

IN THE NAME OF THE RUSSIAN FEDERATION
The Constitutional Court of the Russian Federation

Judgment
of 10th October, 2013 No. 20-II

In the case on the review of constitutionality of Sub-Item “a” of Item 3² of Article 4 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation”, Section 1 of Article 10 and Section 6 of Article 86 of the Criminal Code of the Russian Federation in connection with complaints of citizens G.B.Yegorov, A.L.Kazakov, I.Yu.Kravtsov, A.V.Kupriyanov, A.S.Latypov and V.Yu.Sin’kov

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 A.L.Kazakov – lawyer V.V.Suchkov, the representative of I.Yu.Kravtsov – lawyer E.M.Korovin, the representative of A.V.Kupriyanov – lawyer T.V.Perminova, the representative of V.Yu.Sin’kov – lawyer A.A.Rastorguyeva, the Plenipotentiary Representative of the State Duma to the Constitutional Court of the Russian Federation D.F.Vyatkin, the Plenipotentiary Representative of the Council of Federation to the Constitutional Court of the Russian Federation A.I.Alexandrov, the Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M.V.Krotov,

guided by Article 125 (Section 4) of the Constitution of the Russian Federation, Item 3 of Section 1, Sections 3 and 4 of Article 3, Section 1 of Article

21, Articles 36, 74, 86, 96, 97 and 99 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open hearing considered the case on the review of constitutionality of Sub-Item “a” of Item 3² of Article 4 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation”, Section 1 of Article 10 and Section 6 of Article 86 of the Criminal Code of the Russian Federation.

The reason for the consideration of the case were complaints of G.B.Yegorov, A.L.Kazakov, I.Yu.Kravtsov, A.V.Kupriyanov, A.S.Latypov and V.Yu.Sin’kov. The ground for the consideration of the case was the discovered uncertainty of whether the legislative provisions contested by the petitioners are in conformity with the Constitution of the Russian Federation.

So far as all complaints touch upon one and the same subject, the Constitutional Court of the Russian Federation, guided by Article 48 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, merged cases on these complaints in one proceeding.

Having heard the report of Judge-Rapporteur O.S.Khokhryakova, statements by parties’ representatives, interventions by representatives invited to the hearing – the Plenipotentiary Representative of the Government of the Russian Federation to the Constitutional Court of the Russian Federation M.Yu.Barshevsky, as well as representatives: Ye.A.Borisenko 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, V.K.Mikhailov for the Commissioner for Human Rights in the Russian Federation, having examined submitted documents and other materials, the Constitutional Court of the Russian Federation

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

1. Petitioners in the present case citizens G.B.Yegorov, A.L.Kazakov, I.Yu.Kravtsov, A.V.Kupriyanov, A.S.Latypov and V.Yu.Sin’kov contest constitutionality of Sub-Item “a” of Item 3² of Article 4 of the Federal Law of 12th

June, 2002 No. 67-Ф3 “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation” (in the wording introduced by the Federal Law of 2nd May, 2012 No. 40-Ф3), establishing that citizens of the Russian Federation having ever been convicted to deprivation of liberty for the commission of grave and (or) particularly grave crimes have no right to be elected to bodies of State power or bodies of local self-government, with the exception of cases when in accordance with a new criminal law these actions are not recognized as grave or particularly grave crimes.

And A.S.Latypov contests constitutionality of the said legislative provision also in the interconnection with Section 1 of Article 10 of the Criminal Code of the Russian Federation, according to which a criminal law eliminating criminality of an action, mitigating punishment or in another way ameliorating the state of a person having committed crime, has retroactive force, i.e. extends to persons having committed respective actions prior to entering into force of such a law, including persons serving sentence or having served sentence, but having convictions on the record (criminal record); criminal law establishing criminality of an action, increasing punishment or in another way worsening the state of a person, has no retroactive force, and Section 6 of Article 86 of this Code, according to which cancelling or removal of previous convictions from the record annuls all legal consequences connected with convictions.

Besides, A.V.Kupriyanov requests to verify whether Sub-Item “a” of Section 5 of Article 6 of the Law of Kirov Region of 28th July, 2005 No. 346-30 “On Elections of Deputies of Representative Bodies and Heads of Municipal Entities in Kirov Region”, and I.Yu.Kravtsov – Item 1 of Section 3² of Article 4 of the Electoral Code of Primorsky Territory of 22nd July, 2003 No. 62-K3, in which Sub-Item “a” of Item 3² of Article 4 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation” is reproduced, conform to the Constitution of the Russian Federation.

1.1. Voskresensk City Court of Moscow Region by the decision of 5th October, 2012 repealed the decision of territorial electoral commission of Voskresensk District of Moscow Region on registration as candidate for the post of Head of the Municipal Entity “Urban Settlement Voskresensk” of the Voskresensk Municipal District of Moscow Region of G.B.Yegorov, who was convicted to deprivation of liberty for the term of 3 years 6 months conditionally with a period of probation of 2 years by the sentence of Voskresensk City Court of Moscow Region of 12th March 1998 for the commission of crimes envisaged by Items “a”, “r”, “д” of Section 2 of Article 161 “Robbery” and Items “a”, “б” of Section 2 of Article 163 “Extortion” of the Criminal Code of the Russian Federation and belonging to the category of grave crimes, although by the resolution of the same court of 9th April, 1999 probation in his respect was repealed and previous convictions removed.

North District Court of the City of Oryol by the decision of 10th October, 2012, left unchanged by appellate ruling of Civil Cases Board of Oryol Regional Court of 13th October 2012, refused to satisfy application of A.L.Kazakov on recognition of the decision of territorial electoral commission of the North District of the City of Oryol on annulling his registration as candidate-deputy of Oryol City Council of People’s Deputies as unlawful.

The ground for adoption of such a decision was that by sentence of Zheleznodorozhny District Court of the City of Oryol of 25th May, 1999 A.L.Kazakov was convicted to 3 years of deprivation of liberty conditionally with a period of probation of 2 years for the commission of the crime envisaged by Items “a”, “b”, “r” of Section 2 of Article 161 “Robbery” of the Criminal Code of the Russian Federation (by virtue of Article 86 of the Criminal Code of the Russian Federation, on expiry of the period of probation previous conviction was cancelled).

By the decision of Luza District Court of Kirov Region of 10th September, 2012, left unchanged by appellate ruling of the Board on Civil Cases of Kirov Regional Court of 1st October, 2012, the application of territorial electoral

commission of Luza District of Kirov Region on repeal of the registration of A.V.Kupriyanov as candidate for the post of Head of Municipal Entity “Luza Urban Settlement of Luza District of Kirov Region” on the ground that by the sentence of Gorky Regional Court of 6th December 1984 for criminal attempt, envisaged by Article 103 “Premeditated Murder” of the Criminal Code of the Russian Federation and belonging to the category of grave crimes (at present – particularly grave crimes) he was prescribed penalty in the form of deprivation of liberty for the term of 8 years (by ruling of Luza District Court of Kirov Region of 8th May, 1997 the previous conviction was removed early).

