

МЕСТНОЕ САМОУПРАВЛЕНИЕ: ПРАКТИКА ПРИМЕНЕНИЯ ИЗБИРАТЕЛЬНОГО ЗАКОНОДАТЕЛЬСТВА**А.В. Бутаков**

Омский государственный университет им. Ф.М. Достоевского, г. Омск, Россия

Работа представляет собой специальное исследование практики правоприменения избирательного законодательства судом различных инстанций в процессе проведения выборов в Омский городской Совет шестого созыва 10 сентября 2017 года. Рассматривается коллизия, возникшая в правоприменении федерального и областного законодательства относительно порядка проверки подписи избирателя, в результате которой в суды обратились несколько десятков граждан РФ, осуществивших самовыдвижение своих кандидатур в депутаты Омского городского Совета шестого созыва. Административные иски граждан основывались на том, что при отсутствии порядка проверки подлинности подписей избирателей эта работа сводилась избирательными комиссиями к проверке персональных данных подписанта, а не собственно его подписи.

Ключевые слова: подписной лист, заполнение подписного листа, заверение подписного листа, подпись избирателя, проверка подписи избирателя, недействительность подписи избирателя.

LOCAL SELF-GOVERNMENT: PRACTICE OF ELECTORAL LEGISLATION ENFORCEMENT.**Alexander V. Butakov**

Dostoevsky Omsk State University, Omsk, Russia

The subject. The article presents a special study of the law enforcement practice of electoral legislation made by a court of various instances in the process of elections to the Omsk City Council of the sixth convocation held on September 10, 2017. The collision arises between the enforcement of federal and regional legislation is analyzed in the article.

The purpose of the article is to find the ways of solving the conflict that arose during the enforcement of federal and regional legislation regarding the verification procedure of voter's signature

The methodology. The methods of analysis and synthesis are used. The focus of the scientific analysis concerns the courts decisions.

The results, scope of application. In the Federal Law "On Basic Guarantees of Electoral Rights and the Right to Participate in the Referendum of Citizens of the Russian Federation" of June 12, 2002, № 67-FZ, the last paragraph of paragraph 8 of Article 37 fixes a set of issues established by the law of a sub-sovereign entity of the Russian Federation in holding the elections to a representative body of local self-government. In 2003, the regional law № 456-OZ "On Elections to Local Self-Government Bodies of the Omsk Region" was passed, in which issues referred to the jurisdiction of the subject of the Russian Federation in the last paragraph of paragraph 8 of Article 37 of Federal Law № 67, were not confirmed, especially with regard to the consolidation of the verification order of voters' signatures and grounds for recognition these signatures invalid, and (or) invalidated. At the same time, the Federal Law "On ensuring the constitutional rights of

citizens of the Russian Federation to elect and be elected to local self-government bodies» № 138-FZ of November 26, 1996, which in paragraph 2 of Article 1 "registered" the mechanism of its application in case of unsettledness, even with regard to the right to elect and be elected to the bodies of local self-government by the law of that body. The unsettledness concerns the verification order of authenticity of voters' signatures in candidacy lists when nominating candidates for representative bodies of local self-government.

Conclusion. The article considers the sequence of solving this problem by the courts of the first, appellate and cassation instances, as a result of which the essence of the collision does not find its material and procedural solution, still remaining a gap both in the legislation and in the activities of federal control and supervisory bodies.

Key words and phrases: *candidacy list, filling out the candidacy list, authenticating the candidacy list, voters' signature, verification order of voters' signature, invalidation of voter's signature.*

Информация о статье:

Дата поступления – 02 октября 2017

Дата принятия в печать – 16 октября 2017

Дата онлайн-размещения – 20 декабря 2017

Article info:

Received – 2017 October 02

Accepted – 2017 October 16

Available online - 2017 December 20

1. Peculiarities of the enforcement of federal and regional legislation in the exercise of the constitutional right of a citizen of the Russian Federation to elect and be elected to the bodies of local self-government

Analysis of the practice of law enforcement of federal and regional legislation during the election of deputies of the Omsk City Council of the sixth convocation opened September 10, 2017, one of the strategic problems of the existence in the future of the whole system of political power in general and at the level of the municipal entity in particular. The sense of this problem lies in the fact that at the level of the legislation of the subject of the Russian Federation a stable trend has developed in which a bureaucratic "machine" due to a certain substandard quality of federal and regional legislation in the ratio of two concept categories ("order of verification of the subscription list" and "verification procedure for voter signature") followed the path of least resistance.

The bureaucracy, using various systems of state control, can easily identify the personal data of the signatory without problems. And as for verifying the signature of the voter himself, this is an extremely complicated mechanism both in legal and organizational sense, the launch of which requires significant efforts on the part of election commissions. As a result, the verifying activity of the election commission essentially reduced to verifying the personal data of the signatory, excluding essentially the main thing - verifying the authenticity of the signature of the voter. The assumption of actual errors in the subscription sheet regarding the personal data of the signatory is bad. But disavowing the authenticity of a voter's signature is simply bad, since it deprives a citizen of the Russian Federation of his right to freedom of expression, and, in the final analysis, the constitutional right to elect and be elected to local self-government bodies.

