

In the name of the Russian Federation

RULING

OF THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION

on the case of constitutionality review of art. 3, 4, paragraph 1 section one art. 134, art. 220, section one art. 259, section two art. 333 of the Civil Procedure Code of the Russian Federation, subart. «3» paragraph 9 art. 30, paragraph 10 art. 75, paragraphs 2 and 3 art. 77 of the Federal Law “On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation”, sections 4 and 5 art. 92 of the Federal Law “On election of deputies of the State Duma of the Federal Assembly of the Russian Federation” in respect of appeals of A.V.Andronov, O.O.Andronova, O.B.Belov et al., the Human Rights Commissioner of the Russian Federation and the regional office of the “SPRAVEDLIVAYA ROSSIYA” political party in the Voronezh region’

the city of St.Petersburg

April 22, 2013

The Constitutional Court of the Russian Federation consisting of the Chairman V.D.Zorkin, judges A.I.Boitsov, N.S.Bondar, G.A.Gadzhiev, Y.M.Danilov, L.M.Zharkova, G.A.Zhilin, S.M.Kazantsev, M.I.Kleandrov, V.D.Kniazev, A.N.Kokotov, L.O.Krasavtchikova, S.P.Mavrin, N.V.Melnikov, Y.D.Rudkin, O.S.Khokhriakova, V.G.Yaroslavtsev,

with the participation of O.O.Andronova, V.G.Beliakov, A.V.Davydov and E.P.Sizionov, representative of the Human Rights Commissioner of the Russian Federation candidate of legal sciences N.V.Vasilyev, representative of the regional office of the “SPRAVEDLIVAYA ROSSIYA” political party in the Voronezh region’ doctor of legal sciences I.G.Shablinsky, representative of A.V.Andronov, O.O.Andronova, A.V.Davydov, T.A.Nikolayeva lawyer Sh.S.Akhaev, representative of O.B.Belov lawyer A.K.Soboleva, representative of P.P.Serebryakov and the

regional office of the “SPRAVEDLIVAYA ROSSIYA” political party in the Voronezh region’ doctor of legal sciences N.V.Butusova, representative of V.A.Timoshenko and the regional office of the “SPRAVEDLIVAYA ROSSIYA” political party in the Voronezh region’ candidate of legal sciences A.L.Burkov, plenipotentiary envoy of the State Duma to the Constitutional Court of the Russian Federation D.F.Viatkin, representative of the Council of Federation the chairman of The Council of the Federation Committee on Constitutional Legislation, Legal and Judicial Affairs and Civil Society Development A.A.Klishas, plenipotentiary presidential envoy to the Constitutional Court of the Russian Federation M.V.Krotov,

acting in accordance with art.125 (section 4) of the Constitution of the Russian Federation, paragraph 3 section one, sections three and four art.3, section one art.21, art. 36, 74, 86, 96, 97 and 99 of Federal constitutional law “On the Constitutional Court of the Russian Federation”,

considered in public the case of constitutionality of art. 3, 4, paragraph 1 section one art. 134, art. 220, section one art. 259, section two art. 333 of the Civil Procedure Code of the Russian Federation, subart. «3» paragraph 9 art. 30, paragraph 10 art. 75, paragraphs 2 and 3 art. 77 of the Federal Law “On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation”, sections 4 and 5 art. 92 of the Federal Law “On election of deputies of the State Duma of the Federal Assembly of the Russian Federation”.

The consideration of the case was encouraged by appeals of A.V.Andronov, O.O.Andronova, O.B.Belov, V.G.Beliakov, A.V.Davydov, A.G.Nikolayeva, T.A.Nikolayeva, P.P.Serebryakov, E.P.Sizionov and V.A.Timoshenko, the Human Rights Commissioner of the Russian Federation and the regional office of the “SPRAVEDLIVAYA ROSSIYA” political party in the Voronezh region’.

Reasoning for the case consideration was incertitude as to whether the provisions of law contested by the claimants comply with the Constitution of the Russian Federation.

Basing on the fact that all appeals concern the same subject, The Constitutional Court of the Russian Federation, acting in accordance with art.48 of Federal constitutional law “On the Constitutional Court of the Russian Federation” consolidated the cases.

Upon hearing the statement of judge-rapporteur N.S.Bondar, explanations given by the representatives of the parties, statements of the following representatives invited to the hearing: from the Supreme Court of the Russian Federation – judge of the Supreme Court of the Russian Federation N.K.Tolcheev, from the Ministry of Justice of the Russian Federation – E.A.Borisenko, from the Attorney General of the Russian Federation – T.A.Vasilyeva, from the Central Election Commission of the Russian Federation – N.E.Konkin, having studied the documents and other materials submitted, The Constitutional Court of the Russian Federation.

f o u n d :

1. Claimants in the case - A.V.Andronov, O.O. Andronova, O.B.Belov, V.G.Beliakov, A.V.Davydov, A.G.Nikolayeva, T.A.Nikolayeva, P.P.Serebryakov, E.P.Sizionov and V.A.Timoshenko, the Human Rights Commissioner of the Russian Federation and the regional office of the “SPRAVEDLIVAYA ROSSIYA” political party in the Voronezh region’ – contest the constitutionality of the following legal provisions, applied by the courts of general jurisdiction in specific cases considering applications in respect of violations of electoral rights by decisions of election commissions on the voting, election results:

art. 3 and 4 of the CPC of the Russian Federation, defining the fundamental principles of the regulatory content of the right to appeal to court and the grounds of initiating a civil lawsuit in court;

paragraph 1 section one art. 134 and art. 220 of the CPC of the Russian Federation, stating grounds to dismiss the appeal and terminate the proceedings;

section one art. 259 of the CPC of the Russian Federation, under which voters, participants of the referendum, candidates and their representatives, electoral associations and their representatives, political parties and their regional offices, other

public associations, pressure groups conducting the referendum and their authorized representatives, other participants of the referendum and their authorized representatives, watchers, prosecutor, considering that decisions or actions (inaction) of the state government body, local authority, public associations, election commission, referendum commission, officer violate electoral rights or the right to participate in the referendum of citizens of the Russian Federation, have the right to appeal to court;

section two art. 333 of the CPC of the Russian Federation, under which a special claim, prosecutor's petition to the decision of a first instance court, with the exception of decision to suspend the proceedings, to terminate the proceedings, to dismiss the application, shall be considered without notifying the persons participating in the proceedings;

subart. «3» paragraph 9 art. 30 of Federal Law dated June 12, 2002 № 67-ФЗ “On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation”, providing for the right of a watcher to appeal according to art. 75 of this Federal law actions (inaction) of the election commission to the election commission of a higher rank, the election commission of the constituent entity of the Russian Federation, the Central Election Commission of the Russian Federation, or in court;

paragraph 10 art. 75 of the abovementioned Federal law, under which the right to claim decisions and actions (inaction) which violate the citizens' electoral rights and the right of citizens to participate in the referendum is granted to voters, participants of the referendum, candidates, their representatives, electoral associations and their representatives, other public associations, pressure group conducting the referendum and its authorized representatives, watchers, and election commissions;

paragraphs 2 and 3 art. 77 of the abovementioned Federal law, providing for the legal grounds for the court to repeal the decision of the election commission on voting and election results;

sections 4 and 5 art. 92 of Federal law dated May 18, 2005 № 51 - ФЗ “On election of deputies of the State Duma of the Federal Assembly of the Russian

Federation” which provides for the legal grounds for the court to repeal the decision of a respective election commission on voting results and results of the election to the State Duma.

1.1. The Ruling of the Supreme Court of the Russian Federation dated December 23, 2011 (affirmed by decision of the Russian Supreme Court Board of Appeals dated February 9, 2012) the application of A.V. Andronov, O.O. Andronova, A.V.Davydov, A.G.Nikolayeva, T.A.Nikolayeva and E.P.Sizionov in respect of violation of their electoral rights in the part of demanding to repeal the decision of the Central Election Commission of the Russian Federation dated December 9, 2011 № 70/576 -6 “On the result of elections of deputies of the State Duma of the Federal Assembly of the Russian Federation of the sixth convocation” was rejected.

