

IN THE NAME OF THE RUSSIAN FEDERATION

Constitutional Court of the Russian Federation

Judgment

of 24 December 2012 No. 32-II

In the case concerning the review of constitutionality of individual provisions of Federal Laws “On General Principles of Organization of the Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation” and “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation” in connection with the request of a group of deputies of the State Duma

The Constitutional Court of the Russian Federation composed of the President V.D.Zor’kin, Judges K.V.Aranovsky, A.I.Boitsov, N.S.Bondar’, G.A.Gadzhiev, Yu.M.Danilov, L.M.Zharkova, G.A.Zhilin, S.M.Kazantsev, M.I.Kleandrov, S.D.Knyazev, A.N.Kokotov, L.O.Krasavchikova, S.P.Mavrin, N.V.Mel’nikov, Yu.D.Rudkin, N.V.Seleznev, O.S.Khokhryakova, V.G.Yaroslavtsev,

in the attendance of the representative of the group of deputies of the State Duma having petitioned the Constitutional Court of the Russian Federation – V.G.Solovyov, Plenipotentiary Representative of the State Duma to the Constitutional Court of the Russian Federation D.F.Vyatkin, representative of the Council of Federation – the Chairman of the Committee of the Council of Federation on Constitutional Legislation, Legal and Judicial Questions, Development of Civil Society A.A.Klishas, Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M.V.Krotov,

guided by Article 125 (Item “a” of Section 2) of the Constitution of the Russian Federation, Sub-Item “a” of Item 1 of Section 1, Sections 3 and 4 of Article 3, Section 1 of Article 21, Articles 36, 74, 84, 85 and 86 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open hearing considered the case concerning the review of constitutionality of individual provisions of Federal Laws “On General Principles of Organization of the Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation” and “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation”.

The reason for the consideration of the case was the request of the group of deputies of the State Duma. The ground for the consideration of the case was the discovered uncertainty of whether the legislative provisions contested in the request are in conformity with the Constitution of the Russian Federation.

Having heard the report of Judge-Rapporteur N.S.Bondar’, statements by parties’ representatives, interventions by the representatives invited to the hearing: M.A.Mel’nikova for the Ministry of Justice of the Russian Federation, T.A.Vasilyeva for the Prosecutor General of the Russian Federation, M.V.Grishina for the Central Electoral Commission of the Russian Federation, having considered submitted documents and other materials, the Constitutional Court of the Russian Federation

e s t a b l i s h e d:

1. By the Federal Law of 2 May 2012 No. 40-Φ3 amendments were made to Federal Laws of 6 October 1999 No. 184-Φ3 “On General Principles of Organization of the Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation” and of 12 June 2002 No. 67-Φ3 ”On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation”, establishing new order of substitution of the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) – by way of his/her election by the population at direct elections. The group of deputies of the State Duma requests to recognize as not conforming to the Constitution of the Russian Federation a number of provisions of the

aforementioned Federal Laws, which determine the order and conditions of nomination and registration of candidates for respective office, namely:

Paragraphs 8, 9, 10, 11 and 16 of Item 3 of Article 18 of the Federal Law “On General Principles of Organization of the Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation”, as well as Items 17-20 of Article 37 and Sub-Item «д¹» of Item 24 of Article 38 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation”, which in their normative unity envisage as a compulsory condition of registration of a candidate for the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) the need to receive support from the side of 5 to 10 per cent of deputies of the representative bodies of municipal entities and (or) heads of the municipal entities of a subject of the Russian Federation, elected at municipal elections, in whose number there must be from 5 to 10 per cent of deputies of representative bodies of municipal districts and town circuits and (or) their heads, elected at municipal elections; herewith, the candidate must be supported by indicated persons in no less than 3/4 of municipal districts and town circuits of a subject of the Russian Federation;

Paragraph 4 of Item 3 of Article 18 of the Federal Law “On General Principles of Organization of the Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation”, providing for the right of the President of the Russian Federation to conduct, in the order determined by him, on his own initiative consultations with political parties nominating candidates for the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation), as well as with candidates nominated to this post in the procedure of self-nomination.

The petitioners suppose that the legislative regulation contested by them in the part, obliging to receive support of nomination of a candidate for the post of the

higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) from the side of the established number of elective persons of local self-government, contradicts the Constitution of the Russian Federation, its Articles 3 (Section 2), 10, 12, 13 (Section 4), 19 (Section 2), 29 (Section 3), 32 (Section 2 and 3), 55 (Section 3), 130 and 132, because introduces unfounded and excessively rigid restrictions of electoral rights of citizens, does not allow, in the conditions of significant predominance of the representatives of one of the political parties on the local level, to receive a status of registered candidate by persons, nominated from other political parties or in the procedure of self-nomination, as well as places on local self-government powers not characteristic for it.