Confirmed authenticity of the signature of the voter, even if there are factual errors in the signature sheet, should be the dominant factor in determining the parameters of the freedom of expression of the citizen of the Russian Federation to elect and be elected to the bodies of local self-government. And the selective bureaucracy, using the poor quality of federal and regional legislation, in fact revealing the factual mistakes in the signature sheet, disavowed the institution's action in order to verify the voter's signature and confirm its authenticity. In the Federal Law "On Ensuring the Constitutional Rights of Citizens of the Russian Federation to Elect and Be Elected to Local Governments" of November 26, 1996, No. 138-FZ [1] (hereinafter - Federal Law No. 138) says: "This Federal Law is applied in violation of the constitutional rights of citizens of the Russian Federation to elect and be elected to local government bodies in cases when: ... in violation of the

law, the constitutional rights of citizens residing in the territory of the municipal entity are not exercised, to elect and be elected to bodies local government of the municipality". Here in paragraph 2 of Art. 1. the special law is applied to protect the constitutional rights of citizens of the Russian Federation to elect and be elected to local self-government bodies in the part not regulated by the laws of the constituent entities of the Russian Federation and regulatory legal acts of local self-government bodies.

Art. 5 of Federal Law No. 138 approves the Provisional Regulations on holding elections of deputies of representative bodies of local self-government and elected officials of local self-government in constituent entities of the Russian Federation that did not ensure the exercise of the constitutional rights of citizens of the Russian Federation to elect and be elected to local self-government bodies (hereinafter - Temporary Provisions).

The signatures collected in support of all candidates in the electoral district are subject to verification.

Verification is subject to at least 2 percent of the required number of signatures in support of each candidate. Signatures are selected arbitrarily at the meeting of the relevant election commission. All signatures on the signature sheets selected for verification are subject to verification.

On the time of verification of the authenticity of collected signatures, the election commission is obliged to inform candidates, in respect of whom this verification is carried out, as well as those who nominated them electoral associations. The Commission has no right to refuse to candidates, electoral associations that have expressed the desire to send their trusted (authorized) persons to participate in the audit.

To verify the authenticity of signatures, the members of the commission are entitled to conduct a survey of voters whose signatures are indicated in the verified subscription lists.

The survey is conducted by at least three commission members directly from the voter whose signature is checked.

The following are considered invalid:

unreliable signatures, namely signatures of voters who are not constituents of this district, and voters' signatures that indicated in the signature sheet information that is not true. The signature is recognized as inaccurate in the presence of a certificate of the body of internal affairs;

signatures of voters without specifying all the required information;

falsified signatures, namely the signatures in respect of which it is established that the said voter did not sign in the corresponding signature sheet.

The signature is recognized falsified when there is a handwritten signature of the voter in the protocol that establishes the fact of the voter's refusal to recognize the signature in his own signature sheet. This protocol is certified by at least three members of the election commission.

Actual errors, corrections, blots cannot be grounds for recognizing the signature as invalid during the audit or when counting signatures, provided there is no evidence of falsification of the signature or belonging to its citizen who is not a voter of the given district.

In case of detection of invalid signatures in the amount of more than 10 percent of the number of verified signatures, an additional check of 2 percent of signatures in the above order is made. In the event that more than 10 percent of the invalid signatures from the number of audited registrations are found upon additional verification candidate not performed.

Registration of a candidate is not made if the number of voter signatures submitted, minus the number of signatures recognized as invalid, is insufficient for registration".

Thus, the federal legislator fixes a detailed procedure for verifying the authenticity of a voter's signature while simultaneously establishing the grounds for its recognition as invalid (unreliable).

6 years after the adoption of the Federal Law number 138 comes into force on the Federal Law № 67-FZ of June 12, 2002 "On Basic Guarantees of Electoral Rights and the right to participate in referendum IU of Russian citizens" [2] (hereinafter - Federal Law No. 67). The federal legislator has regulated the specified issues, figuratively speaking, on the shoulders of the subject of the Russian Federation.

The Legislative Assembly of the Omsk region, implementing the federal legislator directive, adopted by The Law of July 7, 2003 № 456-OZ "On elections of local authorities of the Omsk region government" [3] (hereinafter - OZ No. 456). The system analysis of OZ No. 456 from the point of view of the operation of Federal Law No. 138 convincingly demonstrates that there is no verification procedure for voter signatures in this regional law, as evidenced by the "confusion" in the grounds for recognizing invalid and (or) invalid signatures of voters. For example, in Art. 24 OZ No. 456 uses several options for combining unreliable and (or) invalid signature .

If in OZ No. 456 in accordance with Federal Law No. 138 a detailed procedure for verifying the authenticity of the signature was established, then the ratio of the concepts of the invalid (unreliable) signature of the voter, depending on the specific grounds for recognizing them as such, would be specifically defined. As a result, we are faced with a situation where the signature is simultaneously reliable, because it is authentic, but at the same time it is invalid, because there are actual errors in filling out the subscription sheet. The unsettled OZ № 456 in accordance with the requirement FZ № 67 of testing the signature selector caused and fixation in the regional law different conceptual categories - "procedure checks the subscription list", wherein the authentic signature is automatically converted to invalid in the presence of actual errors in the subscription sheet.

This position is also confirmed by the decision of the Omsk City Election Commission of June 15, 2017 No. 10-47 "On the procedure for collecting signatures in support of the nomination of candidates, the list of candidates, the receipt and verification of signature lists in support of the nomination of candidates, City Council of the sixth convocation on September 10, 2017". At the same time, the City Executive Committee "appropriates" the competence of the Legislative Assembly of the Omsk Region itself. There is a natural question: disposition of Art. 23 "Verification of the authenticity of signatures" Temporary provision of Federal Law No. 138 is a criterion for the realization of the constitutionality of the right of a citizen of the Russian Federation to elect and be elected to the bodies of local self-government or a commercial about a non-existent right?

2. Practice of law enforcement of electoral legislation by election commissions

Decision on the District Election Commission No. 8 of August 9, 2017 No. 6-16, *citizen N* was denied registration as a candidate for deputy of the Omsk City Council of the sixth convocation in a single-mandate electoral district No. 16 [4].

