

## THE CONTENTS OF THE CONSTITUTIONAL AND LEGAL MODEL OF FREE ELECTIONS IN RUSSIA

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The subject. At the present stage, the real ideal of legal democracy is ensuring the right of citizens to participate in the management of state affairs, in particular, to elect and be elected to public authorities and to elected public office. The fundamental basis of democracy in a democratic state is free elections. In this regard, the substantive content of the constitutional-legal model of free elections in Russia is considered.

The purpose of the paper. Recently, it is impossible not to note the tendency to narrow the legal understanding of free elections to “the absence of coercion to vote in elections”. At the same time, the real understanding of free elections as a democratic value is much broader. Ensuring the constitutional principle of democracy, the improvement of domestic legislation and electoral law determine the study of the substantive content of the domestic constitutional legal model of free elections.

The methodology of the study. The achievement of this goal was promoted by the use of both general scientific and special methods of cognition of social and legal phenomena (comparative legal method, method of legal modeling).

The main results and scope of their application. The position of the author indicated in the work is based on the regulatory legal acts in the field of elections, judicial practice, as well as on the opinions of representatives of legal science in the framework of the problems of real meaningful content of free elections. As a result of the study, a three-part substantive content of the domestic constitutional legal model of free elections is substantiated.

Conclusions. It is concluded that the free formation of their political behavior by participants in the electoral process (voters, candidates, electoral associations) is an integral element of the meaningful content of free elections and in combination with free and voluntary participation in elections, the free will represents a ternary component rather than a binary component.

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## 1. Introduction

In a state governed by the rule of law, free elections can be given the significance of a democratic value, thanks to which the people act as an active constituent source of power in the country. In this regard, it is impossible not to agree with Kostyukov A. N. that electability is the fundamental principle of the organization of public power in the state [1, p. 18].

The social value of free elections as an integral element of democracy has been repeatedly presumed by legal scholars. Issues related to the organization and conduct of elections became the subject of legal analysis of such researchers as S. A. Avakyan, G. N. Andreeva, A. A. Veshnyakov, N. V. Vitruk, V. D. Zorkin, A.V. Ivanchenko, S. D. Knyazev, E. I. Kolyushin, A. N. Kostyukov, L. A. Nudnenko, O. V. Romanovskaya, I. A. Starostina, E. M. Yakimova, etc. In turn, a comprehensive study of the existing constitutional and legal model of free elections in Russia involves determining the elements of its content. Despite the fact that in the current international acts and domestic legislation, the content of the constitutional and legal model of free elections is determined mainly binary (free participation in elections and free expression of will) [2, p. 19; 3, p. 69; 4, p. 309], we believe that its real content in accordance with the constitutional right to elect and be elected to public authorities and elected public offices — three-tier. In particular, the free formation of their political behavior is also an integral element of the content of the domestic constitutional and legal model of free elections from the standpoint of the implementation of the constitutional right of citizens to participate in the management of state Affairs and requires doctrinal reflection.

## 2. Free formation of political behavior in judicial practice and scientific literature

The free formation of one's political behavior as an integral element of the content of the constitutional and legal model of free elections has a direct impact on the outcome of the entire

election campaign. The decisions of the Constitutional Court of the Russian Federation (hereinafter — the Constitutional Court) have repeatedly noted that elections can be considered free if citizens are really guaranteed the constitutional right to receive and disseminate information and freedom of expression. The citizens are seen as subjects with an active political position that may persuade her to other voters and thus affect the electoral process not only at the stage of voting.

In the scientific literature, the studied element of the content of free elections has the name "freedom of voters to form their opinion" [5, p. 175]. However, it seems that the existing interpretation narrows the range of subjects of electoral legal relations to voters and does not take into account such participants of the electoral process as, for example, candidates or electoral associations. We believe that the free formation of political behavior is conceptually broader and includes the free formation and expression of electoral opinion. As noted by the constitutional Court in its Decision of June 16, 2006 No. 7-P, free elections are a way to identify the real will of the people and, accordingly, are closely linked to the constitutionally guaranteed freedom of thought and speech, the right of everyone to freely receive, process and disseminate information in any legal way, freedom of the media [6; 7]. In turn, if during elections freedom of political discussion is not provided, appropriate conditions for free exchange of opinions in which not only candidates, their representatives or representatives of electoral associations, such elections cannot be recognized free, and the bodies formed as a result of their carrying out cannot be recognized legitimate. This corresponds to the provisions of art. 10 of the Convention for the protection of human rights and fundamental freedoms of 1950, according to which everyone is free to hold opinions, receive and disseminate information without any interference from the state. Back in 1998, the European Court of human rights in its decision stressed the importance of free circulation during the electoral process of various kinds of opinions and information.