As far as the right to conduct consultations with political parties, nominating candidates for the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation), as well as with candidates nominated to this post in the procedure of self-nomination, granted to the President of the Russian Federation is concerned, in the opinion of the petitioners it goes beyond the bounds of the powers of the President of the Russian Federation, established by Article 85 (Section 1) of the Constitution of the Russian Federation, and allows him to interfere into intra-party affairs; besides, the uncertainty of the very institution of consultations creates opportunity of its arbitrary use in practice.

Thus, proceeding from the requirements of Articles 3, 36 and 74 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the subject-matter for consideration by the Constitutional Court of the Russian Federation in the present case are provisions contained in Paragraphs 8, 9, 10, 11 and 16 of Item 3 of Article 18 of the Federal Law “On General Principles of Organization of the Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation”, Items 17-20 of Article 37 and Sub-Item «д¹» of Item 24 of Article 38 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of

Citizens of the Russian Federation”, by which registration of a candidate for the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation), nominated by a political party or in the procedure of self-nomination, is put in dependence of the receipt of support of a number of elective persons of local self-government in this subject of the Russian Federation, established by law, as well as Paragraph 4 of Item 3 of Article 18 of the Federal Law “On General Principles of Organization of the Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation”, granting the President of the Russian Federation the right to conduct, in the order determined by him, on his own initiative consultations with political parties nominating candidates for the indicated post and with candidates nominated to this post in the procedure of self-nomination.

2. The Constitution of the Russian Federation, pursuing the object of approval of human rights and freedoms, civil peace and accord, preservation of historically established State unity, revival of sovereign statehood of Russia and asserting the firmness of its democratic basis (the Preamble), proclaims the Russian Federation a democratic federative law-governed State with a republican form of government (Article 1, Section 1).

Fixing, in development of these provisions, the basis of the constitutional system of the Russian Federation, the Constitution of the Russian Federation establishes that the bearer of sovereignty and the sole source of power in Russia shall be its multinational people, who shall exercise his power both directly – through referendum and free elections, and through State government bodies of State power and bodies of local self-government (Article 3, Sections 1 – 3) and, proceeding from the provision that the sovereignty of the Russian Federation extends to the entirety of its territory, names State integrity, unity of the system of State power, the division of matters of authority and powers between bodies of State power of the Russian Federation and bodies of State power of the subjects of the Russian Federation (Article 4, Section 1; Article 5, Section 3) among principles

of Russian federalism; herewith local self-government is recognized and guaranteed in the Russian Federation, which is independent within the limits of its competence and the bodies of which do not form part of the system of bodies of State power (Article 12).

In order to ensure principal unity of the whole system of public authority in the Russian Federation, the Constitution of the Russian Federation ascribes to the issues of joint jurisdiction of the Russian Federation and its subjects, on which federal laws are adopted and the laws and other normative legal acts of the subjects of the Russian Federation are issued which are adopted in accordance with those federal laws, establishment of general principles of organization of the system of bodies of State power and local self-government (Article 72, Item “н” of Section 1; Article 76, Section 2), the State power in the subjects of the Russian Federation is exercised by bodies of State power formed by them and the system of bodies of State power of the subjects of the Russian Federation is established by them independently in accordance with the basic principles of constitutional order of the Russian Federation and the general principles of organization of representative and executive bodies of State power, established by a federal law (Article 11, Section 2; Article 77, Section 1).

Adduced provisions of the Constitution of the Russian Federation guarantee exercise of public authority in various forms – proceeding from recognition of peculiarities of its organization and exercise on each of the territorial levels, including with regard to specific characteristics of the constitutional-law status of subjects of the Russian Federation, as well as municipal entities. At the same time, the Constitution of the Russian Federation does not directly determine the order of forming of the bodies of State power of the subjects of the Russian Federation: as the Constitutional Court of the Russian Federation pointed out in the Judgment of 21 December 2005 No. 13-II, proclaiming free elections equally with referendum the supreme expression of power of the multinational people of the Russian Federation and fixing electoral rights of citizens and the right to participate in a referendum (Article 3, Section 3; Article 32, Sections 1 and 2), the Constitution of

the Russian Federation at the same time does not regard elections held on the basis of universal equal and direct electoral right by secret ballot as the only admissible mechanism of forming of all bodies of public authority on each level of its organization.

Thus, it is contemplated in the system of constitutional regulation of organization of public authority in the Russian Federation that concrete means of forming of bodies of State power of subjects of the Russian Federation, including substitution of the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) must not obligatorily coincide with those applied in respect of corresponding (similar to them) federal bodies of State power, and if need be may be subject to correction at any particular stage of development of Russia's statehood.

