technologies used.

Already at first glance, it is noticeable that the Russian DEG systems fundamentally do not correspond to the ideals. On closer examination, one can say that the DEG is an instrument of electoral authoritarianism, hiding behind the mask of democracy and modern technology. More on this later.

DEG problems

The legislative regulation of DEG is inconsistent and insufficient. On May 22, 2019, a corresponding law of the city of Moscow was adopted to conduct an experiment with the Moscow system.[1] However, the federal law,[2] on the basis of which the regional law was supposed to be adopted, came into force only on May 29, 2019. Thus, a paradoxical situation has arisen when the federal law, on the basis of which the regional one is adopted, was adopted later than it was. This fact demonstrates the grossest disregard for the rules of lawmaking and the decorative role of the State Duma: it blindly obeyed the Moscow initiative and without question turned over the regulation of electoral rights and freedoms of citizens to the regional level.

Being a witness to the events described, the author can assert that the deputies did not understand what they were voting for, whether the DEG system was democratic, and did not seek to find out. On the one hand, the eternal haste, and on the other hand, the disregard for the rights and freedoms of voters led to the experiment on the DEG in 2019, which was extremely poor in terms of the quality of legal regulation. When announcing the experiment, the creation of technical and legal groups involved in its preparationwas announced. However, the second group was never created, and no one discussed with lawyers the features and problematic aspects of the regulation of the DEG. The technical team included both information technology specialists and a few lawyers, including the author of these lines. As a result, legal issues faded into the background.

1 Law of the city of Moscow dated May 22, 2019 No. 18 *"O provedenii eksperimenta po organizatsii i osushchestvleniu distantsionnogo elektronnogo golosovaniya na vyborakh deputatov Moskovskoy Dumy sed'mogo sozyva"* ("On conducting an experiment on organizing and implementing remote electronic voting in the elections of deputies of the Moscow City Duma of the seventh convocation." Legal reference database "Konsul'tantPlius".

2 Federal Law No. 103-FZ of May 29, 2019 *"O provedenii eksperimenta po organizatsii i osushchestvleniyu distantsionnogo elektronnogo golosovaniya na vyborakh deputatov Moskovskoy gorodskoy dumy sed'mogo sozyva"* ("On the Experiment of Organizing and Implementing Remote Electronic Voting at the Elections of Deputies of the Moscow City Duma of the Seventh Convocation." Legal reference database "Konsul'tantPlius."

In addition, the DEG is regulated mainly at the sub-legislative level, by acts of election commissions. In the elections in 2021, it was determined[1] that the DEG can be applied in cases and in the manner established by the CEC of Russia.[2] The situation is similar in the 2019 elections. Then the federal law transferred the regulation of the DEG to the law of the city of Moscow. In turn, the Moscow law almost completely transferred the regulation to the Moscow City Electoral Commission (hereinafter referred to as MGIK). So the regulation of the rights and freedoms of man and citizen, which is under the exclusive jurisdiction of the Russian Federation,[3] was reduced to the level of an election commission of a constituent entity of the Russian Federation, which did not and could not have such powers. Such a crude illegal delegation shows that constitutional rights and freedoms mean nothing if the end justifies the means.

The federal and regional parliaments have shown complete unwillingness and inability to perform their functions. As spokesmen for the people's will, they were obliged to act in the interests of citizens, to ensure that rights and freedoms would be protected and observed. The situation with the regulation of the DEG once again confirms that the parliament, which has lost a sense of responsibility to the voters, supports and reproduces the worst non-democratic practices. In the situation under consideration, in reality, only the election commissions and executive authorities had power, in whose interests it was to strengthen their own power.

Normative legal acts, as well as the decisions themselves to introduce DEG systems, were adopted less than a year before the elections and did not allow the participants in the electoral process to adapt to the new method of voting.

For example, in 2019, a little less than seven months passed from the public proposal to conduct an experiment with DEG to the actual experiment. In the same year, the last of the Moscow City Election Com-

1 *See*, paragraph 14 of Art. 64 of the Federal Law of June 12, 2002 No. 67-FZ "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation." Legal reference database "Konsul'tantPlius."