In this context, it seems reasonable position Yakimova E. M. in the part that "one of the

foundations of the possibility of choice is to obtain complete, reliable, consistent information about the objects from which the person must make his choice or refuse the presented options" [8, p. 17; 9]. In this regard, we believe that the true ideal of democracy and the possibility of realizing the electoral rights of citizens is the opportunity to participate in the management of state Affairs [10, p. 17; 11, p. 56], including independently forming the political position and on this basis making a choice for what candidates (lists of candidates) to vote or to put the signature in signature sheets. According to Starostina I. A., "the voter can choose the form of his electoral behavior. At the turnout at the polling station, the right to vote for any candidate (list of candidates). No one has the right in any way to impose on the voter the form of his will both at the polling station and outside it" [5, p. 341]. In turn, the candidate as a participant of the electoral process determines the content, forms and methods of election campaigning and the format of his election campaign [12, p. 10].

### **3. The influence of election campaigning and administrative resources on the free formation of political behavior**

The conceptual features of pre-election campaigning are not the subject of this study, but the analysis of the free formation of their political behavior by the participants of the electoral process makes it necessary to address the specific conditions of such campaigning. Thus, the Federal legislator imposes some restrictive limits within which the indicated substantial element of free elections operates in its interrelation with the constitutional right to elect and be elected to public authorities and to elected public positions:

\* paragraph 2 of article 50 of Federal law No. 67-FZ of June 12, 2002 "on basic guarantees of electoral rights and the right to participate in the referendum of citizens of the Russian Federation" (hereinafter — Federal law No. 67-FZ) provides for a ban on campaigning for another candidate, and paragraph 5 of Article 48 — a ban on paying for campaigning from the electoral funds of other candidates. We believe that such measures are very effective in the fight against complimentary

technical candidates, whose main goal is to support their "competitor" and attract the attention of the electorate to him;

\* citizens can conduct election campaigning without their own financial expenses (organize public events, carry out oral campaigning), or make voluntary donations to the election Fund. According to the position of the constitutional Court, the restriction of the right of citizens to carry out pre-election campaigning at their own expense is aimed at ensuring the equality of candidates and protecting the rights and freedoms of other persons, including voters, and aims to guarantee the formation of popular representation. At the same time, the absolute exclusion of the possibility for Russian citizens to conduct pre-election campaigning would mean the impossibility to influence the course of the electoral process before the voting, which prevents the free expression of opinions during the electoral process;

\* in item 6 of art. 56 of Federal law No. 67-FZ stipulates that "agitation that incites social, racial, national or religious strife, humiliates national dignity, propagandizes the exclusivity, superiority or inferiority of citizens on the basis of their attitude to religion, social, racial, national, religious or linguistic affiliation, as well as agitation, during which propaganda and public demonstration of Nazi attributes or symbols or attributes or symbols are carried out, is prohibited, similar to Nazi paraphernalia or symbols to the point of confusion." This ban is aimed not only at ensuring free elections, but also in General to protect the foundations of the constitutional system and the integrity of the state.