The European Court of Human Rights adheres, in essence, to the same position; in its practice the requirement of Article 3 of the Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms on holding at reasonable intervals of free elections of bodies of legislative power by secret ballot, under conditions which would ensure the free expression of the opinion of the people, is interpreted as not extended to other bodies apart from those which fall under the notion "body of legislative power" (judgment of 2 March 1987 on the case "Mathieu-Mohin and Clerfayt vs. Belgium", decision of 25 January 2000 on admissibility of the complaint "Victor Cherepkov vs. Russia").

2.1. Questions connected with the order of substitution of the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) already were the subject-matter of consideration by the Constitutional Court of the Russian Federation at various stages of State and legal development of Russia.

For instance, in the Judgment of 18 January 1996 No. 2-II the Constitutional Court of the Russian Federation – within the framework of realization of the principle of division of State power into legislative and executive on the level of a

subject of the Russian Federation – recognized as not conforming to the Constitution of the Russian Federation the provision of the Charter (Basic Law) of the Altai Territory, envisaging election of the Head of Administration of the Altai Territory as a higher official of this subject of the Russian Federation (head of the higher executive body of State power of the subject of the Russian Federation) by the legislative body of State power – the Altai Territorial Legislative Assembly.

Assessing with regard to changes of socio-historical and legal context new regulation of the order of vesting the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) with powers, introduced by the federal legislator, the Constitutional Court of the Russian Federation in the Judgment of 21 December 2005 No. 13-II recognized that the model, envisaging participation in this procedure of both the Russian Federation and a subject of the Russian Federation, in the person of, accordingly, the President of the Russian Federation, proposing a candidature for this post, and a legislative (representative) body of State power of a subject of the Russian Federation, adopting the final decision, does not principally diverge from the Constitution of the Russian Federation, including those of its provisions which predetermine the principles of forming higher executive bodies of State power of subjects of the Russian Federation and on which legal positions expressed by it earlier, including in the Judgment of 18 January 1996 No. 2-II, are based.

Analyzing the constitutional status of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation), his place and role in the system of division of powers, the Constitutional Court of the Russian Federation – proceeding from the fact that the provisions of the Constitution of the Russian Federation manifest their regulative influence both directly and in a certain system of legal regulation by means of the laws rendering them concrete – has come to the following conclusions:

the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation), entering the system of bodies of State power of a subject of the Russian Federation and being, essentially, the head of its executive power, is simultaneously a link in a united system of executive power in the Russian Federation. In this capacity he/she is responsible for ensuring observance on the territory of a subject of the Russian Federation not only of the constitution (charter), laws and other normative legal acts of this subject of the Russian Federation, but also of the Constitution of the Russian Federation, federal laws and other normative legal acts of the Russian Federation;

by his/her status, the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) – by virtue of the principle of unity of the system of the State power – finds him/herself within the relations of subordination directly with the President of the Russian Federation who, as the Head of State, elected at universal direct elections, ensures coordinated functioning of all bodies of State power on the basis of the interconnected provisions of Articles 19 (Sections 1 and 2), 77 (Section 1), 78 (Section 4) and 80 (Sections 1 and 2) of the Constitution of the Russian Federation. In such capacity this official participates not only in the relations on the level of respective subject of the Russian Federation, realizing powers within the limits of issues of joint jurisdiction of the Russian Federation and subjects of the Russian Federation and within the framework of exceptional authority of the subjects of the Russian Federation, but also in relations, having all-federal significance, to the extent and as much, to which and so far as such participation is provided for and admitted by the federal laws, other normative legal acts of federal bodies of State power;

the revealed constitutional-law nature of the institution of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) – considering that, as follows from the Constitution of the Russian Federation, bodies of State power in the subjects of

the Russian Federation are formed basically on the same principles as the federal ones, – determines the possibility to vest a citizen of the Russian Federation with the powers of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) not necessarily solely by means of direct elections by the population of the subject of the Russian Federation;

the right to take part in direct elections of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) and to be elected to this post is a necessary element of neither the constitutional right of citizens to elect and be elected to the bodies of State power, nor other constitutional rights, therefore, its exclusion from the number of rights of a citizen to participate in the procedure of vesting the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) with powers may not be regarded as restriction of a constitutional right and thus as breach of Articles 32 and 55 of the Constitution of the Russian Federation.

Thus, the Constitutional Court of the Russian Federation has confirmed the possibility of legislative establishment of various forms of substitution of the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation), following from the Constitution of the Russian Federation, including depending on the socio-historical context and, accordingly, the possibility of various forms of participation in this procedure of both the subjects of public authority, in particular the President of the Russian Federation and the legislative (representative) body of State power of a subject of the Russian Federation, and citizens of the Russian Federation.