Irkutsk District Court of Irkutsk Region by the decision of 24th September, 2012, left unchanged by appellate ruling of the Board of Civil Cases of Irkutsk Regional Court of 5th October, 2012, satisfied application of the circuit electoral commission of Bolsherechensk Municipal Entity on repeal of its decision on registration of V.Yu.Sin’kov as candidate-deputy of the Duma of Bolsherechensk Municipal Entity in connection with the fact that for the commission of the crime envisaged by Section 4 of Article 159 “Swindling” of the Criminal Code of the Russian Federation, which belongs to the category of grave crimes, he was convicted by the sentence of Sverdlovsk District Court of the City of Irkutsk of 30th March, 2009 to deprivation of liberty for the term of 7 years conditionally with the period of probation of 4 years (by resolution of Irkutsk District Court of Irkutsk Region of 5th September, 2011 conditional conviction in respect of V.Yu.Sin’kov was repealed and previous conviction removed).

By the decision of Leninsky District Court of the City of Vladivostok of 4th October, 2012 the application of the Vladivostok City Municipal Electoral Commission was satisfied on repeal of the registration as candidate-deputy of the Duma of the City of Vladivostok of I.Yu. Kravtsov, who was convicted to deprivation of liberty for the term of 7 years conditionally with the period of probation of 5 years by the sentence of Leninsky District Court of the City of Vladivostok of 6th May, 2000 for the commission of the crime envisaged by Item “б” of Section 3 of Article 163 “Extortion” of the Criminal Code of the Russian

Federation (by the resolution of the same court of 26th February, 2003 conditional conviction in his respect was repealed and previous conviction removed).

In the petitioners' opinion, Sub-Item "a" of Item 3² of Article 4 of the Federal Law "On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation", applied in their cases, contradicts the Constitution of the Russian Federation, its Articles 2, 6 (Section 2), 15 (Sections 1 and 2), 17 (Sections 1 and 2), 18, 19 (Section 2), 32 (Sections 1, 2 and 3), 45 (Section 2), 47 (Section 1), 50 (Section 1), 54 (Section 1), 55 and 56 (Section 1), since out of connection with any constitutionally significant goals establishes life and unconditional deprivation of passive electoral right of citizens convicted to deprivation of liberty for the commission of grave and (or) particularly grave crimes irrespective of the fact of cancellation or removal of their convictions from the record, as well as of whether a person was released from real serving of penalty and thereby introduces responsibility, additional and disproportionate to the action committed, including for actions committed prior to putting this legislative provision into execution, giving retroactive effect to it and abrogating the presumption of respectability and innocence, as well as groundlessly puts such citizens in the position, unequal by comparison with other categories of citizens in the questions of realization of passive electoral right.

On the same grounds A.V.Kupriyanov and I.Yu.Kravtsov contest constitutionality, accordingly, of Sub-Item "a" of Section 5 of Article 6 of the Law of Kirov Region On Elections of Deputies of "On Elections of Deputies of the Representative Bodies and Heads of Municipal Entities in Kirov Region" and of Item 1 of Section 3² of Article 4 of the Electoral Code of Primorsky Territory, in which Sub-Item "a" of Item 3² of Article 4 of the Federal Law "On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation" is reproduced. Meanwhile, restriction of constitutional rights, following from this prescription, subjects of the Russian Federation may not establish as a primary regulation by virtue of Articles 55 (Section 3) and 71 (Item "B") of the Constitution of the Russian Federation, and

therefore, legal force and operation of the indicated provisions of the laws of Kirov Region and Primorsky Territory completely follow its legal force and operation and may not be independent matter of consideration in the present case.

1.2. By the sentence of Arseniev City Court of Primorsky Territory of 9th September, 1997 A.S.Latypov was convicted to deprivation of liberty for the term of 4 years for the commission of the crime envisaged by Section 3 of Article 144 “Theft” of the Criminal Code of the RSFSR and ascribed at that time to the category of grave crimes. In connection with this, Sakhalin Regional Court by the decision of 7th October, 2012 repealed registration of A.S.Latypov as candidate to deputies of the Sakhalin Regional Duma, having repudiated argument of the prosecutor and representative of circuit electoral commission that the new criminal law, mitigating criminal responsibility in the part of establishing the criteria of assessment of the amount of damage caused by the crime (Federal Law of 8th December, 2003 No. 162-Φ3), does not ascribe action committed by him to the category “grave”. As is indicated in the decision, within the framework of consideration of this civil case the court is not entitled to intrude into criminal-law questions of reappraisal of actual circumstances of the action committed by A.S.Latypov in connection with alteration of the criminal law. Refusing admission for proceeding of application on reconsideration of the sentence of Arseniev City Court of Primorsky Territory of 9th September, 1997 and repudiation of the penalty to A.S.Latypov as not having convict’s status, South-Sakhalin Regional Court in the resolution of 11th October, 2012 referred to Article 10 of the Criminal Code of the Russian Federation and also noted that by virtue of Section 6 of Article 86 of this Code cancelled previous convictions do not entail criminal-law consequences for the applicant.

A.S.Latypov perceives violation of his rights guaranteed by Articles 19 (Section 1), 32 (Sections 1 and 2), 54 and 55 (Sections 2 and 3) of the Constitution of the Russian Federation by Sub-Item “a” of Item 3² of Article 4 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation” in the interconnection with

Section 1 of Article 10 and Section 6 of Article 86 of the Criminal Code of the Russian Federation in the assumption that these provisions, not contemplating reconsideration of sentences in relation to persons whose previous convictions were removed or cancelled in cases when the new criminal law does not recognize actions committed by them as grave or particularly grave crimes, indefinitely deprive such persons of passive electoral right.

1.3. Thus, by virtue of Articles 3, 36, 74, 96 and 97 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the subject-matter of consideration by the Constitutional Court of the Russian Federation in the present case are:

Sub-Item “a” of Item 3² of Article 4 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation” as establishing in relation to citizens of the Russian Federation having ever been convicted to deprivation of liberty for the commission of grave and (or) particularly grave crimes ban on realization of the right to be elected to bodies of State power and bodies of local self-government;

the provisions of Sub-Item “a” of Item 3² of Article 4 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation” and Section 6 of Article 86 of the Criminal Code of the Russian Federation in their interconnection – to the extent to which the question is decided on their basis on the possibility to restrict passive electoral right in relation to citizens of the Russian Federation who were convicted to deprivation of liberty for the commission of grave and (or) particularly grave crimes and whose previous convictions have been removed or cancelled;

the provisions of Sub-Item “a” of Item 3² of Article 4 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation” and Section 1 of Article 10 of the Criminal Code of the Russian Federation in their interconnection – to the extent to which on their basis in connection with the ban on realization of passive electoral right by citizens of the Russian Federation, convicted to deprivation of

liberty for the commission of grave and (or) particularly grave crimes, the question is decided on the possibility to extent to those of them whose previous convictions have been removed or cancelled a new criminal law, in accordance with which actions committed by them do not belong to grave or particularly grave crimes any more.