The Ruling of the Kolpinsky district court of St.Petersburg dated March 1, 2012 terminated the proceedings in respect of the civil case of appeal filed by V.G.Beliakov concerning the actions of the territorial election commission № 21 on establishing the voting results during the elections of deputies to the Legislative Assembly of St.Petersburg of the fifth convocation at polling station № 637.

The abovementioned citizens contest constitutionality of section one art.259 of the CPC of the Russian Federation, paragraphs 2 and 3 art. 77 of the Federal Law “On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation”, sections 4 and 5 art. 92 of the Federal Law “On election of deputies of the State Duma of the Federal Assembly of the Russian Federation”, on the basis of which the Supreme Court of the Russian Federation and the Kolpinsky district court of St.Petersburg ruled that such violation of the electoral legislation as incorrect vote count, which the applicants cited to ground their claim, can lead to violation of the rights of political parties in distribution of mandates between them, but not citizens’ electoral rights; meanwhile the current legislation correlates the right of voters to apply to court with the defense of their violated rights, while the grounds to repeal the decisions of a respective election commission on election results in proportional representation system are recognized only as violations of the electoral legislation which concern the rights and interests of

political parties, whose candidates are eligible to distribution of mandates or who were illegally denied the registration of the party ticket.

In the opinion of the applicants the legal provisions contested by them do not comply with art. 3 (section 3) of the Constitution of the Russian Federation, as they unreasonably limit the circle of persons with the right to contest the voting results, election results, to political parties, therefore not allowing the voting citizens to claim to repeal the voting, election results in case of incorrect establishing thereof.

1.2. The Kalacheevsky district court of Voronezh region terminating the case of appeal filed by P.P.Serebryakov to rule illegal the actions of the district election commission, whose member with the casting vote he was, and Kalacheevsky territorial election commission, in its ruling dated January 30, 2012 (affirmed by appellate decision of the civil division of the Voronezhsky regional court dated April 12, 2012) acted on the basis of the fact that voters and other participants of the electoral process can apply to court only to protect their violated rights, while violations of the electoral legislation the applicant cited (the information concerning the voting results at the election to the State Duma of the sixth convocation submitted to the territorial election commission did not coincide with the information in the protocol of the district election commission, the former being introduced into the summary table of voting results) can lead to violation of only political parties' rights in distribution of mandates among them.

P.P.Serebryakov applies for recognizing as being in contradiction with art. 2, 3 (section 3), 15 (sections 1, 2 and 4), 17 (sections 1 and 2), 18, 32 (sections 1 and 2), 45, 46 (sections 1 and 2), 47 (section 1) and 55 of the Constitution of the Russian Federation the provisions of art. 3, 4, paragraph 1 section one art. 134, art. 220 and section one art. 259 of the CPC of the Russian Federation, as allowing to the court to terminate the case in respect of a claim on protection of electoral rights filed with the court by the applicant who is a member of a district election commission with the casting vote, who supposes that the actions of the election commission in connection with vote count and establishing the election result violate his electoral rights.

O.B.Belov, who participated in the election to the State Duma of the sixth convocation as a voter, and V.A.Timoshenko, appointed watcher from the political party, applies for ruling as being in contradiction with the abovementioned provisions of the Constitution of the Russian Federation the abovementioned provisions of the CPC of the Russian Federation, as well as paragraph 10 art. 75 of the Federal law “On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation”; proceedings in respect of their applications to contest the similar actions of district election commissions and the Kalacheevsky territorial election commission were similarly terminated by the Kalacheevsky district court of Voronezh region (rulings dated January 20 and 31, 2012, affirmed by the appellate decisions of the civil division of the Voronezhsky regional court dated April 24, 2012 and April 19, 2012 respectively).

Moreover, V.A.Timoshenko contests constitutionality of subart. «3» paragraph 9 art.30 of the Federal law “On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation”, on the grounds of which the Voronezhsky regional court ruled that the right of a watcher to appeal in court the actions (inaction) of the election commission in the current civil procedure system includes the possibility to apply to court only to protect the right to watch, but not in respect of any violations of the electoral legislation.

1.3. With reference to provisions of art. 3, 4, paragraph 1 section one art.134, art. 220 and section one art. 259 of the CPC of the Russian Federation the Kalacheevsky district court of Voronezh region in its rulings dated February 28, 2012 and March 6, 2012 (affirmed by the appellate decision of the civil division of the Voronezhsky regional court dated May 24, 2012) terminated the proceeding in respect of cases on applications of the regional office of the “SPRAVEDLIVAYA ROSSIYA” political party in the Voronezh region on protection of electoral rights which indicated divergence between the information on the number of votes cast at the election to the State Duma of the sixth convocation for political parties (including the “SPRAVEDLIVAYA ROSSIYA”) in the protocols of district election commissions № 16/06 and № 16/20 and Kalacheevsky territorial election

commission. In its ruling the court acted on the basis that the applicant had a right to seek protection of its electoral rights but not the interests of the “SPRAVEDLIVAYA ROSSIYA” as a whole, as the Charter of the party does not provide such right to its regional offices; moreover, not being a participant to the election process, the abovementioned party’s regional office cannot contest the voting results in specific polling stations (which its claim comes down to) or act in the interests of an indefinite circle of people (voters).

According to the applicant, the abovementioned provisions of the CPC of the Russian Federation, in terminating the proceedings on the case in respect of the application of the regional office of the political party, which applied to court in respect of large-scale gross violations which require immediate protection of electoral rights during vote count at the elections, do not comply with the Constitution of the Russian Federation, its art. 2, 3 (section 3), 15 (sections 1, 2 and 4), 17 (sections 1 and 2), 18, 32 (sections 1 and 2), 45, 46 (sections 1 and 2), 47 (section 1) and 55.

Moreover, in the applicant’s opinion, there is a contradiction between art.2, 15 (sections 1, 2 and 4), 17, 18, 19 (sections 1 and 2), 45, 46, 55 (sections 2 and 3) and 123 (section 3) of the Constitution of the Russian Federation and section two art. 333 of the CPC of the Russian Federation, which allowed the Voronezhsky regional court – in violation of the right to fair trial under international judicial standards – to consider his appellate claim to the ruling of the Kalacheevsky district court of Voronezh region dated April 4, 2012 which denied to reinstate an expired procedural period to file a special claim on the case in respect of applying for protection of electoral rights without notifying the persons involved in the case on the time and place of its consideration (ruling dated June 7, 2012).

1.4. The Ruzsky district court of Moscow region in its ruling dated October 17, 2012 dismissed the application of A.V.Zayakin to repeal the decision of the district election commission on voting results at the presidential elections of the Russian Federation. The court acted on the grounds that the right to contest voting results belongs to the person who participated in the election as a candidate, i.e. performed his right to be elected, and that the applicant in citing the violations allegedly

committed in the voting process in the Ruzsky district of Moscow region by the district election commission and territorial election commission, as a result of which the election results were distorted in the whole federal district, does not give any evidence to prove direct violation of his active electoral right.

The Human Rights Commissioner of the Russian Federation, applying to the Constitutional Court of the Russian Federation to protect the rights of A.V.Zayakin, contests the constitutionality of section one art. 259 of the CPC of the Russian Federation and paragraph 10 art. 75 of the Federal law “On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation” as they limit the right of the voter to appeal decisions, actions (inaction) of the election committee which influence the election result, which is guaranteed by art. 32 (section 1) and 46 of the Constitution of the Russian Federation.

1.5. Under art. 96 and 97 of the Federal constitutional law “On the Constitutional Court of the Russian Federation”, which specificate art. 125 (section 4) of the Constitution of the Russian Federation, a citizen or an association of citizens can apply to the Constitutional Court of the Russian Federation with a claim to violation of constitutional rights and liberties by the law and such claim is admissible, if the provisions contested were applied in the applicant’s case whose consideration in court ended, and if they concern constitutional rights and liberties of citizens; non-observance of these conditions by virtue of art. 43 and 68 of the abovementioned Federal constitutional law is the basis to dismiss the claim or terminate the proceedings; the same decision is taken by the Constitutional Court of the Russian Federation in case there have already been passed a ruling on the subject under consideration, which ruling remains in force.