2.2. Determining the order of substitution of the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) and thus the concrete normative legal grounds and forms of realization by citizens of the Russian Federation of their right to participate in managing State affairs, the federal legislator – by virtue of his

freedom of discretion, following from Articles 4 (Section 2), 71 (Item “a”), 72 (Item “н” of Section 1) and 76 (Sections 1 and 2) of the Constitution of the Russian Federation, – is not bound by the need to limit himself by reproduction of normative rules operating within the framework of the procedures, which are applied to formation of legislative (representative) and other bodies of public authority on the basis of universal equal and direct electoral right by secret ballot.

Order of substitution of the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) by way of his/her election by the population at direct elections, introduced by the Federal Law of 2 May 2012 No. 40-ФЗ “On amendments to Federal Law “On General Principles of Organization of the Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation” and the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation”, is called upon to replace previous order, under which vesting the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) with powers was carried out by legislative (representative) body of State power of a subject of the Russian Federation on nomination of the President of the Russian Federation. Establishment of such – electoral – order does not exclude the possibility of rendering it concrete, including by way of introduction of additional legal institutions in the legal regulation within the framework of the requirements of the Constitution of the Russian Federation and with regard to legal positions of the Constitutional Court of the Russian Federation, based on these requirements.

2.3. The Constitution of the Russian Federation, granting federal legislator the certain discretionary powers in the field of legal regulation of formation of bodies of public authority, binds their realization by the requirements of coordination with the fundamentals of the constitutional system of Russia and inadmissibility of distortion of the democratic legal nature of the Russian statehood.

In particular, when establishing the order of nomination and registration of candidates for posts, substituted by way of elections, the federal legislator, as the Constitutional Court of the Russian Federation repeatedly pointed out, is entitled to provide for special preliminary conditions, non-observance of which allows to exclude persons having no sufficient support of the voters from electoral process; the need to collect no less than a certain number of signatures in support of a candidate for elective post, which can not be regarded as restricting electoral rights of citizens and violating equality of public associations before the law, pertains to such conditions (judgments of 17 November 1998 No. 26-II and of 11 June 2002 No. 10-II, rulings of 25 March 1999 No. 32-O, of 6 July 2010 No. 1087-O-O, of 24 February 2011 No. 202-O-O and others).

Accordingly, legislatively established requirements must be used neither in order to create unfounded advantages for candidates, representing a certain political force, nor for arbitrary exclusion of candidates, staying in the opposition, from electoral process, – other would break the principles of democracy, political diversity and multi-party system (Article 1; Article 13, Sections 1 and 3, of the Constitution of the Russian Federation), from which follows inadmissibility of monopolizing of power and necessity of existence of opposition, as well as the principle of equality (Article 19, Sections 1 and 2, of the Constitution of the Russian Federation).

This conclusion is fully applicable to the order of election to the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation), herewith the forms (means) of confirmation of support of candidates for this post, established by the federal legislator, must take into account peculiarities of constitutional-law status of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation), character and sphere of public tasks fulfilled by him/her. In particular, the federal legislator is entitled, proceeding from constitutional fundamentals of the unity of public authority in the Russian Federation and objective need of interaction of bodies of

State power of a subject of the Russian Federation, on which responsibility for ensuring social, economic and other development of the territory of the subject of the Russian Federation, and therefore, also of each municipal entity entering its composition, is placed, with bodies of local self-government (Article 3, Sections 1 and 2; Article 7, Section 1; Article 130, Section 1, of the Constitution of the Russian Federation), to envisage some or other forms of participation of elective persons of local community, consideration of their opinion within the framework of the procedure of substitution of the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation).

3. As follows from the Federal Law “On General Principles of Organization of the Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation” (Item 3 of Article 18), candidates for the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) are nominated by political parties which are entitled to nominate to the indicated post a person, being a member of this political party or a person, not being a member of this or other political party; besides, the candidates can be nominated in the procedure of self-nomination, if it is provided for by the law of a subject of the Russian Federation; both nomination of a candidate by a political party and nomination of a candidate in the procedure of self-nomination must be supported by 5 to 10 per cent of deputies of the representative bodies of municipal entities and (or) heads of municipal entities of a subject of the Russian Federation, elected at municipal elections, among whom there must be from 5 to 10 per cent of deputies of representative bodies of municipal districts and town circuits and (or) heads of municipal districts and town circuits of a subject of the Russian Federation, elected at municipal elections, moreover, the candidate must be supported by the indicated persons in no less than 3/4 of municipal districts and town circuits of a subject of the Russian Federation; concrete number of persons necessary for support of a candidate (within the framework of a corridor

determined by the federal legislator – from 5 to 10 per cent), is established by the law of a subject of the Russian Federation.

Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation”, in its turn, determines in Items 17-20 of Article 37 and Sub-Item «д¹» of Item 24 of Article 38 the order of collection and verification of authenticity of signatures, as well as envisages that insufficient number of authentic signatures of deputies of the representative bodies of municipal entities and (or) heads of municipal entities, elected at municipal elections, submitted for registration of a candidate for the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation), is a ground to refuse registration of a candidate.

Thus, being a stage of the electoral process, similar in content to the mechanism of introduction by a political party, whose list of candidates received the largest number of votes of electors on the outcome of elections to the legislative (representative) body of a subject of the Russian Federation, of proposals on candidatures for the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) to the President of the Russian Federation, having operated earlier, collection of signatures of a number of elective persons of local self-government, determined by the law of a subject of the Russian Federation in accordance with federal legislation, is an obligatory condition of registration of a candidate for the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation), nominated both by a political party and in the procedure of self-nomination, and as such, of course, broadens the possibilities of other political forces to be represented in this political process.

3.1. At the same time, participation of elective persons of local self-government – deputies of the representative bodies of municipal entities and (or) heads of municipal entities of a subject of the Russian Federation, elected at

municipal elections, in nomination of candidates to the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation), although it is carried out at the stage of the electoral process, preceding registration of a candidate, and by external signs is comparable with forms (means) of confirmation of support of candidates by voters, has other destination.

Supporting one or another candidate, the elective person of local self-government acts in a capacity reflecting, first of all, the fact of having, as invested with confidence of the population as a result of election, a public-law status, attesting not only personal features, political and life experience of elective person of local self-government, but also his/her certain integration into political system of the society (it is not important, whether on the side of the authority or system opposition, using parliamentary methods of activity). Accordingly, such support in the concrete socio-historical context also means recognition of real capability of the candidate, in case of victory at elections, to fulfill tasks relating to competence of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation), ensuring complex socio-economic development of the region and municipal entities constituting it.

As far as introduction within the framework of the procedure of collection of signatures of elective persons of local self-government in support of a candidate for the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) of a guaranteed share of representation of elective persons of local self-government from municipal districts and town circuits is concerned, it is determined by specific political-legal status of these municipal entities and their elective persons, connected both with other territorial scale of activity of higher level and with nature of the tasks fulfilled, within the framework of which, side by side with issues of local significance, State interests are also broached, which, in its turn,

requires close interaction with bodies of State power of a subject of the Russian Federation.

3.2. Receipt of support of the deputies of representative bodies of municipal entities and (or) heads of municipal entities of a subject of the Russian Federation, elected at municipal elections, when nominating candidates for the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) can not be regarded as placing State powers on local self-government.

Constitutional-law status of local self-government as a public-territorial self-organization of the population at place of residence and a particular form of exercise of power by the people contemplates, as the Constitutional Court of the Russian Federation has repeatedly pointed out, that bodies of local self-government, not entering the system of bodies of State power, at the same time possess public-authority powers for fulfillment of tasks placed on local self-government, i. e. carry out the functions of public authority on the respective territorial level. By its nature, local self-government in the Russian Federation as a law-governed social State is orientated first and foremost at fulfillment of socio-economic tasks within the bounds of the territory of a municipal entity as a territory of compact residence of the population, as well as at ensuring its socio-economic development as an element of complex socio-economic development of the territory of a subject of the Russian Federation.

Adopting the decision on attraction of elective persons of local self-government to participation in the procedure of nomination of candidates for the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) and thus granting local self-government the opportunity to influence the formation of bodies of State power of a subject of the Russian Federation (although these persons act voluntarily and in personal capacity and expenditures at the expense of local budget are not made) in respective form and in a certain way, the federal legislator proceeded from the presence in the legislation of different legal forms of

interrelations of bodies of local self-government and bodies of State power of the subjects of the Russian Federation, within the framework of which bodies of State power of subjects of the Russian Federation, including the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation), possess financial, organizational-control and other powers (in particular, Section 2 of Article 18¹, Section 5 and Item 2 of Section 11 of Article 37, Sections 1, 2¹ and 2² of Article 73, Section 1 of Article 74, Article 74¹, Sections 2 and 4 of Article 75 of the Federal Law of 6 October 2003 No. 131-ФЗ “On General Principles of Organization of Local Self-Government in the Russian Federation”), however, not placing in doubt independence of local self-government, as it is defined by Articles 12, 130 (Section 1) and 131 (Section 1) of the Constitution of the Russian Federation, which proceeds from recognition of value of various non-imperative forms of cooperation between these levels of public authority.

Establishment by the federal legislator of organizational-legal prerequisites of personified interaction of bodies of State power of a subject of the Russian Federation and bodies of local self-government of municipal entities disposed on its territory already in the process of substitution of the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) is aimed at attainment of their concerted functioning, as well as at ensuring unity of functional fundamentals of organization of public authority in a subject of the Russian Federation, based on division of matters of authority and powers and on recognition of independence of local self-government.