2. According to the Constitution of the Russian Federation, the bearer of sovereignty and the sole source of power in the Russian Federation as a democratic law-governed State with a republican form of government is her multinational people, who exercises its power directly, as well as through bodies of State power and bodies of local self-government; the supreme direct expression of power of the people are referendum and free elections (Preamble; Article 1, Section1; Article 3, Sections 1, 2 and 3); citizens of the Russian Federation have the right to participate in managing State affairs both directly and through their representatives, the right to elect and be elected to bodies of State power and bodies of local self-government, as well as to participate in referendum (Article 32, Sections 1 and 2).

The adduced constitutional provisions correlate with Item “b” of Article 25 of the International Covenant on Civil and Political Rights, by virtue of which every citizen shall have the right and opportunity, without any distinctions and unreasonable restrictions, to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors, and Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms which, proclaiming the right to free elections, envisages the obligation of the State to hold them at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

2.1. The right to elect (active electoral right) and to be elected (passive electoral right) to bodies of State power and bodies of local self-government, being an element of the constitutional status of a voter, is at the same time an element of the public-law institution of free elections; embodied in it are both personal interest

of a particular citizen to take direct part in managing State affairs and public interest realized in the objective results of the elections and formation of self-sufficient and independent bodies of public authority on this basis, called upon to guarantee in their activity human and civil rights and freedoms in the Russian Federation, carrying out effective and responsible administration of affairs of the State and society.

Constitutional nature of electoral rights, including their universal and equal, and at the same time political and public-law character, predetermines the obligation of the State in the person of the federal legislator to create conditions, which would ensure adequate expression of the sovereign will of the multinational people of Russia by means of realization by her citizens of the right to participate in managing State affairs, including through occupation of an elective public post, and the right to be elected to bodies of State power and bodies of local self-government, corresponding to it, bearing in mind that the Constitution of the Russian Federation, as follows from its Articles 81 (Section 2) and 97 (Section 1), allows to bring forward special requirements to pretenders to substitution of elective posts, following from constitutional-law status of persons substituting for respective posts.

Citizens' right to participate in managing State affairs, including occupation of an elective public post, and the right to elect and be elected by way of free elections to bodies of State power and bodies of local self-government on the basis of universal and equal suffrage, guaranteed by Articles 3 and 32 of the Constitution of the Russian Federation, not being absolute, may be exposed to certain restrictions provided criteria indicated in it are observed: according to the Constitution of the Russian Federation, the exercise of human and civil rights and freedoms must not violate the rights and freedoms of other people (Article 17, Section 3); all persons are equal before the law and the court (Article 19, Section 1); the State guarantees the equality of human and civil rights and freedoms regardless of sex, race, nationality, language, origin, material and official status, place of residence, attitude to religion, convictions, membership of public

associations, or of other circumstances. All forms of limitations of human rights on social, racial, national, language or religious grounds shall be prohibited (Article 19, Section 2); in the Russian Federation no laws must be adopted which abolish or diminish human and civil rights and freedoms (Article 55, Section 2); human and civil rights and freedoms may be limited by federal law only to the extent necessary for the protection of the basis of constitutional order, morality, health, rights and lawful interests of other people, and for ensuring the defence of the country and the security of the State (Article 55, Section 3).

By virtue of the indicated requirements of the Constitution of the Russian Federation, the right to free elections, as follows from legal positions repeatedly expressed by the Constitutional Court of the Russian Federation, may be restricted only with the aim to protect constitutional values with observance of the principle of juridical equality and the criteria of reasonableness, commensurateness (proportionality) and necessity in a law-governed democratic State; such restrictions must not misrepresent the main content of this constitutional right and infringe upon its very essence; other leads to its disparagement and abrogation; at this any differentiation leading to distinctions in the rights and duties of the subjects of electoral legal relations is admissible only if it is objectively justified, well-founded and pursues constitutionally significant goals, and legal means used in order to achieve these goals are commensurate to them (Judgments of 30th October, 2003 No. 15-II, of 16th June, 2006 No. 7-II, of 22nd June, 2010 No. 14-II and others).

The right to be elected to bodies of State power and bodies of local self-government which, within the meaning of Articles 3 and 32 of the Constitution of the Russian Federation, does not come to participation of a citizen in elections, is indissolubly connected with the right to occupy a public post and thereby carry out public authority, including adoption of normative legal and law-applying acts binding for other persons. Accordingly, in relation to passive electoral right more strict restrictions than in relation to active electoral right may be introduced,

leading to exclusion of certain categories of citizens from the number of persons enjoying the right to pretend to occupy elective public post.

It is directly established in the Constitution of the Russian Federation that citizens who are recognized as legally incapable by court, as well as those kept in places of deprivation of liberty under court sentence, have no right to elect and be elected (Article 32, Section 3). The said prescription, in the context of the provisions of Articles 3 and 32 (Sections 1 and 2) of the Constitution of the Russian Federation in the interconnection with the criteria of possible restrictions of human and civil rights and freedoms fixed in it (Article 17, Section 3; Article 19, Sections 1 and 2; Article 55, Sections 2 and 3), gives no grounds for the interpretation excluding the possibility of restriction of passive electoral right by a federal law in relation to certain categories of persons having served penalty in the form of deprivation of liberty (Ruling of the Constitutional Court of the Russian Federation of 1st June, 2010 No. 757-O-O). In the system of constitutional rights and freedoms it represents special ban to realize this right as applied to categories of citizens, enumerated in Article 32 (Section 3) of the Constitution of the Russian Federation, which in view of its particular significance is singled out by the constitutional legislator as separate case of restriction of a constitutional right. Other, in spite of the real meaning of Article 32 (Section 3) of the Constitution of the Russian Federation in the interconnection with its Articles 2, 17 and 55, would mean that after serving the term of penalty in places of deprivation of liberty even for particularly grave crimes against personality, social security, public health, fundamentals of constitutional order and security of the State, against State power, against peace and security of mankind the right to be elected, as well as the right to occupy elective public posts could not have been restricted, which is incompatible with the obligation of a democratic State based on the principles of supremacy of law to ensure the protection of human and civil rights and freedoms and other constitutionally significant values having become the object of criminal infringement.

2.2. In order to be steady, legal democracy needs effective legal mechanisms able to guard it from abuses and criminalization of public authority, the legitimacy of which in many respects is based on the society's confidence. Creating respective legal mechanisms, the federal legislator is entitled to establish increased requirements to the reputation of persons occupying public posts, so that no citizens' doubts arise with regard to their moral and ethical qualities and, accordingly, to legality and disinterestedness of their actions as bearers of public authority, including use of certain restrictions of passive electoral right for achievement of these goals.