"According to paragraph 2 of Article 23, paragraph 4 of Article 24 of the Law of the Omsk region, in accordance with the decision of the Omsk City Election Commission from June 1, 2017 number 9-35" On the number provided for the registration and subject to verification of voters' signatures in support of nomination of candidates in single-mandate electoral districts in the election of deputies of the Omsk City Council of the sixth convocation ":

the number of signatures required to register candidates in a single-mandate electoral district No. 16 is 217, the maximum number of signatures submitted to the Okrug Okrug Electoral Commission No. 8 of a single-mandate electoral district No. 16 for registration of candidates is 238;

during the election of deputies of the Omsk City Council of the sixth convocation, all signatures of voters submitted in support of the nomination of candidates for single-mandate electoral districts are subject to verification.

On July 31, 2017, candidate for deputy of the Omsk City Council of the sixth convocation in single-seat electoral district No. 16, *citizen N*, submitted documents for registration to the Oktyabrsky district election commission No. 8 of single-mandate electoral district No. 16, including 238 signatures of voters collected in support of the nomination of a candidate.

Based on the results of the audit, 26 (11%) signatures of voters were found to be unreliable and (or) invalid.

Identification of 10 or more percent of unauthentic and (or) invalid signatures from the total number of signatures collected for verification is the basis for refusing to register a candidate (subparagraph "d.1", clause 17, article 24 of the Omsk Oblast Law).

Thus, the number of signatures of voters collected in support of the nomination of a candidate in a single-mandate electoral district No. 16 *citizen a N*, minus the signatures deemed to be unreliable and (or) invalid, is 212 signatures of voters, which is not enough for registration.

Insufficient number of reliable signatures of voters submitted for registration of a candidate is grounds for refusal to register a candidate (subparagraph "e" of paragraph 17 of Article 24 of the Law of the Omsk Region).

Considering the above, guided by Article 38 of the Federal Law, Article 24 of the Law of the Omsk region Oktyabrskaya district election commission № 8 single-mandate constituency number 16 decided:

1. Refuse *citizen N*, put forward by way of self registration candidate in the deputies Omsk city sixth meeting of the Board of mandatory constituency № 16, in connection with the identification of more than 10 percent of false and (or) invalid signatures of the total number of signatures collected to verify, an insufficient number of valid voters' signatures submitted for the candidate's registration .. . "

The decision of the district election commission № 8 dated August 9, 2017 has vividly observed negative consequences of unregulated OZ number 456 of testing of voter signatures, which directly leads to the confusion of reason recognize this signature unauthentic th and (or) issued for the second.

Referring to the analysis of the final protocol of the district election commission number 8. Final Protocol of the working group on August 5, 2017 26 voters' signatures were deemed invalid. Of them:

- 17 signatures in connection with the indication of the voter data not corresponding to reality. (Based on the certificate of registration of the body or on the advice of an expert involved in the verification) (paragraph 6.4 of Article 38 of the Federal Law of 12.06.2002 number 67-FZ) (signature sheets 6, 16, 28, 30, 31, 32, 33, 45, 46, 50, 59, 69, 70, 71, 73);

- 1 signature of the failure to mark for persons 18 years of age on election day, date and month of birth (pp. " G " n 6.4.. Art. 38 Federal Law of 12.06.2002 № 67-FL) (signature sheet 33);

- signature 3 in the absence or omission of passport data selector (p. "G" n 6.4 article 38 of Federal Law 12.06.2002 № 67-FL...) (Petitions 89, 90);

- 3 signatures in connection with an indication not in full information about the person who collects signatures of voters (pp. " H " n 6.4 Article 38 of the Federal Law of 12.06.2002 number 67-FZ) (Sign-up sheet 15);

- 2 signatures due to the fact that the voter's signature to later introduced assurances signature sheet face, the signature collector (Nos. " N " §6.4 article 38 of Federal Law 12.06.2002 № 67-FL...) (Subscription list 22).

It should be noted that in the final report, none of the signatures in the list above are not recognized as unreliable. That is, according to the claim. 5. 1 tbsp. 24 OZ № 456 each signature is authentic, since signed respective voter named in the subscription list. Other information in the final report available. This is the first.

Secondly, it turns out that the 26 signatures in accordance with para. 5.1 v. № 24 OZ 456 is true, but, based on subscription lists, they are unreliable and (or) below. (See.: The decision of the district election commission № 8 of 9 August 2017). In the final minutes of the working group on verification of signature sheets for some reason recorded only 26 invalid signatures. T a e nce in one case 26 signatures are valid (see.: F . 5.1 Article 24 OZ № 456), the other - the 26 signatures acquire the status of inauthentic and (or) invalid (see.: Solution circumferential election commission № 8 on August 9, 2017), in the following the case of these 26 signatures are simply null and void (see.: Final Protocol working group on verification of signature sheets from the August 5, 2017).

Thirdly, the decision of the district election commission № 8 of 9 August 2017 recorded: "Insufficient number of valid voters' signatures submitted for the candidate's registration is the basis for refusal to register a candidate (sub-item" e "of paragraph 17 of Article 24 of the Law of the Omsk region)". But in accordance with para. 5.1 Art. 24 OZ № 456 these 26 signatures are valid in

E. And all of a sudden stroke of the district election commission № 8 the signatures are converted to false and (or) invalid, and the working group - simply invalid. What is to be done?

Fourth, pay attention to the fact that help the body of registration of that submitted to the working group of the district election commission number 8 26 signatures recognition of invalidity links do not go on the legal basis OZ number 456, and are reduced to citing the Federal Law number 67, in which lays down clearly in the last paragraph of p. 8 Art. 37: " ... the procedure for verification of voters' signatures and signatures of voters recognition grounds unreliable and (or) the void set by the law of the subject of the Russian Federation". This only confirms the fact that OZ 456 number or order of the signature verification, no reason to recognize their unreliable and (or) invalid simply settled in violation of the Federal Law Number 67.