2 *See*, Decree of the CEC of Russia No. 26/225-8 dated July 20, 2021 *"O poriadke distantsionnogo elektronnogo golosovaniya na vyborakh naznachenniykh na 19 sentiabria 2021 goda"* ("On the Procedure for Remote Electronic Voting in the Elections Scheduled for September 19, 2021"). Legal reference database "Konsul'tantPlius."

3 *See,* paragraph "v" part 1 of Art. 71 of the Constitution of the Russian Federation.

mission decisions, regulating the issues of openness, transparency and monitoring of the DEG, was taken just 16 days before the voting day. Naturally, within such a time frame it was impossible to qualitatively prepare for the observation.

The source code for the Moscow system was released on July 17, 2019 (that is, less than two months before the election) so that external experts could test the system and try to find vulnerabilities.[1] Some of them were found, but, as it became clear later, this did not make the system reliable enough. The organizers of the experiment deliberately jeopardized the elections in those constituencies where the experiment was conducted.

In 2021, the CEC of Russia adopted the procedure for holding the DEG about two months before the elections. Disclosure of technical documentation on the federal system also began two months before Election Day. This situation does not comply with the Recommendations, according to which documentation should be available in advance, that is, a year before the elections. Otherwise, experts, observers and the public cannot react, and give their comments and assessment. The source code of the federal system was released to the public in September 2021,[2] 18 days before voting day—an extremely short time for any reaction and evaluation.

An outrageous trend is repeated from time to time: the developers and organizers of the DEG set an impossible task for experts and observers: to check and evaluate something in a very short time and with incomplete access to information. This practice means one thing: another fiction, an imitation of the observance of the principle of publicity and openness. Such tight deadlines appear not only as a mockery of experts and observers, but also as another round of enmity between the state and civil society.

Of course, such abbreviated time periods for the development and implementation of the DEG have a bad effect on its reliability and stability. There are at least two known failures in the operation of the Moscow system that occurred during voting: in 2019, in the elections to the Moscow City Duma (resulting in the inability to vote for several hours)[3] and

1 For example, a serious vulnerability was found by Pierre Gaudry // https://habr.com/ru/news/t/463863/ (accessed 03/12/2022).

2 *See* deg2021 // https://github.com/cikrf/deg2021 (accessed 03/12/2022).

3 *See, Vlasti Moskvy ob'yasnili zavisanie sistemy dlia elektronnogo golosovaniya* (Moscow authorities explained the freezing of the system for electronic voting) https://www.rbc.ru/technology_and_media/08/09/2019/5d74c21a9a7947b16fdd7df5 (accessed

in 2021, in the elections to the State Duma (difficulties arose during transcription of votes).[1] It is not entirely clear to what extent the rights of voters and candidates were affected in both cases. One of the candidates doubted the result of the electronic voting and filed a lawsuit to cancel it, but was unsuccessful.[2] At the same time, a case requiring the involvement of experts, special knowledge and special expertise was considered in just one court session.

The cases of failure showed not only the unreliability of the Moscow DEG system, but also the helplessness of the election commissions in such situations. In fact, when using the DEG, the organizers of electronic voting were the developers of the DEG systems and the executive authorities. Only they were able to solve emerging problems even though lacking the necessary legal status. In 2019, one could observe many hours of failure in the operation of the DEG system and how the members of the commission did not understand what was happening and could not influence anything.[3] Representatives of the Department of Information Technologies of the city of Moscow during this situation tried to fix the voting system, without being members of the commission, without any authority, but in fact being the only participants in the process with the right to influence the development of events. The functions of the election commission were reduced to the formal signing of protocols on the results of voting, without understanding how these results were obtained, and without analyzing the possible violation of the rights of voters and candidates, for whom the DEG remains opaque.

Oversight of the DEG requires special technical knowledge, but there is no special training for observers that provides sufficient skills. Anyone can become an observer, but only technical specialists can really even try to understand what is happening during the voting. Due

03/12/2022).