This approach is usually opposed to by the thesis about the people as a sovereign who is free to choose himself any candidate irrespective of his qualities, as if giving him absolution for the past (*vox populi vox Dei*). However, such conception of power of the people contradicts the principles of legal democracy and supremacy of law, contemplating general, including the people itself united into the State, coherence by law and the Constitution. The necessity to observe constitutional balance of public and private interests orientates so that on the way of people neglecting the law to power there exist sufficiently rigid barriers, which do not come to the possibility for the voters to form their opinion about candidate's personality, including by way of familiarizing themselves with his officially published biography, including data on his former criminal record. Grave or particularly grave crime once committed is a circumstance, without doubt influencing the voters' appraisal of the reputation of a candidate for elective post and thereby determining the degree of citizens' confidence in the institutions of representative democracy, and in the end – their confidence in stability of the supremacy of law and legal democracy. Proceeding from this, restriction of passive electoral right and, accordingly, ban on occupation of elective public posts for persons having committed grave and particularly grave crimes as a measure aimed at averting of the detriment of social support and legitimacy of bodies of public authority, pursues constitutionally significant objects of increase of constitutional responsibility and effectiveness of the principles of the law-governed democratic

State, preservation and proper functioning of public legal order, prevention of criminalization of power.

This conclusion correlates with the requirements of international-law acts, envisaging the possibility of the State to introduce ban on realization of the right to be elected beyond the bounds of the served term of penalty as well. For instance, UN conventions against corruption and against transnational organized crime, ratified by the Russian Federation, as well as the Convention of the Council of Europe on Criminal Responsibility for Corruption, underlying the threat which these phenomena represent for the stability and security of the society, democratic institutions and legal order, ethical values and justice, steady development, oblige the State to prevent respective crimes, in particular, by way of introduction conformably to persons having had criminal record of restriction for a certain term (with regard to the degree of public danger of the crime committed) of the right to occupy a public post, first of all in bodies of State power, including those that are formed on the basis of elections.

At this, Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, fixing the right to free elections, in its interpretation by the European Court of Human Rights does not allow the State to establish restrictions which would break the very essence of this right and deprive it of its effectiveness; the introduced restrictions, bearing in mind that they are established only for attainment of a lawful goal and that the means used are not excessive, must not hinder free will expression of the people when electing legislative power, i.e. are called upon to reflect and not block striving for maintenance of the integrity and effectiveness of the electoral procedure aimed at revelation of the people's will by means of universal suffrage; any deviation from the principle of universal suffrage bears the risk to undermine democratic effectiveness of legislative authority, and that is why exclusion of some categories or groups of population from electoral process must correspond to basic goals of Article 3 of Protocol No. 1 to the Convention; in relation to the right to be elected, in principle, more strict restrictions may be established than those in relation to the

right to elect (judgments of 2nd March, 1987 in the case “Mathieu-Mohin and Clerfayt vs. Belgium”, Item 52; of 6th October, 2005 in the case “Hirst vs. the United Kingdom” (No. 2), Item 62; of 8th April, 2010 in the case “Frodl vs. Austria”, Item 24; of 6th January, 2011 in the case “Paksas vs. Lithuania”, Item 96; of 22nd May, 2012 in the case “Scoppola vs. Italy” (No. 3), Item 84).

In the opinion of the European Court of Human Rights, proportionality of restriction of passive electoral right of convicted persons is ensured by its differentiation (depending on the character and category of the crime and prescribed penalty) and, what is particularly important, by individual (non-automatic) application, i.e. with consideration of circumstances of concrete case and personality of the convicted; automatic and undifferentiated deprivation of electoral rights of a group of persons irrespective of the term of penalty, character or gravity of the committed crime and personal circumstances is incompatible with Article 3 of Protocol No. 1 to the Convention (judgments of 6th October, 2005 in the case “Hirst vs. the United Kingdom” (No. 2), Item 82; of 8th April, 2010 in the case “Frodl vs. Austria”, Item 26; of 22nd May, 2012 in the case “Scoppola vs. Italy” (No. 3), Items 96, 99, 102 and 106).

2.3. Thus, restrictions of the constitutional right to be elected to bodies of State power and bodies of local self-government, leading to exclusion of certain categories of citizens from the number of persons having the right to pretend to occupy elective public post, may be established by federal law on the basis of the criteria following from the Constitution of the Russian Federation with accounting of basic principles and norms of international law which are an integral part of the legal system of Russia, including the Convention for the Protection of Human Rights and Fundamental Freedoms, which, by virtue of Article 15 (Section 4) of the Constitution of the Russian Federation, has priority with regard to laws, and with observance of the balance of constitutionally protected values at every concrete stage of the development of Russia’s statehood.

3. In accordance with Sub-Item “a” of Item 3² of Article 4 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a

Referendum of Citizens of the Russian Federation”, both within its literal meaning and the meaning attributed to it by the law-applying practices, penalty in the form of deprivation of liberty, ever prescribed to a citizen by court sentence for the commission of grave or particularly grave crime, entails loss of the right to be elected to bodies of State power and bodies of local self-government irrespective of what period has passed from the moment of termination of serving penalty, of whether the conviction was removed or cancelled, i.e. restriction of passive electoral right extends to citizens made criminally answerable both before and after the establishment of this restriction, and its operation is not directly determined by any term; neither is it of importance what exactly was the term of deprivation of liberty prescribed under court sentence, was the penalty served in places of deprivation of liberty or it was conditional.

By its nature in the system of operating legal regulation, restriction of passive electoral right, stipulated for by the indicated legislative provision, does not directly belong to measures of criminal responsibility, so far as has not a criminal-law, but a constitutional-law character: it was introduced by the federal legislator as a special constitutional-law disqualifying obstacle for occupation of elective public posts (and, accordingly, possibility to be a candidate at respective elections), attended by increased reputational requirements to bearers of public (political) power, what is determined by their direct participation in adoption of legal acts (normative and individual) and responsibility which exercise of their powers is connected with.

Such restriction, not indicated in the sentence as a penalty, by virtue of the law is applied as following the very fact of conviction to deprivation of liberty for the commission of a grave or particularly grave crime, i.e. for the commission of an action of a certain category envisaged by the criminal law and, not being criminal penalty, is nevertheless general legal consequence of the conviction. But the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation” contains respective restrictions neither in relation to persons having committed crimes of

small and medium gravity (with the exception of those convicted for the commission of crimes of extremist direction, envisaged by the Criminal Code of the Russian Federation, and by the day of voting having non-removed and non-cancelled criminal record, – Sub-Item “б” of Item 3² of Article 4), nor in relation to persons having committed grave or particularly grave crimes, irrespective of cancellation or removal of the conviction, if the penalty prescribed to them was not connected with deprivation of liberty.