3. The practice of enforcement of electoral law

Citizen N filed an administrative lawsuit on the decision of the district election commission № 8 for a single-mandate constituency № 16 in the Oktyabrsky District Court of Omsk to cancel the decision of the election commission on refusal of registration of a candidate for the following reasons.

"1. The right to vote in the Russian Federation is based on the fundamental principles of the constitutional rights of Russian citizens, ensuring their free will of the elections.

Along with the Constitution of the Russian Federation the basic legal act that regulates the organization and procedure for conducting elections in Russia is the Federal Law "On Basic Guarantees of Electoral Rights and the right to participate in the referendum citizens of the Russian Federation" dated 12.06.2002 number 67-FZ (hereinafter - Federal Law "On basic guarantees").

In accordance with paragraph 8 of Article 37 of the Federal Law "On Basic Guarantees" form of signature sheets with voter signatures in support of nomination of members of the elected body of local self-government, the order of its filling and assurances, the procedure for verification of signatures of voters and the base of recognition of voters' signatures invalid, and (or) the void set law of the Russian Federation.

According to paragraph 3 of Article 38 of the Federal Law "On Basic Guarantees of" the law should provide for a procedure to verify compliance with the order of voters' signatures collection, execution of signature sheets, the reliability of information about voters and their signatures.

In addition , in the Law of the Omsk region clearly indicates the possibility of application of the Federal Law "On Basic Guarantees" in the definition of the grounds for recognizing voters' signatures as invalid and (or) false.

Thus, the decision of the Omsk City Election Commission decided in the absence of legal regulation of the disputed issue by the law of the RF subject.

According to paragraph 2 of Article 1 of the Federal Law dated 26.11.1996 number 138-FZ (ed. From 04.06.2014) "On ensuring the constitutional rights of the Russian Federation to elect and be elected to bodies of local self-government" (with the "Provisional Regulations on the election of deputies representative bodies of local self-government and elected officials of local self-government in the Russian Federation, do not ensure the realization of the constitutional rights of citizens of the Russian Federation to elect and be elected to bodies of local self-government.

Article 23 of the "Provisional Regulations on the election of deputies of representative bodies of local self-government and elected officials of local self-government in the Russian Federation, do not ensure the realization of the constitutional rights of Russian citizens to elect and be elected to bodies of local self-government", approved by the Federal Law № 138 of 26.11.1996 of governing the authentication of signatures. To check the authenticity of signatures of members of the commission shall be entitled to carry out the survey of voters, whose names are listed in the scanned signature sheets.

The survey is conducted by at least three members of the commission directly to the voter whose signature is verified.

According to the mentioned norm are considered null and void:

false signatures, namely the signatures of voters, non-voters of the district, and the signatures of voters indicated in the signature list data not corresponding to reality. Signature is recognized in the presence of false certificates of internal affairs body;

signatures of voters without all required information;

forged signature, namely the signature for which is set in that said voter not paint in the corresponding subscription list.

Signature forged recognized in the presence of a handwritten signature of the voter in the protocol that establishes the fact of refusal to sign the voter recognition in its own subscription list. This protocol shall be certified by at least three members of the election commission.

Factual errors, corrections, lacoons cannot be the basis for the recognition of invalid signatures during check or counting the signatures in the absence of evidence of falsification of signatures or membership of its citizen who is not a voter of the district.

At the same time, the Law of the Omsk region form signature sheets with voter signatures in support of nomination of members of the elected body of local self-government, the order of its filling and assurances, the procedure for verification of voter signatures and recognition of the base of voters signatures invalid, and (or) the void has not been established.

Unspecified provisions led to the fact that the activities of the election commission was confusion unauthentic and invalid signatures, which, ultimately, led to gross violations of the rights of Russian citizens to freedom of expression.

This, in turn, confirms the need for the Federal Law № 138-FZ of 26.11.1996, the

Thus, the grounds for refusal to register me as a candidate in the contested decision of the election commission indicated an insufficient number of valid signatures of voters submitted for registration of the candidate (paragraph "d" of paragraph 17 of Article 24 of the Law of the Omsk Region).

Meanwhile, verification of signature sheets Election Commission of invalid signatures have been identified.

2. The absence of the Law of the Omsk region form the subscription list, the order of its filling and assurances about checking signatures of voters and voter signatures recognition grounds unreliable and (or) invalidated led to the fact that the election commission in their practice the emphasis is not on authentication voter signatures and their technical control.

This led to the unsettled, even factual errors when filling the subscription lists by citizens, despite the fact that their citizens had committed came to the election commission and publicly confirmed the authenticity of their signatures. The election commission ignored their constitutional right to elect and be elected to bodies of local self-government.

3. The collection of signatures was made by me twice - in the original form of the signature sheet was marked "Elections of deputies of the Omsk City Council of the sixth convocation". In presenting the data of signature sheets to the district Elective Commission 28.07.2017 I was given the discrepancy between the signature sheet forms the legal requirements with regard to references in the signature list the name of the representative body of local self-government with reference to the convocation.

I was misled by the October district election commission № 8, which purposefully or not for any purposes, either intentionally or unintentionally made it clear that I presented petitions may be declared invalid by reason of non-compliance is the form prescribed by law.

Despite this, all the decisions of the election commission include the use of the phrase "the sixth convocation", including the decision to refuse to register me as a candidate.

Me action on filling the new subscription lists have been committed, which was missing the phrase "... the sixth convocation." I had to re-collect signatures in support of my nomination under time pressure - from 29 to 31 July.

Subsequently, it became known that the circumstance (the phrase "the sixth convening") had no fundamental significance to determine whether the signature sheet form.