Art. 3 and 4 of the CPC of the Russian Federation, which state the basic provisions in respect of the right to apply to court and initiating a civil proceeding, shall guarantee the right of any person interested under the civil legal procedure to apply to court to protect the rights violated or contested, liberties and legal interests, including in cases provided in the abovementioned Code, other federal laws, to protect the rights, liberties and legal interests of another person, indefinite group of

people, hence they cannot be regarded as violating the constitutional rights of applicants in the case, as well as interconnected provisions of paragraph 1 section one art. 134 and the second paragraph of art. 220 of the CPC of the Russian Federation in fact contested by the applicants, which, as the Constitutional Court of the Russian Federation pointed at several occasions, are deemed at dismissing the cases which clearly do not fall into its jurisdiction (decisions dated December 17, 2009 № 1555-O-O, March 23, 2010 № 436-O-O, November 25, 2010 № 1465-O-O, May 29, 2012 № 975-O etc.).

The issue of constitutionality of section two art.333 of the CPC of the Russian Federation was solved in the Ruling of the Constitutional Court of the Russian Federation dated November 30, 2012 № 29-II, by which its provisions and provisions of section five art. 244⁶ of this Code were recognized as not contradicting the Constitution of the Russian Federation, as in its constitutional legal sense in the system of current legal regulation they provide for: giving to the persons involved in the case the right to be notified on the very fact of submitting a special claim to the ruling of the first instance court and to be given the possibility to familiarize themselves with the special claim, and in cases when the special claim is considered without hearings to submit to the court their opinion in its respect in writing; notifying of the persons involved in the case on the time and place of conducting the hearing to consider by the second instance court the special claim to the ruling of the first instance court, the hearing being conducted in case the second instance court, considering the nature and complicity of the procedural issue heard and the arguments of the special claim, including the evaluation of whether the verification of lawfulness and feasibility of the ruling of the first instance court without considering in the hearing of newly submitted evidence is possible, comes to a conclusion that to pass the right and feasible ruling thus protecting the citizen's rights and liberties it is necessary to give the persons involved an opportunity to voice their stand in the second instance court. Until the respective amendments are entered into the current civil procedure legislation to regulate the procedure of the first instance court consideration of a special claim, the prosecutor's petition on the ruling of the first

instance court, section two art. 333 of the CPC of the Russian Federation, according to the Constitutional Court of the Russian Federation, shall be applied in its constitutional legal interpretation under the Ruling dated November 30, 2012 № 29-II.

Therefore, the proceeding of the case in the sections concerning review of constitutionality of art. 3, 4, paragraph 1 section one art. 134, the second paragraph of art. 220 and section two art. 333 of the CPC of the Russian Federation shall be terminated.

Section one art. 259 of the CPC of the Russian Federation cannot be considered by the Constitutional Court of the Russian Federation in this case in part in which its constitutionality is contested by P.P.Serebryakov, who regards as violation of his constitutional rights the allegedly unlawful limitations, committed inter alia on its basis, of his right as a member of the district election commission with the casting vote to contest in court decisions and actions (inaction) of the respective election commission in respect of vote count and establishing voting results.

According to the legal position already stated by the Constitutional Court of the Russian Federation, the legal status of members of election commissions with casting vote is conditioned by the legal nature of these collective entities which in essence possess public functions of authority; hence the legal regulation of powers of members of the district election commissions to apply to court in connection with their performing public functions of authority does not concern their legal status as voters; nor does it impede their right to appeal in court the decision and actions (inaction) of the election commission which violates their electoral rights (rulings dated January 15, 2002 № 1-II, December 26, 2005 № 14-II, June 5, 2003 № 215-O, April 18, 2006 № 143-O etc.).

1.6. Under art. 36, 74, 96 and 97 of the Federal constitutional law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation passes a ruling only on the subject of the claim and only in respect of the section of the legal act which was applied in the applicant’s case and whose constitutionality is contested, evaluating therewith the literal meaning of the legal

provisions considered and the sense given to them by official or any other interpretation or practice, as well as considering their place in the system of legal norms, without being constrained in passing the ruling by grounds and arguments the application contains.

Thus, the subject of consideration of the Constitutional Court of the Russian Federation in this case is the interconnected provisions of section one art. 259 of the CPC of the Russian Federation, subparagraph «3» paragraph 9 art. 30, paragraph 10 art. 75, paragraphs 2 and 3 art. 77 of the Federal Law “On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation”, sections 4 and 5 art. 92 of the Federal Law “On election of deputies of the State Duma of the Federal Assembly of the Russian Federation”, on the basis of which the issue of judicial protection of electoral rights in voters’ applications, those from watchers from political parties, and regional offices of political parties, submitted in respect of alleged violation of elector legislation committed in establishing voting results and election results, is solved.

2. Under the Constitution of the Russian Federation the holder of sovereignty and the only source of power in the Russian Federation as a democratic rule-of-law state with republican government is its multinational people, which exercises its authority directly and through the government bodies and local authorities; the supreme direct manifestation of the power of people is a referendum and free elections (Preamble; art. 1, section 1; art. 3, sections 1-3). On the basis of this the Constitution of the Russian Federation provides for the right of citizens of the Russian Federation to participate in government of the state affairs, including through their representatives, and the right to elect and to be elected to the state government and local authorities (art. 32, sections 1 and 2).

The abovementioned provisions correspond with art. 3 Protocol № 1 to the Convention on Protection of Human Rights and Fundamental Freedoms and paragraph “b” art. 25 of the International Pact on Civil and Political Rights, under which every citizen shall not be in any way discriminated or for any reason limited in the right and possibility to vote and to be elected at true periodic elections held on the

basis of general and equal franchise in voting by secret ballot and providing for free expression of the will of voters.

Recognizing as the supreme value the human and their rights and liberties, which define the meaning, content and enforcement of laws and are provided for by the justice, including the right of everyone to protect their rights and freedoms by all legal means, the Constitution of the Russian Federation guarantees to everyone the state, including judicial, protection of their rights and liberties, a possibility to appeal in court the decisions and actions (inaction) of the state government bodies, local authorities and officials (art. 2; art. 17, section 1; art. 18 and 45; art. 46, sections 1 and 2).

Being a universal legal arrangement of state protection of rights and liberties of a person and citizen, the constitutional right to judicial protection performs the function of enforcement and restoration in respect of all other constitutional rights and liberties, serving in this respect as an important guarantee of citizens' electoral rights. Therefore, a federal lawmaker, possessing a certain degree of appreciation in creating specific procedural mechanisms of judicial protection of electoral rights (including providing for the form of its enforcement, the circle of entities and grounds for applying to court, etc.) shall be guided by specific features of their constitutional nature, so that means of judicial protection established by him provide for efficient way of enforcement of the substantive demands originating from electoral legal relations, restoration of violated rights of participants of the electoral process.

2.1. The right to elect their representatives to state government bodies and local authorities (active electoral right) and the right to be elected to these bodies and authorities (passive electoral right) are an essential and integral part of the constitutional right of the citizens of the Russian Federation to participate in management of state or local affairs, thus being characterized by the focus on legitimating elective bodies and public officials by way of direct expression of the will of the people of the Russian Federation or population of a public law entity. Being an element of the constitutional status of the voter, electoral rights are at the same time an element of public law institution of elections, they embody both private

interests of each voter and public interest, which is effected in objective election results and public authorities formed on their basis (Ruling of the Constitutional Court of the Russian Federation dated November 29, 2004 № 17-II, Decision of the Constitutional Court of the Russian Federation dated December 4, 2007 № 797-O-O).

Acting as a voter in electoral legal relations, a citizen of the Russian Federation exercises not only their political freedom and personal interests in this respect which concern these or those political preferences, but one of the basic foundations of the constitutional system of the Russian Federation, the notion of the rule of people; they participate in formation of independent bodies of public power, intended to exercise in their activity representation and implementation of the interests of people, rights and liberties of a person and citizen in the Russian Federation. Accordingly, the legislative content of the active electoral right from the point of view of its function and aim is defined by the necessity to provide for adequate expression of sovereign will of the multinational population of the Russian Federation, which is expressed in objective election results, while a citizen as a voter can be sure that their vote cast for this or that candidate (list of candidates), being a constituent of the common will of the people, will be counted and registered by the authorized body in accordance with the expression of will.