3.1. Life ban on occupation of posts in the field of State activity in connection with actual or former criminal record is established, in particular, in relation to judges (Sub-Item 2 of Item 1 of Article 4 of the Law of the Russian Federation of 26th June, 1992 No. 3132-I “On the Status of Judges in the Russian Federation”), workers of the Prosecutor’s Office (Item 2 of Article 40¹ of the Federal Law of 17th January, 1992 No. 2202-I “On the Prosecutor’s Office of the Russian Federation”), staff-members of the police (Item 2 of Section 1 of Article 29 of the Federal Law of 7th February, 2011 No. 3-Φ3 “On the Police”) and Investigation Committee of the Russian Federation (Item 2 of Section 4 of Article 16 of the Federal Law of 28th December, 2010 No. 403-Φ3 “On the Investigation Committee of the Russian Federation”).

Ban of the same kind also operates for persons carrying out labour activity in the field of education, upbringing, development of minors, organization of their rest and sanitation, medical care, social protection and social service, in the field of children’s and youthful sports, culture and art with participation of minors (Article 351¹ of the Labour Code of the Russian Federation), if such persons have or have had previous convictions for the commission of grave or particularly grave crimes, as well as crimes against sexual inviolability and sexual freedom of person. Its introduction, determined by specific character of the indicated activity, as follows from the legal position of the Constitutional Court of the Russian Federation (Judgment of 18th July, 2013 No. 19-II), does not go beyond the bounds of limitations envisaged by Article 55 (Sections 2 and 3) of the Constitution of the

Russian Federation, since it does not abrogate the right itself to be engaged in labour activity in other fields.

As far as restriction of passive electoral right in connection with the conviction to deprivation of liberty for the commission of grave or particularly grave crimes is concerned, its appraisal must be carried out with consideration of the need to protect public interest following from Articles 3 and 55 (Section 3) of the Constitution of the Russian Federation, which consists first of all in ensuring diversified representation of citizens in managing State affairs, as well as humanizing of criminal penalties and granting persons convicted of crimes the possibility of correction.

Sub-Item “a” of Item 3² of Article 4 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation” does not allow to trace other connection between the committed crime and the following ban to occupy any elective public post except the assumption that a person having ever been convicted to deprivation of liberty is unworthy to carry out public commanding and managing functions. Meanwhile, unlimited in time restriction of passive electoral right by a federal law can not be justified by the only fact of previous conviction as its sole substantiation – such restriction may not be irreversible; within the meaning of Articles 32 (Section 3) and 55 (Sections 2 and 3) of the Constitution of the Russian Federation it is admissible only as a temporary measure.

Establishment of indefinite (life) ban to be candidate at elections to bodies of State power and bodies of local self-government (initially it coincided with the term of penalty, later – with the term of criminal record following it) by the Federal Law of 2nd May, 2012 No. 40-Φ3 ”On Amendments to the Federal Law “On General Principles of Organization of 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” causes doubt also from the point of view of the historical, political and legal context in the form

in which it is reflected at present in the Constitution of the Russian Federation, orientating Russia towards strengthening of legal democracy.

Within the meaning of Article 32 (Section 3) of the Constitution of the Russian Federation, such ban is admissible only in the event of prescription of criminal penalty in the form of life imprisonment. Restrictions of passive electoral right for other term by a federal law are possible if they pursue constitutionally protected goals indicated in Article 55 (Section 3) of the Constitution of the Russian Federation and are proportionate to them. Indefinite deprivation of a citizen of the right to be elected, although he is not sentenced to life imprisonment, represents such a restriction of this right, which broaches its very essence, makes it impossible to realize the right as such in neither form during the whole life of this citizen even after serving punishment by him, i.e., in breach of Articles 3 (Sections 2 and 3), 15 (Section 4), 17 (Section 3), 19 (Sections 1 and 2) and 55 (Sections 2 and 3) of the Constitution of the Russian Federation, turns exactly into abolition of passive electoral right, which is inadmissible. At this, since in the legal system of the Russian Federation the Constitution of the Russian Federation has supremacy and higher legal force, inadmissibility of indefinite deprivation of citizens of this right can be overcome neither by a federal law nor by international law treaty of the Russian Federation.

3.2. Proportionality of restrictions of passive electoral right contemplates not only exclusion of indefinite character of the ban on its realization. In the presence of a certain, sufficiently long term of restriction of this right proportionality must be ensured not only at the expense of its legislative extension to categories of grave and particularly grave crimes, but also by means of individualization of the penalty prescribed by court, corresponding to the character and the degree of public danger of the crime belonging to the indicated categories, circumstances of its commission and personality of the guilty person, which in itself is compatible with the requirements of Articles 32 (Sections 1 and 2) and 55 (Section 3) of the Constitution of the Russian Federation and by virtue of the respective prescription 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 envisages such restriction, means the need of its application without special indication of it in the sentence.

Differentiation and individualization of restrictions of passive electoral right can be ensured at the expense of legislative detailing of normative restrictions themselves (their extension to certain categories and (or) kinds of crimes), combined with prescription by court in the sentence, with regard to the character and public danger of the action and other circumstances of the case, including the defendant’s personality, of a penalty not lower than certain limit, which by virtue of the law itself, without special indication on such restriction in the sentence, will be equal to deprivation of the convicted of this right. Analogous position was formulated by the European Court of Human Rights in the judgment of 22nd May, 2012 in the case “Scoppola vs. Italy” (No. 3) (Items 96, 99, 102 and 106).

Principle of proportionality, realized by means of differentiation and individualization of application to a citizen of such a measure as restriction of passive electoral right, determined by the commission of a grave or particularly grave crime, within the meaning of Articles 3, 15 (Section 4), 17 (Section 3), 19 (Sections 1 and 2), 32 (Sections 1 and 2) and 55 (Sections 2 and 3) of the Constitution of the Russian Federation in the interconnection with Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms in its interpretation by the European Court of Human Rights, contemplates that the terms of such restriction must be established by the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation” with consideration of the provisions of the criminal law defining criminality of an action, as well as its punishability and other criminal-law consequences.

3.3. According to Article 15 of the Criminal Code of the Russian Federation, actions envisaged by this Code are subdivided into crimes of small gravity, crimes of medium gravity, grave crimes and particularly grave crimes depending on the character and the degree of social danger of an action (Section 1), and as criteria of

delimitation of the categories of grave and particularly grave crimes from the crimes of medium gravity only maximum terms of penalty in the form of deprivation of liberty are named (not more than 5 years for intentional crimes of medium gravity, up to 10 years – for grave crimes, more than 10 years or more severe penalty – for particularly grave crimes), and minimum terms are not indicated.