1 *See*, *Onlain-golosovanie v Moskve dalo sboy* (Online voting in Moscow failed) https://octagon.media/politika/onlajn_golosovanie_v_moskve_dalo_sboj.html (accessed 03/12/2022).

2 *See*, *Roman Iuneman podal isk ob otmene rezul'tatov elektronnogo golosovaniya na vyborakh v Mosgordumu* (Roman Yuneman filed a lawsuit to cancel the results of electronic voting in the elections to the Moscow City Duma) https://tvrain.ru/news/roman_juneman_podal_v_sud_s_trebovaniem_cancellation_elektronnogo_golosovanija_na_vyborah_v_mosgordumu-493832/ (date of access: 03/12/2022).

3 The author of the text was a member of the DEG precinct commission with an advisory vote in the 30th constituency in the elections to the Moscow City Duma in 2019 and personally observed the events described.

to the need to have special training, the number of qualified electronic observers is small, and the quality of DEG observation is significantly reduced. In addition, observation tools themselves are insufficient, even for specialists. The programmer and observer Petr Zhizhin noted that in the elections in 2021, the proposed tools were only a "showcase" of voting and did not reflect the processes taking place inside the systems.[1] Unfortunately, even legal surveillance tools may be inaccessible to observers if the authorities simply do not let them in.[2]

The blockchain used in the DEG systems was only partly transparent. After the 2021 elections, it turned out that there is a public blockchain, where information can be recorded, as well as a private blockchain, inaccessible to observers,[3] information from which was never published. At the same time, the most important property of this technology is decentralization, when all information about the voting process is recorded on various independent devices. However, in Russia they are all in the hands of the state, which creates the possibility of rolling back the voting results and replacing part of the database.[4]

The DEG can be a democratic, reliable and transparent voting instrument, if the whole electoral system is like that. If it is sick with authoritarianism, then DEG is also infected. Russia's modern DEG systems are non-transparent and undemocratic, and authorities at various levels are doing everything to keep them that way.

What's going on with DEG now?

In January 2022, a bill introducing legislative regulation of the DEG was submitted to the State Duma for consideration. However, in terms of content, it did not consolidate any conceptually important provisions and principles, confining itself to giving great legal force to the norms previously adopted by the CEC of Russia and the Moscow City Election Commission. As before, election commissions will be empowered to regulate key aspects of the DEG with no time limits for the adoption of acts. This

1 *See*, *DEG-show* // https://yandex.ru/turbo/novayagazeta.ru/s/articles/2021/09/24/deg-shou (accessed 03/12/2022).

2 *See*, *Majoritarnaya Sistema vyborov* (Majoritarian Election System) // https://yandex.ru/turbo/novayagazeta.ru/s/articles/2021/09/21/mazhoritarnaia-sistema-vyborov (Accessed: 03/12/2022).

3 *Supra*, note 36.

4 *Ibid*.

means that, most likely, the trend of adopting and publishing significant acts and documentation on the eve of the elections, in violation of the principle of stability of the electoral system, will continue.

The draft law did not describe the operationla algorithm of the DEG system in any way, nor did it regulate access to it. It also did not solve the problem of monitoring and did not give the members of the election commissions the opportunities and tools to control the operation of the system. There is no legal certainty, no control, no openness and transparency, and no guarantees of voting rights.

The bill was sharply criticized by experts who, in their reviews, called it unacceptable in its entirety[1] or requiring significant revision. Based on the feedback, the experts prepared a package of amendments for the second reading of the bill and sent it to deputies of different factions. In the event, all amendments were rejected.

During the second reading, a terrible situation happenedwith the bill, albeit typical for Russian laws: it was crammed with amendments that had nothing to do with the original concept. From a very weak DEG bill, it has become a 155-page monster, which complicates election observation, introduces new barriers to nominating candidates, and creates a register of "natural person foreign agents" with all the ensuing consequences. The norms on the DEG have practically not changed compared to the first reading, consolidating the already established undemocratic tendencies.