Thus, the constitutional meaning of the active electoral right is not limited only to provision of free participation in voting in itself, it determines the future relations in connection with vote count and establishing of voting results at the polling station where the citizen participated in the elections as a voter, and establishing the election results, as election results shall correspond to the expression of the will of the voters contained in the voting results. Another approach, correlating the end of the process of exercising of active electoral right with the voting stage and not recognizing the interests of a citizen as a voter in terms of further electoral procedures, including vote count, would challenge the constitutional value not only of electoral rights themselves, but the very institution of free elections. In such case a citizen would be deprived of an opportunity to be sure of the right counting of the vote they cast, which in turn would challenge lawfulness of procedures of exercising of passive electoral

right, as well as legitimacy of the elective public government body, elective official elected.

Meanwhile, the constitutional principle of mutual confidence, which forms the basis of relations of a person and public power, requires from the state to provide the confidence of people that elections, being a supreme form of direct expression of their power, reach their aim. Only in case of free expression of will by the people and its right registration in the formal outcome of voting, elections can the elective bodies and public officials be considered as bodies of democratic representation of the people. Therefore, in the right-of-law state a citizen as a voter can in no way be denied the right to exercise in these or those forms stated by the law, including jurisdictional, control over procedures related to vote count and establishing election results, as well as a possibility of lawful reaction to the violation determined; otherwise they would not be an equal subject who can protect their right by all legal arrangements and argue with the state in the person of its bodies, but an object of state activity, which contradicts to the constitutional requirement of respect and protection by the state of dignity in all spheres, including political relations (art. 21, section 1; art. 45, section 2, the Constitution of the Russian Federation).

Moreover, taking into consideration that interests of voters and candidates (electoral associations) are not identical and, depending on specific social and political conditions, may not coincide and contradict to each other to a certain extent, efficient control of adequacy of formal vote count to their expression of will at the elections cannot be provided if the respective powers are considered to belong to the status of subjects of passive electoral right and shall be recognized as belonging to citizens as the only holders of active electoral right and associated participants of the public sovereignty.

The fact that free elections are based on the principle of secret ballot cannot in itself hinder limitation of the sphere of legally protected interests of voters by relations which took place prior to the end of voting: violation of the provisions of electoral legislation committed thereafter, including in vote count, concern the constitutional interest of each voter, irrespective of their expression of will, as they

can result in distortion of the real will of voters, and thus lead to the elective public authority being formed (elective position of an official being taken) against the constitutional principle of the rule of the people, on which exercising of electoral rights of citizens of the Russian Federation is based as well.

Thus, the active electoral right, in the meaning of art. 3 (section 3) and 32 (sections 1 and 2) of the Constitution of the Russian Federation, irrespective of specific type of electoral system, necessarily means the existence of the legal right connected with provision of vote count in accordance with their expression of will, which conditions the possibility for a citizen to legally demand to repair violations committed in establishing voting result (in cases provided by the federal legislation, in establishing the election results as well), and the corresponding obligation of the state to create legal regulatory, organizational and other necessary and substantial conditions to exercise this right on the basis of the balance of legal interests of each citizen and society as a whole. This conclusion corresponds with the legal position of the Constitutional Court of the Russian Federation, according to which every voter shall have the right to express their will in any legal form of voting under the established procedures, so as to exclude therewith a possibility to distort the essence of the voters' expression of will (Ruling dated June 10, 1998 № 17-II, Decision dated November 5, 1998 № 169-O).

2.2. The recognition of a citizen's right to appeal in court the voting, election results, though not being universal, is relatively wide-spread, including in states with proportional representation system, such as Hungary, Germany, Italy, Kazakhstan, Moldova, Poland, Portugal, Serbia, Slovakia, Tadzhikistan, Ukraine, Finland, Croatia, the Check Republic, Switzerland, Estonia. Regulatory content and the procedure of exercising of such right in the abovementioned countries has its specific features, based on different approaches to setting balance of private and public interests. For instance, with such aim the corresponding legislation provides for shorter term of applying to court, a minimum number of persons necessary to file a claim is defined, etc.

Striving for broadening of accessibility of procedure of appealing election results in court for voters was reflected in the Resolution 1897 of the Parliamentary Assembly of the Council of Europe (2012) “Ensuring Greater Democracy in Elections” and other official documents of the Council of Europe, which at the same time allow introduction of specific requirements in respect of such opportunities. In particular, under the Guidelines for Elections, contained in the Code of Good Practice in Electoral Matters prepared by the European Commission for Democracy through Law (the Venice Commission of the Council of Europe) (Venice, October 18-19, 2002; Strasbourg, October 30, 2002), all candidates and voters registered in the respective election district shall have the right to appeal; therewith reasonable requirements to the minimum number of voters can be set for voters’ appeals to the election results (subart. «f» art. 3.3 section II).

The possibility to enshrine as a condition of court appeal of the results of elections a reasonable number of voters supporting the respective application exists in the precedence practice of the European conventional control. According to the decision of the European Human Rights Commission dated May 7, 1979 on the appeal “X. vs Germany”, the respective provision of the electoral law shall not be considered as loose and does not violate the right to effective remedy, with the help of which other rights guaranteed by the Convention on Human Rights and Fundamental Freedoms, including the right to free election under the provisions of art. 3 Protocol № 1 to this Convention could be provided by the government body.

2.3. Constitutional principles of a rule-of-law state, based on the rule of law and rule-of-law democracy, infer with the aim to support civil peace and conciliation the necessity of introducing legal regulation to provide for civilized forms of settlement of electoral disputes, which demands judicial mechanisms of protection of electoral rights.

In the intention of art.17 (section 1), 32 (sections 1 and 2), 45 and 46 (sections 1 and 2) of the Constitution of the Russian Federation and corresponding provisions of the Universal Declaration of Human Rights (art. 8), the International Pact on Civil and Political Rights (paragraph 2 and subart. “a” paragraph 3 art. 2) and the

Convention on Protection of Human Rights and Fundamental Freedoms (paragraph 1 art. 6), the state shall provide for exercising of right to judicial protection in relation to citizens' electoral rights, which protection shall be fair, competent and effective. The same principles lie in the basis of the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the CIS, under which in case of violation of democratic election standards, electoral rights and freedoms of citizens, as well as election legislation brought forward by this Convention, a person or persons whose rights were infringed shall have the right and possibility to appeal and restore the violated rights in court, and in cases and in accordance with the legal procedure in the electoral bodies as well (paragraph 1 art. 16).

Ascertaining the right to judicial protection in constitutional respect the Constitutional Court of the Russian Federation stated the following legal positions: the abovementioned right implies specific guarantees which would allow to exercise it in full and provide for restoration of right by means of fair justice; therewith the legal regulation shall not annul or diminish the rights and liberties of a person and citizen, and their possible limitations shall be commensurable and conditioned by the necessity to protect constitutional values (rulings dated February 3, 1998 № 5-II, March 16, 1998 № 9-II, December 25, 2001 № 17-II and December, 27 2012 № 34-II); therefore, in defining the means and forms of judicial protection of the violated electoral rights the law shall guarantee protection of both active and passive electoral right, as well as responsibility of election commissions for wrongful actions or decisions which impede due exercising of electoral rights; constitutional requirements of ensuring of rights and liberties of a person and citizen by justice necessitate application by courts of adequate forms and means of protection of the violated electoral rights, inadmissibility of only stating the violations, denial of compensatory mechanisms to eliminate the consequences of the violations detected, indemnity of the subjects of the electoral process who let those violations happen, etc. (Ruling dated December 26, 2005 № 14 -II).