Accordingly, in the conditions of operating legislative regulation the situation is highly probable when for a grave or even particularly grave crime the prescribed penalty may be less severe than that for a crime of medium gravity. And if a court comes to the conclusion that the convicted person can be corrected without real serving of penalty, then in accordance with Article 73 of the Criminal Code of the Russian Federation it may decide to consider the prescribed penalty conditional, i.e. without keeping the convict in places of deprivation of liberty; when prescribing conditional conviction, the court takes into account the character and the degree of public danger of the committed crime, the defendant's personality, including extenuatory and aggravating circumstances, and establishes period of probation during which conditionally convicted must prove his correction by his behavior (Sections 1 – 3). For instance, for grave crime penalty may be prescribed in the form of 3 years of deprivation of liberty conditionally with the period of probation for the term of 2 years (as it took place in the case of A.L.Kazakov), although for a crime of medium gravity 5 years of deprivation of liberty may be prescribed with serving penalty in the places of deprivation of liberty (maximum penalty for this category).

Abstract prescriptions of Article 15 of the Criminal Code of the Russian Federation create no obstacles for the realization of the principles of equality, fairness and proportionality in the criminal law, so far as it is contemplated that the court considering a criminal case is guided both by these and other provisions of this Code (of its General and Particular parts), containing normative characteristics of crime and punishment, rendering them concrete as applied to every single crime and defendant's personality, and with consideration of all circumstances of the

case within the framework of discretion granted to it prescribes penalty, proportionate to the committed crime.

In contradistinction to criminal penalty which may be prescribed only by court sentence, the measure in the form of restriction of passive electoral right, stipulated for by Sub-Item “a” of Item 3² of Article 4 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation”, the court does not prescribe, since it does not directly solve the question of whether it should be applied to the guilty person. Nevertheless, such restriction is an “automatic” consequence of the sentence, and that is why its proportionality, within the meaning of Articles 19 (Sections 1 and 2), 32 (Sections 2 and 3) and 55 (Section 3) of the Constitution of the Russian Federation in the interconnection with Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, must be ensured by differentiation depending not only on the category of a crime, but also on its character and the degree of public danger, circumstances of the commission and personality of the convicted.

Meanwhile, Sub-Item “a” of Item 3² of Article 4 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation” does not admit the possibility of restriction of the right to be elected by one or another term with accounting of the prescribed penalty: one and the same, sufficiently strict restriction (even if it were not of indefinite character) is applied on the ground that the crime is ascribed to the category of grave or particularly grave crimes, irrespective of the kind (depending on the object of infringement) and the degree of public danger, and even in the event if the court with consideration of all circumstances of the case decides that the committed action deserves less severe penalty than maximum admissible at commission of a crime of medium gravity. In this situation, the note is not taken of what penalty exactly is prescribed – real deprivation of liberty or conditional conviction, as well as for what term the citizen is deprived of liberty.

4. According to Article 86 of the Criminal Code of the Russian Federation, a person convicted for the commission of a crime is considered convicted from the day of entering of accusatory sentence of a court into legal force and until the moment of cancellation or removal of the conviction from the criminal record; previous convictions are taken into account at recidivism of crimes, prescription of penalty and entail other legal consequences in cases and in the procedure established by federal laws (Section 1); the criminal record is cancelled: in relation to persons convicted conditionally – on expiry of the period of probation; in relation to persons convicted to more mild kinds of penalties than deprivation of liberty – on expiry of one year after serving or execution of the penalty; in relation to persons convicted to deprivation of liberty for the crimes of small or medium gravity – on expiry of 3 years after serving the penalty; in relation to persons convicted to deprivation of liberty for grave crimes – on expiry of 8 years, and for particularly grave crimes – 10 years after serving the penalty (Section 3); if a convicted person after serving the penalty behaved irreproachably, upon his application the court may strike previous conviction off his record before expiry of the term of cancellation of criminal record (Section 5); cancellation or removal of criminal record annuls all legal consequences connected with criminal record (Section 6).

Revelation of the authentic meaning of the adduced legislative provisions, which render concrete the principles of juridical equality and legal certainty, as well as the principle *nullum crimen, nulla poena sine lege*, expressed in the Constitution of the Russian Federation (Article 19, Section 1; Article 54, Section 2), is impossible out of connection with the subject-matter of regulation of the criminal legislation: the Criminal Code of the Russian Federation, according to Section 2 of its Article 2, establishes the ground and principles of criminal responsibility, defines what actions dangerous for a person, society or the State are recognized as crimes and establishes kinds of penalties and other measures of criminal-law character for the commission of crimes; criminality of an action, as

well as its punishability and other criminal-law consequences are determined only by this Code; application of criminal law on analogy is not admitted (Article 3).

As the Constitutional Court of the Russian Federation pointed out in the Judgment of 19th March, 2003 No. 3-II, criminal record is in the first instance a criminal-law institution which has significance for the purposes of realization of criminal responsibility. In accordance with the Criminal Code of the Russian Federation, it is taken into account when qualifying a number of crimes (Section 5 of Article 131, Section 5 of Article 132, Section 6 of Article 134 and Section 5 of Article 135), when establishing the presence of recidivism of crimes (Article 18), as a circumstance hindering release from criminal responsibility and punishment (Section 1 of Article 75, Articles 76 and 80¹), for extension of retroactive effect of the law to the convicted (Section 1 of Article 10). Besides, criminal record influences the peculiarities of the regime of serving individual kinds of penalties (envisaged by the Criminal Executive Code of the Russian Federation) and establishment of administrative supervision over some categories, being released or having been released from the places of deprivation of liberty and having non-cancelled or non-removed criminal record (Federal Law of 6th April, 2011 No. 64-Φ3 “On Administrative Supervision over Persons Released from the Places of Deprivation of Liberty”), i.e. in criminological sense is aimed at individualization of criminal responsibility, as well as prevention of crimes.

By its legal nature, the institution of criminal record as a criminal-law means aimed at ensuring constitutional principle of equality of all before the law and the court in the field of criminal-law relations, serves for attainment of the constitutionally significant goals of differentiation of criminal responsibility and punishment, strengthening of its corrective influence on the convicted, prevention of new crimes and thereby protection of personality, society and the State from criminal infringements; criminal-law consequences of criminal record, provided for in the Criminal Code of the Russian Federation, do not go beyond the bounds of criminal-law means which the federal legislator is entitled to use for attainment of the indicated goals (Judgment of the Constitutional Court of the Russian

Federation of 19th March, 2003 No. 3-II, Ruling of the Constitutional Court of the Russian Federation of 22nd March, 2012 No. 439-O-O).

The Russian legislation stipulates for legal consequences of criminal record not pursuing the end of realization of criminal responsibility, which manifest themselves in other branches and are connected with the ban to occupy certain posts (in particular, judges, workers of the Prosecutor's Office, staff-members of the police and others) or to be engaged in certain kinds of activity, to deal with objects of increased danger (for instance, arms) and others. Beyond the bounds of criminal-law regulation criminal record (former convictions) acquires autonomous significance and entails not criminal-law, but general legal, mediated consequences, which are established not by the Criminal Code of the Russian Federation, but by other federal laws proceeding from the nature and specific character of regulation of respective relations, contemplating no restrictions of criminal-law character. In such cases possible restrictions of rights (including those connected with occupation of a public post), not being criminal penalty, are nevertheless general legal consequence of former convictions, and therefore terms for which they are introduced, as a general rule, must also conform to terms of keeping previous convictions on the record. At the same time, as an exception, if it is necessary for the protection of constitutional values, the question of terms may be resolved in the federal law in a different way, taking into account the subject of regulation and with observance of the criteria of reasonableness and proportionality.