Exploring the problems of free formation of political behavior as an element of the content of the domestic constitutional and legal model of free elections, it should be noted that recently in the political environment there are proposals to abolish the "day of silence" - the day before the voting day, when election campaigning is prohibited. An example is the experience of the UK, Germany, Sweden, where there is no "day of silence", which, according to supporters of such an initiative, does not interfere with the free will of voters. In Russia, at the moment, election campaigning is prohibited on the day of voting and the day before it. In May 2017, a bill was introduced to The State Duma Committee

on state construction and legislation, which proposed to stop the campaign period on the day following the voting day. However, this bill is still under consideration. At the same time, it is worth noting that modern reality a priori will not allow creating an information vacuum. Most of the campaign materials are preserved by the day of voting and continue to influence the electoral choice to some extent. For example, paragraph 4 of article 49 of Federal law No. 67-FZ States that leaflets, posters and other printed campaign materials placed on advertising structures or other stably placed objects may be preserved on the day of voting. In turn, in the conditions of the organization of social relations in the Internet it is not possible to stop all circulation of propaganda materials to "day of silence" at all. Consequently, the provisions of the legislative acts of the Russian Federation prohibiting election campaigning during this period are not implemented and require appropriate changes. In fact, pre-election campaigning must stop at zero o'clock local time on the day following the day of voting.

Within the framework of the studied issue, it is worth noting that in 2016 the Federal legislation on elections was supplemented by a novel providing for the mandatory personal participation of candidates in pre-election TV debates at all levels, except for presidential ones — candidates for the President of the Russian Federation retained the right to send proxies to TV debates. In case of non-fulfillment by the candidate of the requirement for personal participation, the share of free airtime is distributed among other participants of the joint campaign event. However, we believe that mandatory personal participation of candidates should be introduced in elections at all levels, not excluding the election of the future head of state, the guarantor of the Constitution of the Russian Federation, the constitutional rights and freedoms of man and citizen.

It seems that the exclusion of personal participation of candidates in pre-election debates in the presidential elections significantly narrows the ability of voters to evaluate and compare candidates for the post of head of state [13]. In world practice, such a way as an open dialogue between candidates is very popular: John Kennedy

— Richard Nixon; Hillary Clinton — Donald trump; Emmanuel Macron — Marine Le Pen; Angela Merkel — Martin Schulz. However, neither in Russia Eltsin B. N., neither Dmitry Medvedev nor Vladimir Putin's personal participation in joint election campaigns are accepted. Nevertheless, it is in an open dialogue that one can democratically justify one's claims to the post of head of state. Moreover, it seems logical to build a single system of conditions for pre-election campaigning in all elections, not excluding the presidential ones.

Another conceptually important parameter determining the free formation of political behavior is the inadmissibility of the use of "administrative resources". In the scientific literature, the administrative resource is defined as a set of organizational, financial, human and other resources of public authorities and local self-government [14, p. 16]. In order to eliminate the abuse of administrative resources, i.e. the use of any kind of resources on the part of representatives of public authorities, directly and indirectly creating obstacles for persons possessing and exercising active and passive suffrage, within the framework of Federal legislation provides for restrictions related to the possibility of using the candidates of their official or official position (article 40 of Federal law No. 67-FZ). For example, the highest officials (heads of the highest Executive bodies of state power) of subjects of the Russian Federation registered as candidates, for the period of elections are exempted from execution of the powers. As the constitutional Court rightly noted in its decision, such restrictions "are aimed at ensuring that the use by these persons of the advantages of their official position and opportunities to influence the process and results of elections is excluded, which, in turn, ensures the implementation of constitutional guarantees of freedom of expression, the right of citizens to participate in democratic, free and periodic elections as the highest direct expression of power belonging to the people, equality of electoral rights, protection of democratic principles and norms of international law".

#### 4. Conclusions

Summing up all the conditions for the

implementation of the studied element to a common denominator, it is logical to assume that elections can be considered free and democratic, when the constitutional right to complete and objective information is really guaranteed [15; 16], as well as the free formation and free expression of their political behavior by all participants of the electoral process. The content of the constitutional and legal model of free elections is three-tiered and includes not only free and voluntary participation in elections, free expression of will, but also free formation of their political behavior by the participants of the electoral process (voters, candidates, electoral associations), which must first of all be provided:

- \* neutrality of the state in relation to candidates, impartiality in matters of financing and holding demonstrations in public places;

- \* informing voters about candidates and electoral associations, terms and procedure of electoral actions;

- \* freedom of election campaigning in favor of certain candidates at the expense of the election fund;

- \* the establishment of a ban on the placement of campaign materials in and near polling stations;

- \* equal conditions for candidates to use airtime;

- \* preventive measures for the use of administrative resources by certain candidates;

- \* ensuring freedom of political discussion in which candidates directly participate;

- \* the possibility of familiarization with candidates (lists of candidates) through the proper placement of visual information.