It should be noted that, in violation of article 37, paragraph 8 of the Federal Law "On Basic Guarantees" the form of signature sheets with voter signatures in support of nomination of members

of the elected body of local self-government has not been established Omsk Region law, which creates legal uncertainty and subjectivity in the volume of information, It is included in the subscription list ' .

Oktyabrsky district court of the city of Omsk, examined in open court administrative lawsuit *citizen N*, August 16, 2017 made a decision: "Administrative claim *citizen N* contesting the October decision of the district election commission № 8 on elections of deputies of the Omsk City Council of the sixth convocation no compensation. The decision can be appealed to the Appellate Court in Omsk Oblast through the Oktyabrsky District Court of Omsk for five days from the date of its adoption" (p. 11) .

Owing to the considerable volume of the text of the judgment, I would like to stay on an analysis of its most important aspects.

"By virtue of Article 1 of the Federal Law of 26.11.1996 number 138-FZ" On ensuring the constitutional rights of citizens of the Russian Federation to elect and be elected to bodies of local self-government, "the law is applied in violation of the constitutional rights of citizens of the Russian Federation to elect and be elected to bodies of local self-government in cases where:

legislative (representative) body of the Russian Federation has not adopted a law establishing the procedure for the holding of municipal elections;

the representative body of local government or a local referendum is not adopted the charter of the municipality;

in the municipality there is no elected representative body of local self-government;

powers of local self-government bodies are carried out by officials appointed by the public authorities;

Law of the Russian Federation has not established the procedure for the formation, association, conversion and abolition of municipalities;

expired deadlines powers of the elected bodies of local government and local government officials;

elections of deputies of representative bodies of local self-government or elected officials of local self-government, including repetitive or early elections are not assigned by the authorized body or official in a timely manner;

no bodies or officials authorized to appoint elections of deputies of representative bodies of local self-government and elected officials of local self-government;

municipalities abolished, merged or converted in a manner inconsistent with the law;

local authorities abolished in a manner inconsistent with the law, or actually ceased to exercise their powers;

in violation of the law is not implemented the constitutional rights of citizens residing in the territory of the municipality, to elect and be elected to bodies of local self-government of the municipality.

Federal law is applied in order to protect the constitutional rights of citizens of the Russian Federation to elect and be elected to bodies of local self-government *in the part not regulated by laws of subjects of the Russian Federation and normative legal acts of local self-government bodies* (AB: emphasis added).

Given the established scope of the Act, to the election of deputies of the Omsk City Council applied its provisions could not be, since the forms of subscription lists, the procedure for verification of signature sheets, the recognition of invalid signatures are to settle both the federal and regional levels.

The very fact reflected in the signature lists of incorrect information about voters administrative claimant was not contested.

An opportunity to interrogate citizens-voters commission the Federal Law of 12.06.2002 number 67-FZ "On Basic Guarantees of Electoral Rights and the right to participate in the referendum RF citizens", the Law of the Omsk region from 07.07.2003 number 456-OZ "On the elections to the local Omsk region government "does not provide" (para. 10-11).

Firstly, the Court of First Instance, in my opinion, not quite correctly interpreted the principle of legislative jurisdiction and jurisdiction of reference object. This is a unique situation for the Russian Federation legislation, which is unique, unfortunately, has not been understood.

Secondly, the above uniqueness of terms of reference of the subject of the Russian Federation in force to date of the paragraph and p. 8 Art. 37 of the Federal Law number 67 of strictly fix the range of issues is not perceived by the trial court, as evidenced by its formula laid down in the judgment: "Taking into account the established scope of the Act, for the election of deputies of the Omsk city of its provisions Council applied could not be, since the forms of subscription sheets, order verification of signature sheets, recognition invalid signatures are to settle both the federal and regional levels"(p. 11).

RF subject, based on the requirements of the Federal Law Nr.67, established:

a) signature sheets' form with voter signatures in support of nomination of members of the elected body of local self-government ;

b) the procedure of filling and assurances;

c) the procedure for verification of voters' signatures ;

d) Grounds for recognizing voters' signatures invalid, and (or) invalidated .

Compare these two formulas: the judgment and the Federal Law number 67.

Federal Law № 138 FZ number 67, number 456 OZ - but it rmativnye acts of public law, which operates on the principle that only allowed what is allowed.

Third, we return again to the text of the judgment, which says: " The ability to commission a survey of citizens-voters Federal Law of 12.06.2002 number 67-FZ" On Basic Guarantees of Electoral Rights and the right to participate in the referendum citizens of the Russian Federation ", Law Omsk region from 07.07.2003 number 456-OZ "on the elections to the local self-government of the Omsk region" not provided "(p. 11). In fairness it must be noted in para. 20 Art. 37 of the Federal Law number 67 for the elections of the supreme official of the subject of the Russian Federation is written: "... the election commission of the subject of the Russian Federation shall have the right to interview the person whose signature authenticity raised doubts ..." In addition, I am convinced that the Federal Law number 138 is the legal basis for the current legislation to ensure the constitutional rights of Russian citizens to elect and be elected to bodies of local self-government. H ere is already a question to the relevant supervisory and control and judicial authorities of the Russian Federation.

Fourth, in the judgment on the basis of para. 7, Art. 38 of the Federal Law number 67 is recorded: " Re-verification of signature sheets after the adoption by the Commission of this decision can be implemented only by the court or the Commission in accordance with Article 76, paragraph 6 hereof, and only within the limits of signatures to be verified". Note rechecking the subscription list, not the voter's signature.

4. Enforcement of the electoral law by the appellate court

Citizen N in support of filing the appeal stings Oba made the following arguments.