There are no words to describe how undemocratic, absurd and repressive the new amendments are, or what brutal and ruthless violence is being conducted as part of the legislative process.

The Future of DEG

Before making a decision about the possibility or impossibility of using the DEG in elections in Russia, it is necessary to conduct a thorough review of what has already been done and used. Recommendations of the Council of Europe can serve as a reference point in this process. At the same time, it must be admitted that there is no universal solution for organizing the work of the DEG system, but there is a way through which

1 *See*, *Maksimal'no blagopriyatnye usloviya dlia fal'sifikatsii* (Maximum favorable conditions for falsifications: Amendments to the election law will legalize manipulations with electronic voting) https://liberal.ru/ekspertiza/maksimalno-blagopriyatnye-usloviya-dlya-falsifikaczij-popravki-k-zakonu-o-vyborah-uzakonyat-manipulyaczii-s-elektronnym-golosovaniem (accessed 03/12/2022).

such a solution can be found and implemented. It is necessary to start moving in this direction with the involvement of experts and the public in the discussion of undoubtedly progressive technology, with the search for agreement between political forces.

The most important milestone on this path should be the decision of an independent parliament on the future of the DEG in Russia. Only it has the right to decide whether the system is ready for use in the form and context in which it is presented at the time of voting, whether it meets democratic standards or is not capable of guaranteeing the realization of the rights of all participants in the electoral process. And it may turn out that even if voters have confidence in the DEG system, parliament will decide not to use it if it is not sufficiently reliable and democratic, as the Norwegian parliament did in 2014.[1]

When conducting DEG, members of election commissions and observers should be able to independently check all stages of remote electronic voting without special knowledge. This is an ideal to strive for and bring to life as much as possible. However, it is likely that with the use of the DEG, elections will no longer be the business of lawyers and bureaucrats. Observers and members of election commissions will need to have at least a minimal understanding of the technical side of electronic voting, which means that, with the participation of experts, it will be necessary to develop and conduct special training. Only with a thorough understanding of the principle of operation of the DEG and awareness of the essence of the tools and procedures for verification, will members of election commissions cease to be mere window dressing. Undoubtedly, technical specialists, experts, and observers will also need to be involved in the development of monitoring tools. Specific tools will depend on the availability of technology, the needs of the observing community, and the actual ability to meet them.

The review process might look like this:

1) suspend the use of DEG in Russia;
2) make available as much documentation and information related to the DEG as possible;
3) involve observers and experts in the discussion and verification of the DEG, formalize their status and powers;
4) initiate public discussion;

1 *See*, No more online voting in Norway // https://sciencenorway.no/election-politics-technology/no-more-online-voting-in-norway/1562253 (accessed 03/12/2022).

5) develop domestic standards (based on international ones) for the DEG system;
6) conduct a public audit of technology systems, as well as a review of DEG legislation for compliance with domestic and international standards;
7) conduct public testing of DEG systems, sum up its results;
8) conduct public opinion polls;
9) provide Parliament with all the information necessary to make a decision on use or non-use;
10) if the decision is positive, then develop a plan for the introduction of DEG;
11) finalize the legislation on DEG;
12) implement the updated DEG gradually, starting with municipal elections;
13) analyze each experience of using DEG and refine the system;
14) be ready to abandon the DEG and return to paper voting if the system fails pre-election checks;
15) update DEG standards and regularly update the system to counter new vulnerabilities.

This entire process, most likely, will take more than one year. But haste is inappropriate when it comes to democratic elections. The DEG should not create barriers to the exercise of voting rights, and changes are possible only if the principles of interaction between the state and citizens are reviewed, as well as careful observance of the principle of openness and publicity as one of the key principles in the process of creating and using the DEG.

The future of the Russian electoral system may well be tied to this technology as the main voting tool, provided it is brought up to the highest standards. In turn, the implementation of this requirement is possible only in the conditions of a free, democratic and technologically developed Russia, and at the current moment we are forced to state one thing: the current state of DEG technology makes it completely unsuitable for use.