## REFERENCES

1. Kostyukov A.N. The electivity of public authorities in the Russian Federation and the Russian pre-revolutionary electoral qualification system. *Pravoprименение = Law Enforcement Review*, 2018, vol. 2, no. 1, pp. 17–25. DOI: 10.24147/2542-1514.2018.2(1).17-25. (In Russ.).
2. Ivanchenko A.V. *Electoral law and the electoral process in the Russian Federation*. Moscow, Norma Publ., 1998. 856 p. (In Russ.).
3. Knyazev S.D. *Modern Russian suffrage: concept, principles, sources*. Vladivostok, Far Eastern University Publ., 1999. 160 p. (In Russ.).
4. Yakimova E.M. Free elections as an international electoral standard, in: Meteleva E.R. (ed.). *Evraziiskii integratsionnyi proekt: tsivilizatsionnaya identichnost' i global'noe pozitsionirovanie*, materials of the International Baikal Forum. Irkutsk, Baikal State University Publ., 2018, pp. 309–311. (In Russ.).
5. Andreeva G.N., Starostina I.A. *Electoral law in Russia and in foreign countries*. Moscow, Norma Publ., 2010. 592 p. (In Russ.).
6. Desmoulins C. La France libre, in : *Oeuvres de Camille Desmoulins*, Vol. 1. Paris: La France Libre, 1874, pp. 3–132. (In French).
7. Harb M. Arguments en faveur du vote obligatoire. *Revue Parlementaire Canadienne*, 2005, no. 2, pp. 4–6. (In French).
8. Yakimova E.M. The Information Support of the Election (Referendum) Process as a Means of Implementing the Principle of Free Elections: the Origins of the Legal Regulation and Modern State of the Russian Legislation. *Pravovaya Paradigma = Legal Concept*, 2018, vol. 17, no. 4, pp. 16–21. DOI: 10.15688/lc.jvolsu.2018.4.2. (In Russ.).
9. Yakimova E.M. State control in the Russian Federation: problems of theory and practice, in: *Sovershenstvovanie zakonodatel'stva v sfere zashchity prav cheloveka i grazhdanina: problemy i perspektivy*, materials of the International scientific-practical conference. Irkutsk, Baikal State University Publ., 2013, pp. 245–251. (In Russ.).
10. Chuksina V.V. Human rights activities of the state in the field of human rights in the context of global standardisation of human rights. *Voprosy rossiiskogo i mezhdunarodnogo prava = Matters of Russian and International Law*, 2018, vol. 8, no. 4A, pp. 17–24. (In Russ.).
11. Chuksina V.V. Globalization, human rights and state duties. *Izvestiya Irkutskoi gosudarstvennoi ekonomicheskoi akademii = Baikal Research Journal*, 2010, no. 6, pp. 55–60. (In Russ.).
12. Avak'yan S.A., Prokhorov M.V. *Election process and public associations*, for the elections of deputies of the State Duma. Moscow, Zertsalo Publ., 1999. 152 p. (In Russ.).
13. Schneckener U. (ed.). *States at Risk. Fragile Staaten als Sicherheits- und Entwicklungsproblem*, SWP-Studie 2004/S 43. Berlin, Stiftung Wissenschaft und Politik Publ, 2004. 196 p. (In German).
14. Panfilova E.A., Sheverdyayev S.N. *Countering the abuse of administrative resources in elections: problems and prospects*. Moscow, De Novo Publ., 2005. 106 p. (In Russ.).
15. Ley S. To vote or not to vote: how criminal violence shapes electoral participation. *Journal of Conflict Resolution*, 2017, vol. 62, no. 9, pp. 1963–1990. DOI: 10.1177/0022002717708600.
16. Bishop S., Hoeffler A. Free and fair elections: A new database. *Journal of Peace Research*, 2016, vol. 53, no. 4, pp. 608–616. DOI: 10.1177/0022343316642508.

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