"1. The Federal Law of 12.06.2002 № 67-FZ" On Basic Guarantees of Electoral Rights and the right to participate in the referendum citizens of the Russian Federation "(hereinafter - the Federal Law № 67) establishes the legal obligation of the Russian Federation in relation to the municipal level of government.

In paragraph 8 of Article 37 of the said Act is recorded: "The form signature sheets with voter signatures in support of nomination of members of the elected body of local self-government, the order of its filling and assurances, the procedure for verification of signatures of voters and the base of recognition of voters' signatures invalid, and (or) the void set by the law of the subject of the Russian Federation".

It should be noted that the Federal Law number 67 refers to acts of public law, the legal ideology is based on the principle "allowed only what is allowed."

On the basis of the Federal Law number 67 in the Omsk region, the Law of the Omsk region of 07.07.2003 № 456-OZ, "On the elections to the local self-government of the Omsk region", in which none of the directives of the federal legislator has not received its establishment, as evidenced by paragraph 11 of article 24:

"11. The provisions of this law, determining the order of filling and assurances the signature sheets, the procedure for verification of voters and voter recognition of signatures based on the signatures invalid and void, shall apply to relations connected with the preparation and conduct of elections of members of the elected body of local self-government".

It determines the existence of these legal facts.

Firstly, the regional law number 456 did not fulfill the requirements of the Federal Law number 67 and not get tired of the fork shape of signature sheets with voter signatures in support of nomination of members of the elected body of local self-government, the order of its filling and assurances, the procedure for verification of voters' signatures and the base of recognition of signatures of voters unreliable and (or) invalidated.

Second, the Regional Law № 456 "On the elections to the local Omsk region government" stress "in the local self-government", it begins to spread unspecified position on "relations associated with the preparation and conduct of elections of members of the elected body of local self-government".

Third, unidentified and unresolved these provisions of the regional law number 456 led to the identity between the order of verification of signature sheets and the order verification of voters' signatures.

In practice, there is the procedure for verification of signature sheets defined by the decision of the Omsk City Election Commission from June 15, 2017 №10-47. It should be noted that the Federal Law number 67 of such legal categories as "procedure for verification of signature sheets" are not related to the duties subjective is the Russian Federation. At the same time, the requirement to establish the order of verification of voters' signatures and grounds acceptance voter signatures false and (or) invalidated, not fulfilled the Omsk region.

Fourthly, the directive of the Federal Law number 67 of the Russian Federation subject is not fulfilled, and not by the Law category "procedure for verification of signature sheets" affirms unentitled body - Omsk City Election Commission (judgment of 15 June 2017 №10-47).

Fifth, the regional law number 456, in addition to non-fulfillment of requirements of the Federal Law, confuses enforcement. The law generates subjectivism and arbitrariness in the work of election commissions that directly affect the realization of the right of a citizen of the Russian Federation to elect and be elected to bodies of local self-government.

Conclusion: The regional law number 456, do not set the form of the subscription list, the procedure for filling and assurances, and especially how to check the signature of the voter and the base recognition voter signatures false and (or) invalidated, directly violates the right of the citizen to elect and be elected to bodies of local self-government.

In this connection, I consider it necessary to apply the Federal Law of 26.11.1996 № 138-FZ "On ensuring the constitutional rights of Russian citizens to elect and be elected to bodies of local self-government" (hereinafter - the Federal Law number 138).

Article 1 of the Federal Law number 138 states: "The present federal law shall be applied for violations of the constitutional rights of Russian citizens to elect and be elected to bodies of local self-government in the following cases: ... in violation of the law is not implemented the constitutional rights of citizens residing in the territory of the municipality, to elect and be elected to bodies of local self-government of the municipality. " Also, in paragraph 2 of this article is fixed: "This federal law is applied in order to protect the constitutional rights of Russian citizens to elect and be elected to local self-government bodies in the part not regulated by the laws of the Russian Federation and normative legal acts of local self-government."

Article 23 of the "Provisional Regulations on the election of deputies of representative bodies of local self-government and elected officials of local government in subjects of the Russian Federation does not ensure the realization of the constitutional rights of citizens of the Russian

Federation to elect and be elected to bodies of local self-government" fixed order of signature verification, differentiated falsified signature (by intention) of the actual errors in the voter's signature (unintentional form of guilt), it is established that falsified signature is invalid and unreliable, and the commission of the actual error in the authentication of the signature, the signature is valid and reliable, thus confirming that it is the authenticity of the signature determines the priority in the implementation of the rights of a citizen of the Russian Federation to elect and be elected to bodies of local self-government. Thus: "The actual error correction, blots can not be the basis for the signature invalidation during the inspection or counting the signatures in the absence of evidence of falsification of signatures or membership of its citizen who is not a voter of the district" (paragraph 12 of Article 23).

2. In proceedings in accordance with paragraph 7 of Article 38 of the Federal Law № 67 Oktyabrsky District Court conducted a re-test 7 voter signatures from 26 October recognized the district election commission № 8 invalid and (or) misleading.

Witnesses were questioned.

Reliability and validity of the above seven signatures of voters have not been refuted in the course of the trial.

Thus, the number of valid signatures submitted by the candidate to the district election commission, rises to 219, with the necessary 217 (decision of the Omsk City Election Commission from 01.06.2017, the number 9-35), which is sufficient for registration of a candidate for deputy of the Omsk City Council the sixth convocation of the single-mandate constituency № 16 " .

Judicial board on administrative matters of the Omsk Regional Court considered in the hearing 23 August 2017 the case on the appeal of *a citizen of N* on the decision of the Oktyabrsky district court of the city of Omsk on August 16, 2017, that the administrative petition *citizen N* challenging the decisions of the October district election commission № 8 for elections of deputies of the sixth convocation of the Omsk City Council is dismissed.