By virtue of the abovementioned legal positions of the Constitutional Court of the Russian Federation, judicial protection shall be available for voters and effective not only when violations of electoral rights, including the right to elect to state government bodies, local authorities, emerge during election campaign prior to or during the voting process, but at the following stages of the electoral process aimed at determining the election result. However, judicial protection of the active electoral right, as well as the right to be elected to the state government bodies, local authorities cannot be exercised without considering the fact that the result of review of the election result as an accomplished act of people's expression of will can be disturbance of stable functioning of the institutions of representative democracy, disqualification of the acts of exercising electoral right. Therefore, not all but only substantial violations of the law committed in vote count and establishing the election result which do not allow to determine the real expression of will of voters can serve as grounds for repealing the voting, election results by the court on the respective territory. This conclusion is in line with the legal position of the Constitutional Court of the Russian Federation expressed in the Ruling dated January 15, 2002 № 1 -II, and has its meaning in respect of developing specific jurisdictional procedures, the initiation of which shall be conditioned by good grounds to suggest that in vote count and establishing the voting, election results the expression of popular will was in fact distorted.

Thus, the mechanism of judicial protection of electoral rights of citizens violated in vote count and establishing voting, election results shall be based on coordination of private and public interests, inadmissibility of abuse of the right. Enjoying a broad enough appreciation in performing the respective legal regulation, the federal lawmaker is bound by constitutional principles of equality and commensuration, and the resulting requirements of formal certainty, adequacy and proportionality of the legal arrangements used. As the Constitutional Court of the Russian Federation pointed out on several occasions, in cases when a federal lawmaker limits constitutional rights and liberties under provisions of art. 55 (section 3) of the Constitution of the Russian Federation, they cannot exercise regulation

which would infringe the very nature of such right and lead to the loss of its real meaning; even with the aim to prevent abuse of the right they shall not apply excessive measures, but only those conditioned by necessity to protect constitutionally crucial values.

2.4. In this way in defining the mechanism of judicial protection of electoral rights the federal lawmaker shall provide for voters, as well as voting associations, candidates, the right to appeal in court the decisions and actions (inaction) of election commissions, connected first of all with vote count and establishing voting results, so that in the course of judicial proceeding, fair and unbiased, they could receive final legal assessment of arguments in respect of circumstances giving evidence of violations, and in establishing the fact proving impossibility to define the real expression of will of voters the court have an opportunity to rule the voting outcome, election results as invalid on the respective territory. Therewith the federal lawmaker can – to provide for the necessary balance between the private and the public interests and in observance of constitutional requirements in respect of limitation of rights and liberties of a person and citizen – stipulate certain conditions and the procedure of exercising by citizens of the right to such appeal.

As for extending the right to seek in court protection of electoral rights of citizens, including in connection with their violation in vote count and establishing voting results, election results, over other subjects, apart from voters themselves and candidates, voting associations, this issue is considered by the federal lawmaker taking into account specific features of legal status of respective subjects, nature of their participation in electoral process, and other important circumstances, including the level of development of political and legal, democratic culture, necessity to provide in specific historical background for increased democratic control on the part of institutions of civil society in respect of functioning of the electoral system.

3. In exercising their powers connected with state and legal protection of the citizens' right to elect and to be elected to state government bodies, local authorities the federal lawmaker stipulated the procedure of effecting judicial protection of electoral rights of citizens in the Federal law "On Basic Guarantees of electoral rights

and right to participate in referendums for citizens of the Russian Federation” and the Civil procedure Code of the Russian Federation.

3.1. Under art. 75 of the Federal law “On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation”, decisions and actions (inaction) of state government bodies, local authorities, public associations and officials, as well as decisions and actions (inaction) of election commissions and their officials which violate electoral rights of citizens can be appealed in court (paragraph 1); decisions of election commissions on the voting results, election results are appealed in respective courts, and the court considers the decision of the election commission which organized the elections, and decisions of lower-rank election commissions participating in holding the elections in accordance with the law, if violations committed by them could affect the elections results (paragraph 4); claims to decisions and actions (inaction) which violate the citizens’ electoral rights can be filed by voters, candidates, their representatives, voting associations and their representatives, other public associations, watchers, and election commissions (paragraph 10). In respect of watchers this right is also stipulated in subart. «3» paragraph 9 art. 30 of this Federal law.

The abovementioned provisions, as well as section one art. 259 of the CPC of the Russian Federation corresponding to them, under which voters, candidates and their representatives, voting associations and their representatives, political parties and their regional offices, other public associations, watchers, prosecutor considering that the decisions and actions (inaction) of a state government body, local authorities, public associations, election commissions, an official violate electoral rights of the citizens of the Russian Federation, can apply to court, in their literal meaning are based on the universal nature of judicial protection of citizens’ electoral right. Thus it is assumed that subjects enlisted in these regulatory instruments can on the equal grounds appeal in court any violations of citizens’ electoral rights committed by election commissions, regardless of the specific stage of electoral process they were committed. Therewith neither the abovementioned, nor any other provisions of the current legislation contain direct limitations and bans in respect of the right of

respective subjects, including voters, to appeal the decisions and actions (inaction) which violate electoral rights of citizens on the part of election commissions in respect of vote count and establishing voting, elections result.

Interconnected provisions of paragraphs 2 and 3 art. 77 of the Federal law “On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation” and sections 4 and 5 art. 92 of the Federal Law “On election of deputies of the State Duma of the Federal Assembly of the Russian Federation”, which stipulate an open (non-exhaustive) list of grounds for the court to repeal the decision of a respective election commission on voting, elections result do not contain regulatory legal barriers for courts to consider applications on violated electoral rights of citizens in vote count and establishing voting, election results as well, insomuch as to accordingly repeal the decisions of election commissions in case the violations committed do not allow to define the real will of voters.

Thus, provisions of paragraph 10 art. 75, paragraphs 2 and 3 art. 77 of the Federal law “On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation”, sections 4 and 5 art. 92 of the Federal law “On election of deputies of the State Duma of the Federal Assembly of the Russian Federation” and section one art. 259 of the CPC of the Russian Federation shall guarantee electoral rights of citizens by means of judicial protection, do not impede voters from applying to court on the issue of violation of their electoral rights and do not limit the circle of decisions and actions (inaction) of election commissions which may be appealed in court only to the ones which were effected on the stages of electoral process prior to the vote count.

3.2. Subart. «3» paragraph 9 art. 30, paragraph 10 art. 75 of the Federal law “On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation” and section one art. 259 of the CPC of the Russian Federation stipulate that watchers are an independent subject of the right to apply to court for protection of citizens’ electoral rights.

The regulatory content of this right of the watcher from a political party as a special subject of the electoral process is conditioned by specific features of their

legal status regulated in the Federal law “ On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation”, under which a watcher is a citizen of the Russian Federation authorized to watch the voting process, vote counting and other activity of the election commission during voting, establishing its outcome, establishing election results, including the actions of the election commission to verify correctness of establishing voting and election results (subart. 42 art. 2); in the process of holding the election a watcher can be appointed by a registered candidate, an electoral association which nominated the registered candidate, registered candidates, electoral association which nominated a list of candidates; the law can provide for a possibility of appointing a watcher by other public associations; the watcher’s powers shall be certified in a written notice issued by the registered candidate or their representative, the electoral association, the public association whose interests the watcher represents; watchers can, in particular, watch the count of the number of voters on the voting list, ballot papers given out to the voters, cancelled ballot papers, watch the vote count at a polling station at a distance and under conditions which allow them to see the voters’ marks in ballot papers, familiarize with any marked or unmarked ballot paper in vote count, watch the process of the commission’s drafting the protocol on voting results and other documents, be present at recount in respective election commissions (paragraphs 4 and 7, subart. «Г», «И» paragraph 9 art. 30).

The abovementioned provisions let conclude that a watcher of electoral association, candidate is not a holder of personal interests in connection with exercising the right to elect and be elected to state government bodies, local authorities; being a secondary participant of the electoral process, they act , under the general rule, as a representative of the interests of a candidate, electoral association, thereby providing control over legal implementation of electoral procedure, including correctness of vote count, at the specific polling station. By virtue of their legal status watchers are constrained by interests of the subjects of electoral process who appointed them, and cannot replace candidates, electoral associations in respect of protection of their electoral rights; in its basis the right of watchers to apply to court is

conditioned by a necessity to provide effective guarantees of exercising the powers they have under the law, therefore, there is a possibility of judicial appeal of the decisions and actions (inaction) of respective authorized bodies which violate first of all their subjective rights which arise in the course of watching the electoral process. That is what judicial practice bases on, which is confirmed, in particular, by judicial decisions passed in respect of one of the claimants in this case, V.A.Timoshenko.