Expression and consideration – by means of the will of respective elective persons – of the opinion of municipal community in respect of candidates for the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation), creating additional conditions for appropriate guaranteeing of the rights of citizens, living on this territory, and the rights of local self-government, as requires Article 133 of

the Constitution of the Russian Federation, do not diverge from its Article 12, which is aimed not at denial of any forms of organizational interaction of bodies of local self-government and bodies of State power, but at exclusion of decisive participation of bodies of State power in formation of bodies of local self-government, substitution of bodies of local self-government for bodies of State power when deciding questions of local significance.

Introduction in the legal regulation of the requirement to receive support exactly from the side of deputies of representative bodies of municipal entities and (or) heads of municipal entities of a subject of the Russian Federation, elected at municipal elections (considering that support of deputies of representative bodies of municipal districts and town circuits and (or) their heads, elected at municipal elections, must constitute from 5 to 10 per cent of the general amount of candidate's support), is not excessive in the operating mechanism of nomination of candidates for the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation), simultaneously raising interest to municipal elections, to the functioning of the system of bodies of local self-government, thus stimulating strengthening of democratic basis of the Russian statehood.

3.3. According to the legal position formulated by the Constitutional Court of the Russian Federation conformably to questions, connected with carrying out legislative regulation in the field of electoral rights of citizens on the level of subjects of the Russian Federation (Judgment of 11 March 2008 No. 4-II, Ruling of 17 June 2008 No. 436-O-O), respective laws of subjects of the Russian Federation appear as concretizing normative regulator of electoral rights of citizens, they bear secondary character and are derivative from basic legal regulation, established by the Constitution of the Russian Federation and federal laws, in particular, by the Federal Law "On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation"; legislator of a subject of the Russian Federation, introducing concrete electoral procedures, must, with consideration of peculiarities of the subject-matter

of legal regulation, envisage also the necessary guarantees of electoral rights of citizens; here he is bound by the requirement of Article 76 (Section 5) of the Constitution of the Russian Federation, by virtue of which laws and other normative legal acts of a subject of the Russian Federation can not conflict with federal laws, and in any case must not bring down the level of federal guarantees of electoral rights, ensured in the Russian Federation on the basis of the Constitution of the Russian Federation and according to universally recognized principles and norms of international law; neither is the legislator of a subject of the Russian Federation entitled to introduce any restrictions of constitutional rights and freedoms and moreover, to establish procedures and rules which broach the very essence of the rights to free elections.

The adduced legal position fully extends to regulation provided for by the provisions of the Federal Laws “On General Principles of Organization of the Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation” and “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation” under consideration which, fixing as an obligatory condition of nomination and registration of candidates for the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) support from the side of elective persons of local self-government, grant a subject of the Russian Federation the possibility to determine their number within the bounds of minimum and maximum threshold meanings, established on the level of 5 to 10 per cent.

This means that, determining the number of persons necessary for support of nomination of a candidate, subjects of the Russian Federation, guided by the constitutional principles of democracy, political pluralism, multi-party system, as well as equality of electoral rights (Article 1, Section 1; Article 13, Sections 1 and 3; Article 19, Sections 1 and 2, of the Constitution of the Russian Federation), must proceed from the need to ensure appropriate guarantees of election of the higher official of a subject of the Russian Federation (head of the higher executive

body of State power of a subject of the Russian Federation) on alternative basis and in the conditions of real political competition, including with regard to Item 33 of Article 38 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation”, according to which when elections are held in united electoral circuit – what takes place at elections of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation), in case of registration of only one candidate holding of elections must be postponed for additional nomination of candidates, i.e. holding of elections (if only it is not a question of repeated voting) in the presence of only one registered candidate is not admitted. Reservation, excluding application of this rule in the procedure of vesting the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) with powers, is absent in the legislation.

Therefore, within the constitutional-law meaning of the provisions of Item 3 of Article 18 of the Federal Law “On General Principles of Organization of the Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation” and Articles 37 and 38 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation”, legislator of a subject of the Russian Federation must establish the number of persons, necessary for confirmation of support of a candidate for the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation), taking into account concrete conditions of development of party-political relations in this subject of the Russian Federation. With observance of this requirement even possible overwhelming representation in the elective body of local self-government of one political party, creating for persons, enjoying its support, certain advantages during nomination to the post of the higher official of a subject of the Russian Federation (head of the

higher executive body of State power of a subject of the Russian Federation), in itself does not depreciate the use of elections.