Let us consider a number of fundamental provisions laid down by the court in determining the appeal. The plaintiff in the meetings of the district election commission № 8 About ktyabrskogo district court and the appellate court of the Omsk Regional Court claimed that the Omsk region , taking in the whole OZ № 456 " On elections to the bodies of local self- government of the Omsk region "failed to comply with essential requirements , provided the latter paragraph f. 8 v. 37 of the Federal Law № 67 " ... The form signature sheets with voter signatures in support of nomination of members of the elected body of local self-government, the order of its filling and assurances, the procedure for verification of voters and the base of recognition of signatures of voters signatures invalid, and (or) the void set by the law of the Russian Federation" .

By the way, in the appeal the determination of the above situation is confirmed:

"The procedure of collecting signatures in support of nominating candidates to the production requirements of signature sheets, making the necessary information to sign-up sheet and filling, as well as the need to comply with the requirements for the form of the signature list are set forth in Art. 37 of 67-FZ. Signature recognition grounds for invalidity are fixed in para. 6.4. hereof .

By virtue of para. 6, Art. 23 of the Law of the Omsk region from 07.07.2003 number 456 petitions to collect signatures in support of the nomination (self-nomination) of candidates for the post of head of the municipality are made and executed in the form according to Annex 6 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 support of the nomination (self-nomination) of candidates for deputies of the representative body of the municipality - in accordance with Annex 8 to the Federal law Nr. 67-FZ, in support of the nomination list of candidates for deputies of the representative body of the municipality - in accordance with Annex 7.1 of the Federal Law "On Basic Guarantees of Electoral Rights and the right to participate in the referendum citizens of the Russian Federation." Signature sheets with voter signatures in support of nomination of members of the elected body of local self-made and executed in the form as set out in Annex № 2 to this Law.

Questions forms of subscription lists, verification of signature sheets, recognition invalid signatures are to settle both the federal and regional level. Arguments complaints otherwise be rejected "(pp. 6-7).

Note. The district election commission № 8 simply refused to hear witnesses candidate whose signatures were considered invalid and (or) invalidated. The trial court questioned under oath 7 witnesses, whose signatures were considered invalid and (or) invalidated , but kept silent about it in its decision . The appellate court virtuoso, or not say, went on addressing the issue of the seven witnesses questioned under oath, whose signatures were considered invalid and (or) invalidated. The arguments that have been given by the court, don't consider problems.

5. Enforcement of the electoral law by the court of cassation

On August 28, 2017 citizen N filed a cassation appeal, which raised the question of the transfer of complaints to the case for review in the court session of the Presidium of the Omsk regional court to cancel the judicial acts and the adoption of the new judgment.

According to the joint jurisdiction of the Russian Federation and the Russian Federation by virtue of para. 2 Art. 76 of the Constitution of the Russian Federation federal laws shall issued and adopted in accordance with them laws and other regulatory legal acts of the Russian Federation.

Legislation of the Russian Federation on elections consists of the Constitution of the Russian Federation , federal laws, constitutions (charters), laws of subjects of the Russian Federation , other regulatory legal acts on the election taken in the Russian Federation .

12.06.2002 in the Russian Federation , the Federal Law № 67-FZ "On Basic Guarantees of Electoral Rights and the right to participate in the referendum of the Russian Federation " (the Federal Law of 12.06.2002 № 67-FZ) .

In accordance with paragraphs 1, 2 and 6 of Article 1 of the Law, this law defines the basic guarantees of the citizens of the Russian Federation, the constitutional right to participate in elections and referendums held in the territory of the Russian Federation in accordance with the Constitution of the Russian Federation , federal laws, constitutions (charters), the laws of subjects of the Russian Federation , charters of municipal formations. This law has direct effect and is used in all territory of the Russian Federation .

Federal laws, constitutions (charters), laws of the Russian Federation, other regulatory legal acts on elections and referendums, taken in the Russian Federation must not contradict this Federal Law. If the federal law, the constitution (charter), the law of the subject of the Russian Federation , other regulatory legal act of the election and (or) the referendum contradict this Federal Law, the rules of the Federal Law " (pp. 3-4) .

That is, the meaning of handling *citizen N* in different courts. On the one hand, there is the Federal Law "On ensuring the constitutional rights of Russian citizens to elect and be elected to local self-government bodies» № 138 from 26 November 1996 year in the preamble which provides: "This Federal Law establishes legal rules to ensure the implementation of constitutional rights Russian citizens to elect and be elected to bodies of local self-government in cases of violation of these rights". That is, here we are talking about the very first guarantee guarantee the constitutional right of a citizen of the Russian Federation to elect and be elected to bodies of local self-government. On the other hand, the Federal Law № provides that the form of signature sheets with voter signatures in support of nomination of members of the elected body of local self-government, the order of its filling and assurances, the procedure for verification of voters and the base of recognition of signatures of voters signatures invalid, and (or) the void set by the law of the Russian Federation". In this case, figuratively speaking, behind already operates the Federal Law number 138, special but provides a guarantee of the constitutional rights of citizens in the Russian Federation to elect and be elected to bodies of local self-government.

In response to our questions, read in the appeal denial: "... a systemic interpretation of the scope of the normative legal acts of the data indicates that during the elections in the local self-government bodies in the Omsk region Omsk region Act applies from 07.07.2003 №456-OZ" On

Elections local self-government of the Omsk region, "as well as the Federal law of 12.06.2002 number 67-FZ" on basic guarantees of electoral rights and the right to participate in the referendum citizens of the Russian Federation "; with the normative legal act of the subject *cannot be contrary to* the stated Federal Law of 12.06.2002 number 67-FZ "(AB: emphasis added) (5.)