Therefore, the interconnected provisions of subart. «3» paragraph 9 art.30, paragraph 10 art. 75 of the federal law “On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation” and section one art. 259 of the CPC of the Russian Federation in the system of current legal regulation give grounds for the right of watchers from political parties to appeal in court the decisions and actions (inaction) of election commissions which violate the rights of watchers themselves in connection with direct exercising of their powers of watching the electoral process, thus stipulating guarantees of their legal status.

3.3. According to the Federal law dated July 11, 2001 № 95 –ФЗ “On Political Parties”, a regional office of a political party is a subdivision of a political party set up by decision of its authorized governing board and conducting its activity on the territory of a constituent entity of the Russian Federation (paragraph 3 art. 3); regional offices of a political party operate on the basis of the party’s Charter and are guided by it (paragraph 1 art. 21),and in cases stipulated in the Charter can participate in elections (paragraph 2 art. 36).

The Federal law “On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation” does not directly consider regional offices of political parties as subjects which can apply to court on the decisions and actions (inaction) which violate the citizens’ electoral rights. However, in the meaning of paragraph 10 art. 75 of the abovementioned Federal law in regulatory accord with subart. 25 of its art. 2, such possibility is not ruled out in cases connected with participation of a regional office of a political party in elections with the status of an electoral association. Accordingly, considered in regulatory accord with the abovementioned provisions section one art. 259 of the CPC of the

Russian Federation, which directly grants to regional offices of political parties the right to apply to court for protection of electoral rights of citizens, provides for the right of a regional office of a political party to seek judicial protection of its rights in connection with participation in elections as an electoral association.

Along with that, art. 30 (section 1) of the Constitution of the Russian Federation, which provides for the right of everyone to association, and its art. 46 (section 1), extending the right to judicial protection not only over single, but also joint subjects, who can also use respective jurisdictional mechanisms to protect their rights and liberties, does not exclude individual – on the basis of the current legislation – decision of an association of citizens, which is a political party, of the issue of the specific procedure of exercising the right to apply to court, including in respect of a possibility to seek judicial protection of interests of an association of citizens and its subdivisions. The Federal law “On Political Parties”, though not providing for compulsory insertion of the procedure of exercising by the party itself and its regional offices of the right to judicial protection in the party’s Charter, does not impede settlement of this issue in the party’s Charter, on the condition that such provisions shall not contradict the legislation of the Russian Federation (paragraph 3 art. 21). Accordingly, the fact that the party’s regional office has no right to apply to court to protect the interests of the political party whose subdivision it is cannot be considered as violation of constitutional rights, as it does not exclude the right of the party itself to apply to court.

Accordingly, the interconnected provisions of paragraph 10 art. 75 of the Federal law “On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation” and section one art. 259 of the CPC of the Russian Federation – in its constitutional legal meaning in the system of current legal regulation – assert the right of a regional office of a political party to apply to court to protect its electoral rights in connection with participation in the elections as an electoral association, and – if not prohibited by the party’s Charter – to protect the rights and lawful interests of the party itself, irrespective of the level of elections and direct participation of the regional office of a political party in them.

3.4. Accordingly, the interconnected provisions of section one art. 259 of the CPC of the Russian Federation, subart. «3» paragraph 9 art. 30, paragraph 10 art. 75, paragraphs 2 and 3 art. 77 of the Federal law “On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation”, sections 4 and 5 art. 92 of the Federal law “On election of deputies of the State Duma of the Federal Assembly of the Russian Federation” do not contradict the Constitution of the Russian Federation to the extent that being directed to provision of guarantees of judicial protection of electoral rights and observance of the principles of truly free democratic elections these provisions – in their constitutional legal meaning in the system of current legal regulation – stipulate the right of voters to seek in court legal protection of their electoral rights, the right of watchers from political parties to appeal in court the decisions and actions (inaction) of election commissions which violate the rights of the watchers themselves in connection with exercising their powers to watch the elections, and the right of a regional office of a political party to apply to court to protect their electoral rights in connection with participating in the respective elections as an electoral association, as well as the rights and lawful interests if the party itself if not prohibited by the party’s Charter, irrespective of the level of elections and direct participation of the regional office of the political party in them.

4. In regulating public relations, including in connection with judicial protection of citizens’ electoral rights, the federal lawmaker shall be guided by the common law requirement of certainty, clarity, unambiguity of a legal standard which is pursuant to the constitutional principle of equality of everyone before the law and court, as the constitutional equality can be provided only under the condition of uniform understanding and interpretation of a regulation by all executors of law; uncertainty of the essence of a regulation, on the contrary, gives grounds for unlimited discretion in the process of execution and leads to arbitrary treatment, hence violation of not only the principles of equality and supremacy of law, but of guarantees of state, including judicial, protection of rights, liberties and lawful interests of citizens provided for by art 45 and 46 (sections 1 and 2) of the

Constitution of the Russian Federation (rulings of the Constitutional Court of the Russian Federation dated April 25, 1995 № 3 -II, July 15, 1999 № 11-II, February 25, 2004 № 4-II, April 20, 2009 № 7-II, December 6, 2011 № 27-II, June 29, 2012 № 16-II etc.).

Universally acknowledged standards of justice, stipulated in the Constitution of the Russian Federation and international legal acts, which are based on priority of human rights and liberties, supremacy of law, adversary character of justice and judicial equality of participants of the trial, assert the application by court of the judicial procedure stipulated in the law, which shall exclude a possibility of unlimited discretion in the legislative and regulatory compliance practice in definition of the essence of rights and obligations of participants of the trial. The subject whose right to judicial protection is recognized by law cannot be put in a situation of inadmissible indeterminacy in respect of the rules of access to justice and their participation in the trial.

Therefore, recognizing the right of citizens, along with other subjects of electoral process, to seek judicial protection of electoral rights, the federal lawmaker shall envisage specific regulation to provide for this right. Therewith in respect of relations connected with judicial protection of citizens' electoral rights the principle of formal determinacy of legal regulation conditions the necessity for the federal lawmaker to use definite criteria to assess lawfulness of the passed decisions, as application to court for protection of electoral rights is in its nature a demand originating from public legal relations, concerns, as a rule, interests of a considerable amount of citizens, has great public and political importance, asserts special measures of coordination of private and public interests, so that the constitutional value of elections, their legitimacy are not challenged by evidently ungrounded, frivolous applications to court, and respective jurisdictional procedures are not used as a means of political struggle.

4.1. Provisions of section one art. 259 of the CPC of the Russian Federation and paragraph 10 art 75 of the Federal law "On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation", which

stipulates the circle of persons with the right to seek protection of electoral rights of citizens in court, does not directly provide for differentiation of the right to court protection for such persons and conditions of its enforcement, including in respect of the subject of application. The absence of such differentiation can be regarded as an evidence of formal leveling of the enlisted subjects and recognition of common grounds to apply to court for all of them. As long as the federal lawmaker both in civil procedure and in electoral legislation recognizes as an excuse for applying to court in all cases violation of electoral rights of exactly citizens of the Russian Federation, the abovementioned legal provisions in respect of cases arising from public legal relations can be viewed as establishing for all subjects of the right to apply to court to protect citizens' electoral rights a universal possibility to originate in court a case to protect not only their own interest, but the interests of a certain circle of persons, i.e. electoral rights of all citizens as participants of the respective elections.

However, the Constitutional Court of the Russian Federation has on several occasions pointed out that the right of everyone to judicial protection of their rights and liberties, according to art. 46 of the Constitution of the Russian Federation, does not lead to establishing the possibility of a person to choose in their discretion this or that procedure of judicial protection, which specific characteristics in respect of specific types of court proceedings and types of cases are defined, according to the Constitution of the Russian Federation, in the federal law. In accordance with optional basis, which expresses the aim of justice in civil cases, first of all constitutional aim of protection of rights and liberties of a person and citizen, the Civil Procedure Code of the Russian Federation stipulated that under the procedure provided for in the legislation on civil proceedings a person interested has a right to seek judicial protection of violated or contested rights, liberties or lawful interests (section one art. 3), and the court initiated a civil case on the basis of a claim of a person seeking protection of their rights, liberties and lawful interests (section one art. 4); therewith it is permitted by law to initiate a civil case on the basis of a claim of a person acting in his own name to protect rights, liberties and lawful interests of another person,

indefinite circle of persons, but only in cases provided for in the Code and other federal laws (section two art. 4).