Proceeding from this, the provisions of Sub-Item "a" of Item 3² of Article 4 of the Federal Law "On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation" and Section 6 of Article 86 of the Criminal Code of the Russian Federation in their interconnection within their constitutional-law meaning in the system of operating legal regulation contemplate as a general rule that the terms of restrictions of passive electoral right introduced by the federal law as general legal consequence of previous convictions must be established in accordance with differentiation of

the terms of criminal record, stipulated for by the Criminal Code of the Russian Federation (as it was, in particular, fixed by Sub-Item “a” of Item 3² of Article 4 of the Federal Law “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 5th December 2006 No. 225-Φ3 and remains in Sub-Item “б” of the same Item in the wording in force as applied to persons convicted for the commission of crimes of extremist direction). In exceptional cases, for individual grave and particularly grave crimes, proceeding from the increased degree of their public danger, federal law may introduce restrictions also for longer terms with observance of constitutional criteria of proportionality and necessity.

5. According to Section 1 of Article 10 of the Criminal Code of the Russian Federation, a criminal law, eliminating criminality of an action, mitigating punishment or in another way ameliorating the state of a person having committed crime, has retroactive force, i.e. is extended to persons having committed respective actions prior to entering into force of such a law, including persons serving sentence or having served sentence, but having criminal record. The adduced legislative provisions render concrete the prescriptions of the Constitution of the Russian Federation, which, proceeding from the general legal principles of fairness and proportionality of responsibility for the committed action to its real public danger, establishes that in case of elimination or mitigation of the responsibility for committed action by the new law the new law shall be applied (Article 54, Section 2).

In court practice, Section 1 of Article 10 of the Criminal Code of the Russian Federation is understood in a way that retroactive effect of the new law, ameliorating the state of a person having committed crime, is extended only to incomplete criminal legal relations, namely to those legal relations, the subjects of which are persons serving penalty or having served penalty, but having non-removed or non-cancelled conviction on the record.

5.1. From the point of view of the criteria of necessity and proportionality, following from Articles 17 (Section 3), 19 (Sections 1 and 2) and 55 (Section 3) of

the Constitution of the Russian Federation, restriction for persons whose criminal record has been cancelled or removed of the possibility to reconsider the sentence in the direction of mitigation according to the new criminal law, based on Section 1 of Article 10 of the Criminal Code of the Russian Federation, can not in itself be regarded as breaking the Constitution of the Russian Federation, including its Articles 46 (Section 1) and 54 (Section 2).

Granting of such possibility without limitation to all persons having committed respective actions prior to entering of the new law into force, irrespective of served penalty or presence of non-removed or non-cancelled criminal record would entail reconsideration of a large number of court decisions on criminal cases having entered into legal force, which can lead to breach of the constitutional principle of legal certainty, implied by Article 19 (Sections 1 and 2) of the Constitution of the Russian Federation, which appears as one of the main signs of the supremacy of law, includes in itself the requirements of reasonableness of legal regulation and stability of legal order, steadiness of the formed system of legal relations and whose legal significance was repeatedly confirmed by the Constitutional Court of the Russian Federation (Judgments of 24th May, 2001 No. 8-II, of 19th June, 2002 No. 11-II, of 27th May, 2003 No. 9-II, of 5th February, 2007 No. 2-II and of 16th May, 2007 No. 6-II). Each of the participants of legal relations staying under the protection of Article 17 (Section 3) of the Constitution of the Russian Federation must have opportunity to be confident in invariability of the officially recognized legal status – both his own and of other persons (including those convicted for crimes directed against him or against public interests), which he commensurated his behavior and its consequences with.

Proportionality of restriction following from Section 1 of Article 10 of the Criminal Code of the Russian Federation is achieved by the fact that persons whose criminal record has been removed or cancelled have already served penalty in full accordance with criminal law which operated at that moment, and freed themselves from the places of deprivation of liberty. As the Constitutional Court of the Russian Federation repeatedly noted, this Article, defining the procedure of

discontinuance of criminal-law consequences of the action committed by a person in connection with publication of a new criminal law eliminating or mitigating responsibility for it, does not in itself violate constitutional rights of persons whose criminal record at the moment of adoption of the new criminal law has been already removed or cancelled and in relation to whom criminal-law consequences of the conviction have thus exhausted themselves (Rulings of 25th January, 2007 No. 96-O-O, of 5th March, 2009 No. 469-O-O, of 16th July, 2009 No. 1001-O-O, of 17th July 2012 No. 1462-O, of 24th September, 2012 No. 1816-O and of 24th January, 2013 No. 52-O).

Thus, the provisions of Section 1 of Article 10 of the Criminal Code of the Russian Federation to the extent to which they determine the procedure of application of the new criminal law within the framework of criminal legal relations, when it is necessary for correction of criminal-law consequences of instituting criminal proceedings, which is possible only in the procedures of criminal judicial proceedings, with consideration of legal positions formulated by the Constitutional Court of the Russian Federation earlier, are aimed at realization of the principle of legal certainty and stability of legal order and as such do not break the principles of juridical equality and retroactive effect of the law eliminating or mitigating responsibility for offences (Article 19, Section 1; Article 54, Section 2, of the Constitution of the Russian Federation).

Accordingly, Section 1 of Article 10 of the Criminal Code of the Russian Federation, as intended for application only with the object of realization of criminal responsibility, i.e. within the bounds of criminal-law consequences of the conviction, can not serve as obstacle for extension of operation of the new criminal law, by which some or other actions are no more recognized as grave or particularly grave crimes, to legal relations with participation of persons with cancelled or removed criminal record, connected with application of Sub-Item “a” of Item 3² of Article 4 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation”, so far as restriction of passive electoral right established by it

is a general legal (and not criminal-law) consequence of former conviction. The provision contained in it “with the exception of cases, when in accordance with the new criminal law actions are not recognized as grave or particularly grave crimes” within its literal meaning contemplates that in these cases the new law must be extended also to citizens convicted before its adoption and, consequently, operation of restriction of passive electoral right in relation to these citizens is subject to discontinuance by virtue of the law.