The final passage in the analysis of the appeal denial is already in the appeal the refusal did not recall the testimony given under oath in a court of first instance, confirming the authenticity of the signatures found unauthentic and (or) invalidated the district election commission № 8. That's the aim of our first study - show be related to the will of the citizen of the Russian Federation, for his constitutional right to elect and be elected to bodies of local self-government.

The cassation appeal *citizen and N* the Supreme Court of the Russian Federation by the Supreme Court on September 4, 2017 № 50-KF17-734 was rejected. Questions about the enforcement of the Federal Law № 138 and the testimony of Russian citizens, given under oath in court, were not considered. This concludes our special study Forensic versions and the practice of enforcement of electoral law in the context of elections in the Omsk city council of the sixth convocation of September 10, 2017.

At the end of the study, the author thanks LA Lanshakova, YS Dyakov and EV Myakisheva for the technical assistance.

СПИСОК ЛИТЕРАТУРЫ

1. Егоров С.Н. Институционализация избирательного процесса в политической системе Российской Фе-дерации / С.Н. Егоров. – М.: РУДН, 2011. – 254 с.
2. Колюшин Е.И. Выборы и избирательное право в зеркале судебных решений: монография / Е.И. Колю-шин. – 2-е изд., перераб. и доп. – М.: Норма: ИНФРА-М, 2012. – 384 с.
3. Астафичев П.А. Избирательное право России: современное состояние и перспективы развития / П.А. Астафичев. – Орел: ОРАГС, 1999. – 201 с.
4. Бондарь Н.С. Конституционная ценность избирательных прав граждан России / Н.С. Бондарь, А.А. Джагарян. – М.: Формула права, 2005. – 336 с.
5. Зиновьев А.В. Избирательная система России: теория, практика и перспективы / А.В. Зиновьев, И.С. По-ляшова. – СПб.: Юридический центр Пресс, 2003. – 359 с.
6. Белоновский В.Н. Представительство и выборы в России с древнейших времен до XVII века: (Теория, история, практика) / В.Н. Белоновский, А.В. Белоновский. – М.: ПРИОР, 1999. – 304 с.
7. Белоновский В.Н. Правонарушения и юридическая ответственность в избирательном праве. Истори-ческая практика и современность / В.Н. Белоновский; под ред. проф. А.С. Прудникова. – М.: ЮНИТИ-ДАНА, 2005. – 512 с.
8. Матейкович М.С. Защита избирательных прав граждан в Российской Федерации / М.С. Матейкович. – М.: Изд-во МГУ, 2003. – 304 с.
9. Право избирать и быть избранным в российских политических реалиях: основные конституционно-правовые проблемы: учебно-методический комплекс / Рук. авт. кол. и отв. ред. проф. С.А. Авакьян. – М.: Юс-тицинформ, 2015. – 680 с.

REFERENCES

1. Egorov S.N. The institutionalization of the electoral process in the political system of the Russian Federation. Moscow, PFUR Publ., 2011. 254 p. (In Russ.).
2. Kolyushin E.I. Elections and suffrage in the mirror of court decisions, Monograph. Moscow, Norma Publ., INFRA-M Publ., 2012. 384 p. (In Russ.).
3. Astafichev P.A. The electoral law of Russia: modern state and prospects of development. Orel, ORAGS Publ., 1999. 201 p. (In Russ.).
4. Bondar N.S. Dzagharyan A.A. The constitutional value of electoral rights of citizens of Russia. Moscow, For-mula prava Publ., 2005. 336 p. (In Russ.).

5. Zinoviev A.V., Polyashova I.S. Electoral system of Russia: theory, practice and prospects. St. Petersburg, Yuridicheskii tsentr Press Publ., 2003. 359 p. (In Russ.).
6. Belonovsky V.N., Belonovsky A.B. Representation and elections in Russia from ancient times to the 17th century: (Theory, history, practice). Moscow, PRIOR Publ., 1999. 304 p. (In Russ.).
7. Belonovsky V.N. Offense and legal responsibility in the electoral law. Historical practice and modernity, Ed-ited by Prof. A.S. Prudnikov. Moscow, YuNITI-DANA Publ., 2005. 512 p. (In Russ.).
8. Mateikovich M.S. Protection of electoral rights of citizens in the Russian Federation. Moscow, MGU Publ., 2003. 304 p. (In Russ.).
9. Avakyan S.A. (Ed.) The right to elect and be elected in the Russian political realities: the major constitutional and legal problems, Educational-methodical complex. Moscow, Yustitsinform Publ., 2015. 680 p. (In Russ.).

<p>Информация об авторе Бутаков Александр Владимирович -доктор юридических наук, профессор кафедры теории и истории государства и права Омский государственный университет им. Ф.М. Достоевского, 644077, Россия, г. Омск, пр. Мира, 55а, e-mail: magistr25@inbox.ru SPIN-код: 9843-0789, AuthorID: 683256</p>	<p>Information about the author Alexander V. Butakov - Doctor of Law, professor,, Department of Theory and History of State and Law, Dostoevsky Omsk State University, 55a, Mira pr., Omsk, 644077, Russia e-mail: magistr25@inbox.ru SPIN-code: 9843-0789, AuthorID: 683256</p>
<p>Библиографическое описание статьи Бутаков А.В. Местное самоуправление: практика правоприменения избирательного законодательства/ А.В. Бутаков // Правоприменение. – 2017. Т. 1, № 4. – С. . – DOI 10.24147/2542-1514.2017.1(4).96-111</p>	<p>Bibliographic description Butakov A.V. Local self-government: practice of electoral legislation enforcement. <i>Pravoprimenie = Law Enforcement Review</i>, 2017, vol. 1, no. 3, pp. . – DOI 10.24147/2542-1514.2017.1(4).96-111 (In Russ.).</p>