In case the current legal regulation system lacks special provisions which in respect of voters and other subjects of section one art. 259 of the CPC of the Russian Federation and paragraph 10 art. 75 of the Federal law “On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation” specify regulatory content and procedure (conditions) of exercising their right to seek protection of electoral rights in court, vagueness arises both in respect of grounds for applying to court and the very nature of material interest the respective procedural standards concern.

Describing the regulative content of electoral rights, protection of which – these rights being their own in the meaning of civil procedural legislation – can be applied for in court by citizens and other holders of such right, the abovementioned Federal law does not directly grant the voters the right to demand from election commissions the correct vote count in the election and adequate reflection of the expression of will of voters in the formalized polling outcome, election results: under subart. 28 of its art. 2 electoral rights of citizens include the constitutional right of citizens of the Russian Federation to elect and be elected to state government bodies and local authorities, and the right to participate in nominating candidates, lists of candidates, election campaign, watching the election, watching the work of election commissions, including establishing voting, election results, other electoral activity in accordance with the Constitution of the Russian Federation, this Federal law, other federal laws, constitutions (charters), laws of constituent entities of the Russian Federation.

The abovementioned regulation has a general nature and extends to elections of all levels, the result being that other federal laws which regulate electoral relations do not recognize rights of voting citizens exercised during electoral process after the voting stage as elements of active electoral right. Such legal regulation allows not to recognize on formal grounds the right of citizens to claim the correct vote count and adequate reflection of their expression of will, including in formalized election

results, hence to deny judicial protection of the violated right. In their turn, other subjects of section one art. 259 of the CPC of the Russian Federation and paragraph 10 art. 75 of the Federal law “On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation”, including watchers and regional offices of political parties, basing on the vagueness of the current legislation may feel in respect of recognition of their rights as subjects to seek court protection of electoral rights of indefinite circle of persons, may have respective expectations, which, however, are not grounded by any special regulatory mechanism of enforcement.

Meanwhile, notwithstanding the fact that limitation of circle of persons holding the right to apply to court to appeal decisions and actions (inaction) of election commissions which violate their rights, including in connection with vote count and establishing voting, election results in itself does not exceed the limit of discretion of the federal lawmaker, who according to the Constitution of the Russian Federation does not have to grant all subjects the right to apply to court to protect interests of an indefinite circle of persons, in exercising respective legal regulation the lawmaker shall not allow such situations in which these or those regulations give rise to their addressees’ having unfounded, unenforceable ideas of judicial protection of electoral rights. Otherwise the demand of formal determinacy of the legal standard would be violated, and the principle of sustaining citizen’s trust confidence in the law and actions of the state, which is based on the Constitution of the Russian Federation, including its preamble and art.1 (section 1), 2, 18 and 21 (section 1), would be undermined.

Nor does the current legislation provide for any differentiation by subjects and conditions of applying to court on the grounds of the subject of appeal, voting or election results, and the territorial level of establishing voting results – whether at a polling station, electoral district, constituent entity of the Russian Federation, in the Russian Federation. Lack of this differentiation gives background for violation of the principle of obligatory election results, which cannot be contested by an indefinite circle of persons, on any grounds, including in respect of assumptions of violations

committed in the course of establishing voting election results or subjective intention to protect social and political interest seen in a specific way in case the applicant lacks sufficient grounds to assume that the scale and nature of the violations do not allow to define the real will of voters, and the real opportunity to prove their position by the necessary evidence.

Besides, the current unification of judicial appeal procedures suggests that the legislative and regulatory compliance practices should apply to appeals in respect of voting results at a certain polling station the same tough conditions which would be acceptable in respect of voting results on a higher territorial level or the elections results as a whole. Meanwhile, according to the Federal law “On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation” (subart. 18 art. 2, paragraph 1 art. 3, paragraphs 1 and 4 art. 4, paragraph 10 art. 17), every citizen residing on the territory where elections are held is recognized as a voter, and as a voter they in no case can be deprived of the right to appeal the decisions and actions (inaction) in respect of the vote count and establishing the voting results at the polling station they voted. It is on this territorial level that the electoral interest of a citizen is displayed, in respect of the right count of the vote cast (their expression of will), and as a voter they may have real opportunities to find out facts which witness violations of the election commission at this or that stage of electoral process.

4.2. According to the legal position of the Constitutional Court of the Russian Federation, expressed inter alia in rulings dated December 23, 1997 № 21-П, February 23, 1999 № 4-П, March 28, 2000 № 5-П, January 23, 2007 № 1-П and November 8, 2012 № 25-П, in judicial practice there shall be provided constitutional interpretation of the regulations to be applied; although the mechanism of law shall be understandable to the subjects of the respective legal relations first of all from the content of the specific regulation or a system of interconnected regulations, it is possible that in some cases the necessary degree of determinacy of the legal regulation can be reached through defining a more complicated connection of the legal regulations, including with the help of the clarification of judicial practice

provided by the Supreme Court of the Russian Federation and the Supreme Arbitration (Commercial) Court of the Russian Federation of the Russian Federation (art. 126 and 127 of the Constitution of the Russian Federation), which aim is to eliminate vagueness of the standard in a specific sphere of public relations. When judicial practice allows giving to specific legal provisions of the regulatory legal meaning which leads to violation of constitutional rights exercised on their basis, there arises the issue of conformity of such provisions to the Constitution of the Russian Federation, which issue shall be resolved by the Constitutional Court of the Russian Federation to exclude their application and interpretation in the meaning in contradiction with constitutional provisions.

Materials submitted to the Constitutional Court of the Russian Federation by applicants in this case witness that in considering specific cases courts of general jurisdiction as a rule act on the basis of such understanding of provisions of section one art. 259 of the CPC of the Russian Federation, subart. «3» paragraph 9 art. 30, paragraph 10 art. 75, paragraphs 2 and 3 art. 77 of the Federal Law “On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation”, sections 4 and 5 art. 92 of the Federal Law “On election of deputies of the State Duma of the Federal Assembly of the Russian Federation” in which the violations of the electoral legislation committed in vote count and establishing voting, election results are considered as concerning passive electoral right of citizens who participated in the elections as candidates, including those included in the lists nominated by electoral associations, i.e. the right to appeal such decisions and actions (inaction) of election commissions is de facto recognized only as being held by candidates and electoral associations, as well as by persons who were illegally denied the right to participate in the elections in a respective status.

This approach, in particular, lies in the basis of the ruling of the Plenum of the Supreme Court of the Russian Federation dated March 31, 2011 № 5 “On practice of judicial consideration of cases on protection of electoral rights and the right to participate in referendums for citizens of the Russian Federation”, paragraph 20 thereof states that in case an application submitted in one’s own name contests the

decision, actions (inaction) which does not concern the applicant's electoral rights, such application shall be dismissed on the basis of paragraph 1 section one art. 134 of the CPC of the Russian Federation, as it is filed by a person who has no right to file it. The fact that legal provisions considered by the Constitutional Court of the Russian Federation in this case are considered in legislative and regulatory compliance practices as not giving the right to citizens who participated in the elections as voters to appeal the decisions and actions (inaction) of election commissions, connected in particular with vote count and establishing voting results at the polling station where these citizens participated in the elections, is furthermore supported by the fact that the Council of Federation, the Ministry of Justice of the Russian Federation, and the Central Election Commission of the Russian Federation act in compliance with the position similar to the one formed by judicial practice, according to statements made by participants of the proceedings hereof.