Herewith the prescription of Item 20 of Article 37 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation”, by virtue of which the number of signatures of deputies of representative bodies of municipal entities and (or) heads of municipal entities, elected at municipal elections, submitted to the electoral commission of a subject of the Russian Federation, may exceed the number of signatures necessary for registration of a candidate for the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation), but no more than on 5 per cent, in unity with the principle of inadmissibility of violation of rights and freedoms of other people while exercising human and civil rights and freedoms, fixed by Article 17 (Section 3) of the Constitution of the Russian Federation, meaning, among other things, ban to abuse a right, and with regard to the fact that one elective person of local self-government may support only one candidate for respective post, contemplates inadmissibility of creation of artificial obstacles for nomination of other candidates by way of collecting signatures of elective persons of local self-government in the number larger than the number of signatures, determined by a law of a subject of the Russian Federation, necessary for registration of a candidate, exceeded on 5 per cent.

Besides, when assessing legal regulation of elective order of substitution of the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation), introduced by the Federal Law of 2 May 2012 No. 40-Φ3 “On Amendments to the Federal Law “On General Principles of Organization of the Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation” and the Federal Law ”On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation”, one can not but consider its system connection with other measures,

adopted in the unified complex of development of the legislative basis of political-party and electoral relations in the Russian Federation.

For example, the Federal Law of 2 April 2012 No. 28-ФЗ “On Amendments to the Federal Law “On Political Parties” simplified the order and conditions of creation of a political party, in particular, requirements to minimum numbers of a political party are reduced from 40000 members of a political party to 500 members, as well as is envisaged that a political party, and in cases determined by the charter of a political party – its regional branches and other structural subdivisions are entitled to take part in elections, official publication of a decision on the appointment (holding) of which took place after submission by the political party to authorized bodies of documents, confirming State registration of its regional branches in no less than half of subjects of the Russian Federation. Herewith the Federal Law of 2 May 2012 No. 41-ФЗ “On Amendments to Individual Legislative Acts of the Russian Federation in Connection Liberation of Political Parties From Collection of Signatures of Voters at Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation, to Bodies of State Power of Subjects of the Russian Federation and Bodies of Local Self-Government” abrogated for all political parties without exception the requirement of obligatory collection of signatures of voters for registration of candidates at elections, with the exception of elections of the President of the Russian Federation.

In the context of the adduced legal regulation, extending the possibilities of participation of different political forces in the formation of bodies of public authority, introduction as a condition of registration of a candidate for the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) receipt by him/her of support of a certain number of elective persons of local self-government can not be regarded as incompatible with requirements of legal democracy based on political pluralism, which follow from the Constitution of the Russian Federation. Accordingly, the provisions of the Federal Laws “On General

Principles of Organization of the Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation” and “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation”, regulating realization of this provision, do not contemplate their use with the aim of limiting political diversity and multi-party system.

3.4. Thus, the provisions of Paragraphs 8, 9, 10, 11 and 16 of the Federal Law “On General Principles of Organization of the Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation”, as well as Items 17-20 of Article 37 and Sub-Item «д¹» of Item 24 of Article 38 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation”, envisaging as an obligatory condition of registration of a candidate for the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) receipt of support from the side of a certain number of elective persons of local self-government, determined by a law of a subject of the Russian Federation within the bounds established by the federal legislation (5 to 10 per cent), do not contradict the Constitution of the Russian Federation, because within their constitutional-law meaning contemplate obligation of the legislator of a subject of the Russian Federation, when establishing the number of elective persons of local self-government necessary for confirmation of support of a candidate for respective post, to proceed from concrete conditions of development of party-political relations in this subject of the Russian Federation, as well as exclude the possibility to create artificial obstacles for nomination of other candidates, to collect and submit with this object signatures of elective officials of local self-government in the number exceeding the number of signatures, established by the law of a subject of the Russian Federation, on more than 5 per cent.

This does not cast doubt on the competence of the federal legislator to further improve legal regulation in this field of social relations in accordance with

requirements of the Constitution of the Russian Federation and legal positions of the Constitutional Court of the Russian Federation, based on them, including those expressed in the present Judgment, – with regard to the practice of application of the provisions of the Federal Laws “On General Principles of Organization of the Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation” and “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation” in the wording of the Federal Law of 2 May 2012 No. 40-Φ3 and with the aim of intensification of democratic elements of the order and conditions of vesting the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) with powers.

4. According to Paragraph 4 of Item 3 of Article 18 of the Federal Law “On General Principles of Organization of the Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation”, the President of the Russian Federation may, on his own initiative, conduct consultations with political parties, nominating candidates for the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation), as well as with candidates, nominated to this post in the procedure of self-nomination; the order of conducting such consultation is determined by the President of the Russian Federation.