Meanwhile, the law-applying practices attribute other meaning to the said legislative provision in its interconnection with Section 1 of Article 10 of the Criminal Code of the Russian Federation, regarding them as not admitting extension of the new criminal law, by which respective actions are no more recognized as grave or particularly grave crimes, to citizens in relation to whom restriction of passive electoral right is applied, which A.S.Latypov’s case, in particular, testifies to: when considering the dispute connected with repeal of his registration as a candidate at elections, court of general jurisdiction, having considered itself as not entitled to invade into questions of the action’s qualification resolved earlier by the sentence on A.S.Latypov’s case, refused to extend to him the new criminal law, by which the action committed by him was ascribed to crimes of another category; at the same time the court refused to admit for consideration A.S.Latypov’s application on reconsideration of the sentence in connection with criminal record which existed in the past with reference to Article 10 and Section 6 of Article 86 of the Criminal Code of the Russian Federation. Thereby, the provisions of Article 10 of the Criminal Code of the Russian Federation, intended for application with the object of realization of criminal responsibility of persons having non-removed or non-cancelled criminal record were applied equally in other legal relations having arisen in connection with general legal consequences of former conviction.

As a result, in breach of the principles of fairness, juridical equality and constitutional legality, following from the Constitution of the Russian Federation (Preamble, Articles 4, 15, 19 and 120), the law-applying bodies, including courts,

do not take into account the will of the federal legislator expressed in the new criminal law eliminating or mitigating criminal responsibility, i.e. being an act which defines the character and the degree of public danger of some or other crimes and legal status of persons having committed them in the new way (Judgment of the Constitutional Court of the Russian Federation of 18th July, 2013 No. 19-II). This leads to the situation where citizens who had criminal record (convictions) in the past and in relation to whom reconsideration of the sentence on the basis of Article 10 of the Criminal Code of the Russian Federation is already impossible, find themselves in a situation worse as compared with those whose criminal record has not yet been removed or cancelled.

5.2. Thus, the provisions of Sub-Item “a” of Item 3² of Article 4 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation” and Section 1 of Article 10 of the Criminal Code of the Russian Federation in their interconnection to the extent to which these legislative provisions within the meaning attributed to them by the law-applying practices serve as a ground to refuse restoration of passive electoral right of citizens who were convicted to deprivation of liberty for the commission of grave and (or) particularly grave crimes and whose criminal record has been removed or cancelled, in case of adoption of a new criminal law according to which actions committed by them are not recognized as grave or particularly grave crimes any more, break the guarantees of juridical equality and retroactive effect of the law, following from Articles 19 (Section 1), 32 (Sections 1, 2 and 3) and 54 (Section 2) of the Constitution of the Russian Federation.

6. The appraisal of Sub-Item “a” of Item 3² of Article 4 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation”, including in its interconnection with Section 1 of Article 10 and Section 6 of Article 86 of the Criminal Code of the Russian Federation, contained in the present Judgment, as well as the consequences of such appraisal fully extend to identical provisions of

Sub-Item “a” of Section 5 of Article 6 of the Law of Kirov Region “On Elections of Deputies of Representative Bodies and Heads of Municipal Entities in Kirov Region” and Item 1 of Section 3² of Article 4 of the Electoral Code of Primorsky Territory.

Concluding from the above and pursuant to Article 6, Section 2 of Article 71, Articles 72, 74, 75, 78, 79 and 100 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation

h e l d :

1. To recognize Sub-Item “a” of Item 3² of Article 4 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation”:

as conforming to the Constitution of the Russian Federation to the extent to which restriction of passive electoral right not being criminal penalty, established by it in relation to citizens of the Russian Federation convicted to deprivation of liberty for grave and (or) particularly grave crimes, may be applied in the mechanism of general legal consequences of the conviction without special indication in the sentence as established for a certain term constitutional-law disqualifying obstacle for occupation of elective public posts by such persons after serving penalty by them;

as not conforming to the Constitution of the Russian Federation, its Articles 3 (Sections 2 and 3), 15 (Section 4), 17 (Section 3), 19 (Sections 1 and 2), 32 (Sections 1, 2 and 3) and 55 (Sections 2 and 3) to the extent to which it establishes indefinite and undifferentiated restriction of passive electoral right in relation to citizens of the Russian Federation convicted to deprivation of liberty for the commission of grave and (or) particularly grave crimes.

2. To recognize the provisions of Sub-Item “a” of Item 3² of Article 4 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation” and Section 6 of Article 86 of the Criminal Code of the Russian Federation in their

interconnection as not contradicting the Constitution of the Russian Federation, so far as within the constitutional-law meaning of these legislative provisions in the system of operating legal regulation it is contemplated that terms of restrictions of passive electoral right introduced by federal law must, as a general rule, be established in accordance with differentiation of the terms of keeping of criminal record stipulated for by the Criminal Code of the Russian Federation.

In exceptional cases, for individual grave and particularly grave crimes, proceeding from the increased degree of their public danger, federal law may introduce restrictions of passive electoral right for longer terms with the observance of constitutional criteria of proportionality and necessity.

3. To recognize the provisions of Sub-Item “a” of Item 3² of Article 4 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation” and Section 1 of Article 10 of the Criminal Code of the Russian Federation in their interconnection to the extent to which these legislative provisions within the meaning attributed to them by the law-applying practices serve as ground for refusal to restore passive electoral right of citizens who were convicted for the commission of grave and (or) particularly grave crimes and whose previous convictions have been removed from the criminal record or cancelled, in case of adoption of a new criminal law in accordance with which actions committed by them are not recognized as grave or particularly grave crimes any more, as not conforming to the Constitution of the Russian Federation, its Articles 19 (Section 1), 32 (Sections 1, 2 and 3) and 54 (Section 2).

4. The federal legislator must, in order to ensure holding of elections which will be appointed after entering of this Judgment into force, guided by the Constitution of the Russian Federation and with consideration of legal positions expressed in the present Judgment, immediately make appropriate amendments to Sub-Item “a” of Item 3² of Article 4 of the Federal Law “On Fundamental Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation”, as well as establish procedural guarantees

ensuring the possibility of restoration of passive electoral right of citizens, whose previous convictions have been removed from the record or cancelled, in case of adoption of a new criminal law, in accordance with which action committed by them is no more recognized as grave or particularly grave crime.

5. In accordance with Section 3 of Article 79 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” law-applying decisions passed in relation to citizens G.B.Yegorov, A.L.Kazakov, I.Yu.Kravtsov, A.V.Kupriyanov, A.S.Latypov and V.Yu.Sin’kov on the basis of legislative provisions, having appeared the subject-matter of consideration by the Constitutional Court of the Russian Federation on the present case, to the extent to which these legislative provisions have been recognized as not conforming to the Constitution of the Russian Federation, must be reconsidered in the established procedure.

So far as restoration of passive electoral right of citizens-petitioners in the present case is impossible within the framework of the terminated electoral process, they are entitled to make use of compensatory mechanisms provided for by operating legislation.

6. 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 and officials.

7. The present Judgment is subject to immediate publication in Rossiyskaya Gazeta, the Collection of Laws of the Russian Federation, on the official Internet-portal of legal information (www.pravo.gov.ru) and in the official publications of bodies of State power of Kirov Region and Primorsky Territory. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

The Constitutional Court
of the Russian Federation.