Thus, by virtue of vagueness of regulatory content of the interconnected provisions of section one art. 259 of the CPC of the Russian Federation, paragraph 10 art. 75, paragraphs 2 and 3 art. 77 of the Federal law "On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation", as well as sections 4 and 5 art. 92 of the Federal law "On election of deputies of the State Duma of the Federal Assembly of the Russian Federation", legislative and regulatory compliance practices do not recognize the right of citizens who participated in the elections as voters to appeal the voting results at the polling station where they participated in the elections; this leads to the negation of the legal nature of electoral rights according to the Constitution of the Russian Federation and the resulting possibility of judicial protection in the framework of voters appealing the decisions and actions (inaction) of public authorities, their officials, which embody both individual (private) interest in respect of restoration of the violated rights and public interest, aimed at sustaining lawfulness and constitutional rule of law, therefore being an essential characteristic of the regulatory content of everyone's right to judicial protection, one of its vital components.

The Constitutional Court of the Russian Federation has on several occasions pointed out that paragraph 1 section one art.134 of the CPC of the Russian Federation, considered in system with section one art. 246 of this Code and its other provisions defining the judicial procedure for cases originating from public legal relations, does not assume the court's dismissal of an application to recognize a legal regulation of a state authority as contradicting to the law in case the claimant considers this regulation violates their rights and liberties guaranteed by the Constitution of the Russian Federation, laws and other legal regulations. Otherwise it would mean that on the stage of initiating the case where court hearing with participation of the parties are not held and procedural issues are considered, the judge in his ruling, which after it comes into power in accordance with art. 13 of the CPC of the Russian Federation becomes mandatory, defines the content of rights and obligations of subjects of controversial material legal relation; however, such approach is not in line with the constitutional nature of judicial procedure, by virtue of which settlement of material issues shall be performed in court hearing in adjudgment the case in essence on the basis of adversarial principle and equality of the parties (decisions dated July 8, 2004 № 238-O, October 20, 2005 № 513-O, January 24, 2006 № 3-O etc.).

The abovementioned legal position of the Constitutional Court of the Russian Federation, remaining in force, extends itself to relations in respect of appeal of the decisions and actions (inaction) of election commissions in connection with vote count and establishing voting, election results. The existing legislative and regulatory compliance practices, which fully excludes the possibility of judicial protection of electoral rights of citizens, if violations of them myky committed at the stages of the electoral process after the moment of voting, thus denying the voters the right to appeal voting results at the polling station where they participated in the elections, does not comply with the Constitution of the Russian Federation. Along with that, interpretation in the legislative and regulatory compliance practices of the legal provisions which are considered by the Constitutional Court of the Russian Federation in this case as not providing for judicial appeal of voting results by voters

on other territorial levels, as well as of the election results, does not state their inconsistency with the Constitution of the Russian Federation.

4.3. Thus, the interconnected provisions of section one art. 259 of the CPC of the Russian Federation, paragraph 10 art. 75, paragraphs 2 and 3 art. 77 of the Federal Law “On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation”, and sections 4 and 5 art. 92 of the Federal Law “On election of deputies of the State Duma of the Federal Assembly of the Russian Federation” do not comply with the Constitution of the Russian Federation, its art. 3 (section 3), 19 (sections 1 and 2), 32 (sections 1 and 2), 46 (sections 1 and 2) and 55 (section 3), in the part in which these provisions, in giving the voters the right to seek judicial protection of their electoral rights, along with that by virtue of vague regulatory content in respect of subjects, procedure and conditions of applying to court to appeal the election results – in the sense given to the by the existing legislative and regulatory compliance practices – exclude the right of citizens who participated in the elections as voters to appeal the decisions and actions (inaction) of election commissions in connection with establishing the voting results at the polling station where these citizens participated in the elections.

According to the Constitution of the Russian Federation and the legal positions of the Constitutional Court of the Russian Federation based on it, which are stated in this Ruling as well, the federal lawmaker shall introduce amendments in legal regulation of judicial protection of citizens’ electoral rights aimed at clarifying the procedure of judicial appeal of the decisions and actions (inaction) of election commissions in connection with establishing the voting, election results. Until such amendments are introduced into the current legal regulation courts of general jurisdiction shall not dismiss applications of citizens who participated in the elections as voters to protect their electoral rights violated in the course of establishing the voting results at the polling station where these citizens participated in the elections.

On the basis of the foregoing, and guided by art. 6, section two art. 71, art. 72, 74, 75, 78, 79 and 100 of the Federal constitutional law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation

ruled:

1. To recognize the interconnected provisions of section one art. 259 of the CPC of the Russian Federation, subart. «3» paragraph 9 art. 30, paragraph 10 art. 75, paragraphs 2 and 3 art. 77 of the Federal Law “On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation”, sections 4 and 5 art. 92 of the Federal Law “On election of deputies of the State Duma of the Federal Assembly of the Russian Federation” as not being in contradiction to the Constitution of the Russian Federation to the extent these provisions, aimed at provision of guarantees of judicial protection of electoral rights of citizens and observance of the principles of truly free democratic elections, in their constitutional legal sense in the system of the current legal regulation provides for the right of citizens to seek judicial protection of their electoral rights in connection with the voting which took place, the right of watchers from political parties to appeal in court the decisions and actions (inaction) of election commissions which violate the rights of watchers themselves in connection with exercising their powers to watch the elections, and the right of the regional office of a political party to seek judicial protection of their electoral rights in connection with their participation in the respective elections as an electoral association, as well as protection of rights and lawful interests of the political party itself in case the party’s Charter provide for it-irrespective of the level of elections and direct participation of the regional office of the political party in them.

2. To recognize the interconnected provisions of section one art. 259 of the CPC of the Russian Federation, paragraph 10 art. 75, paragraphs 2 and 3 art. 77 of the Federal Law “On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation”, and sections 4 and 5 art. 92 of the Federal Law “On election of deputies of the State Duma of the Federal Assembly of the Russian Federation” not in compliance with the Constitution of the Russian Federation, its art. 3 (section 3), 19 (sections 1 and 2), 32 (sections 1 and 2), 46 (sections 1 and 2) and 55 (section 3), in the part in which these provisions, in giving the voters the right to seek judicial protection of their electoral rights, along with that

by virtue of vague regulatory content in respect of subjects, procedure and conditions of applying to court to appeal the election results – in the sense given to the by the existing legislative and regulatory compliance practices– exclude the right of citizens who participated in the elections as voters to appeal the decisions and actions (inaction) of election commissions in connection with establishing the voting results at the polling station where these citizens participated in the elections.

3. According to the Constitution of the Russian Federation and the legal positions of the Constitutional Court of the Russian Federation based on it, which are stated in this Ruling as well, the federal lawmaker shall introduce amendments in legal regulation of judicial protection of citizens' electoral rights aimed at clarifying the procedure of judicial appeal of the decisions and actions (inaction) of election commissions in connection with establishing the voting, election results.

Until such amendments are introduced into the current legal regulation courts of general jurisdiction shall not dismiss applications of citizens who participated in the elections as voters to protect their electoral rights violated in the course of establishing the voting results at the polling station where these citizens participated in the elections.

4. Legislative and regulatory decisions, in connection with which the claimants in this case applied to the Constitutional Court of the Russian Federation, if based on the provisions of section one art. 259 of the CPC of the Russian Federation, subart. «3» paragraph 9 art. 30, paragraph 10 art. 75, paragraphs 2 and 3 art. 77 of the Federal Law “On Basic Guarantees of electoral rights and right to participate in referendums for citizens of the Russian Federation”, sections 4 and 5 art. 92 of the Federal Law “On election of deputies of the State Duma of the Federal Assembly of the Russian Federation” in the interpretation which contradicts its constitutional legal sense provided for in the present Ruling, or in case such decisions are based on the abovementioned provisions in the part in which they are recognized as being in contradiction with the Constitution of the Russian Federation, shall be reviewed in accordance with the established procedure, unless there are other obstacles.

2. This Ruling is final and without appeal, with immediate and direct effect after its proclamation, and requires no further endorsement by other government agencies or officials.

3. The present Ruling shall be immediately published in “Rossiiskaya Gazeta” and the “Legislation Bulletin of the Russian Federation”. The Ruling shall also be published in the “Official Gazette of the Constitutional Court of the Russian Federation”.

The Constitutional Court of the Russian Federation

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