Such power of the President of the Russian Federation is not directly provided for by the Constitution of the Russian Federation, which, as it follows from the legal position of the Constitutional Court of the Russian Federation, expounded in the Judgment of 21 December 2005 No. 13-II, as such does not hinder placing on the President of the Russian Federation as Head of State, being, within the meaning of Article 81 (Section 1) of the Constitution of the Russian Federation, direct representative of the entire people of the Russian Federation, certain functions in the mechanism of vesting a citizen of the Russian Federation with powers of the higher official of a subject of the Russian Federation (head of the higher executive

body of State power of a subject of the Russian Federation) by the federal law – within the framework of establishment of general principles of organization of executive bodies of State power in accordance with Articles 5 (Section 3), 72 (Item “H” of Section 1), 77, 78 (Section 2), 80 (Sections 1 and 2) and 85 of the Constitution of the Russian Federation.

The possibility of placing respective power on the President of the Russian Federation is determined also by his status of guarantor of the Constitution of the Russian Federation, human and civil rights and freedoms, called upon to adopt, in the order established by the Constitution of the Russian Federation, measures for protection of sovereignty of the Russian Federation, her independence and State integrity, to ensure coordinated functioning and interaction of bodies of State power (Article 80, Section 2, of the Constitution of the Russian Federation), and not only on the fact of rise of a threat to constitutional values, but also preventively, which follows from Article 85 (Section 1) of the Constitution of the Russian Federation, admitting use of conciliatory procedures by the President of the Russian Federation. This constitutional-law institution in the plane of content and subject composition differs from the institution of conducting consultations, provided for by Paragraph 4 of Item 3 of Article 18 of the Federal Law “On General Principles of Organization of the Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation”, but in the procedural plane is comparable to it.

Conducting of consultations with political parties and candidates for the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) by the President of the Russian Federation is not a compulsory element of the mechanism of nomination and registration of a candidate for respective post: neither the indicated legislative provision itself, nor any other normative provisions of the legislation in force put the decision of question of participation of one or another candidate in the electoral process in dependence on of the results of this procedure, which, by virtue of direct indication of the law has exactly consultative character

and, consequently, in the operating legal regulation can not be regarded as breaking the prescriptions of the Constitution of the Russian Federation, including the principles of law-governed State, democracy, division of powers and federalism, fixed by it.

Accordingly, the President of the Russian Federation, with the aim to ensure coordinated interaction of all interested participants of electoral campaign at the stage of nomination and registration of candidates for the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation), has the right to determine the order of conducting of consultations with political parties and candidates for respective post, including recruiting to participation in them individually in each subject of the Russian Federation other persons, apart from the candidates themselves and representatives of political parties.

By virtue of this, Paragraph 4 of Item 3 of Article 18 of the Federal Law “On General Principles of Organization of the Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation” can not be regarded as contradicting the Constitution of the Russian Federation.

Concluding from the above and pursuant to Article 6, Section 2 of Article 71, Articles 72, 74, 75, 78, 79, 86 and 87 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation

h e l d:

1. To recognize as not contradicting the Constitution of the Russian Federation the provisions of Paragraphs 8, 9, 10, 11 and 16 of the Federal Law “On General Principles of Organization of the Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation”, as well as Items 17-20 of Article 37 and Sub-Item «д¹» of Item 24 of Article 38 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation”, envisaging as an obligatory condition of registration of a candidate for the post of the higher

official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation) receipt of support from the side of a number of elective persons of local self-government, determined by a law of a subject of the Russian Federation within the bounds established by the federal legislation (5 to 10 per cent), because within their constitutional-law meaning these legislative provisions contemplate obligation of the legislator of a subject of the Russian Federation, when establishing the number of elective persons of local self-government necessary for confirmation of support of a candidate for respective post, to proceed from concrete conditions of development of party-political relations in this subject of the Russian Federation, as well as exclude the possibility to create artificial obstacles for nomination of other candidates, to collect and submit with this object signatures of elective officials of local self-government in the number exceeding the number of signatures, established by the law of a subject of the Russian Federation, on more than 5 per cent.

2. To recognize as not contradicting the Constitution of the Russian Federation Paragraph 4 of Item 3 of Article 18 of the Federal Law “On General Principles of Organization of the Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation”, envisaging conducting consultations with political parties and candidates for the post of the higher official of a subject of the Russian Federation (head of the higher executive body of State power of a subject of the Russian Federation), because this procedure, which by virtue of the direct indication of the law has exactly consultative character, is not a compulsory element of the mechanism of nomination and registration of a candidate for respective post, and decision of the question of participation of one or another candidate in the electoral process is not put in dependence on its results.

3. The present Judgment shall be final and shall not be subject to any appeal, it shall come into force immediately upon pronouncement, shall be directly applicable and shall not require confirmation by other authorities or State officials.

4. The present Judgment is subject to immediate publication in Rossiyskaya Gazeta and the Collection of Laws of the Russian Federation. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

The Constitutional Court
of the Russian Federation

No. 32-II