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Analytical Report
**On Crucial Changes in Legislation
Regarding Russian Presidential
Elections of 2018 as Compared
to Elections of 2012**

The Golos Movement presents the analysis of key changes in the legislation of the Russian presidential elections of 2018, comparing them with statutory regulation of the presidential elections of 2012.

The Russian presidential elections of 2018 will be held pursuant to legislation, which substantially differs from the laws that governed the previous elections of 2012. It should be noted that in 2012-2017, 15 changes were introduced to the Federal law “On elections of the President of the Russian Federation,” changing 59 out of 87 articles and all four appendices to this law.

Furthermore, a number of provisions of the Federal law “On the principal guarantees of electoral and referendum rights of the citizens of the Russian Federation,” relevant to the elections of the President of the Russian Federation, but not duplicated in the Federal law “On elections of the President of the Russian Federation,” have also been changed. This concerns the creation of electoral districts and district election commissions, as well as the deadlines for appealing voting returns and election results.

We believe that the changes have no single vector. The first amendment, introduced in May of 2012, which dramatically reduced the number of voter signatures required for the candidate’s registration, was aimed at democratization

of elections. However, the greater part of amendments introduced in 2012-2016 seemed to follow opposite aims, bringing new restrictions on the right to be elected; additional restraints on candidate registration; constraints on election monitoring, and reduction of the periods for appealing voting returns and elections results. The changes introduced in 2017 once again had a mostly democratic vector: guaranteeing the citizens that reside far from the place of their permanent registration an opportunity to vote as well as certain concessions on election monitoring restrictions.

Below, we consider the most important changes in greater detail.

1. Changes to the number of signatures in favour of a candidate's nomination

The most radical change comes in the form of a reduction in the number of required signatures. The laws of 1995 and 1999 demanded that all of the candidates provide no less than one million signatures (which amounted to approximately 0.9% of registered voters). The law of 2003 relieved the candidates representing parliamentary parties from the collection of signatures, while all other candidates had to submit two million signatures each (approximately 1.8% of registered voters). Such demand was excessive and failed to meet the recommendations of the Venetian Commission, which states that no more than 1% of voters should submit their signatures at this preliminary stage.

From 2 May 2012, Federal law №41-FZ reduced the number of signatures for candidates representing non-parliamentary parties to 100,000 signatures, and for self-nominated candidates the number was set at 300,000 signatures. We believe that on its own, the reduction in numbers of obligatory signatures is the correct step that promotes democratization of presidential elections. At the same time, we consider the difference in requirements for candidates from non-parliamentary parties and self-nominating candidates legally incorrect and politically unjustified. Moreover, there are grounds to believe that the said

difference contradicts the Russian Constitution.

The Constitutional Court of the Russian Federation has indicated on multiple occasions that “any differentiation of statutory regulation that results in differences in the rights and obligations of the subjects of electoral legal relations can be allowed only if it is objectively explained, justified, and seeks constitutionally meaningful goals, while the legal remedies used for the achievement of these goals are proportional to them” (see, for example, Ruling №233-O-O from 7 February, 2012). In this case, however, we see that there are no objective explanations or justifications for such differentiation.

Thus, it should be kept in mind that in accordance with the requirements of federal law “On Political Parties,” a political party should have no less than 500 members. At the same time, the federal law “On Elections of the President of the Russian Federation” stipulates that the candidate’s self-nomination requires the creation of a group of voters that includes no less than 500 citizens of Russia with active voting rights. In this way, by default, the level of support for the self-nominating candidate is approximately the same as the level of support for the candidate from a small party. In connection with this, there are no good reasons to present these candidates with such different requirements regarding the number of voter signatures submitted for registration.

Furthermore, in accordance with the Constitutional Court’s position and provisions of Russia’s electoral legislation, the provision of voter signatures by the candidate is required to confirm the presence of sufficient support that the candidate enjoys. For this reason we believe that the requirement for a number of signatures cannot be different for different candidates: the sufficient level of voter support can only be a single number.

2. Restrictions on the right to be elected

From 2 May 2012, Federal law №40-FAZ introduced additional restrictions

on the right to be elected: it was permanently taken away from the citizens of Russia who have ever been imprisoned for grave and/or especially grave offences.

In its Ruling №20-P from 10 October 2013, the Constitutional Court of the Russian Federation ruled that this provision is inconsistent with the Russian Constitution to the extent that it sets the permanent and non-differentiated restrictions on the right to be elected regarding the citizens of Russia sentenced to imprisonment for grave and/or especially grave offences.

From 21 February 2014, Federal law №19-FZ, changed this provision. According to the new legislation, persons imprisoned for grave offences lose their right to be elected for a 10 year period from the day that their criminal conviction is expunged or expires, while persons imprisoned for especially grave offences lose this right for 15 years after such date.

By doing this the legislators removed the permanent restriction on the right to be elected, which was inconsistent with the Constitution. Nonetheless, a number of legal experts believe that the new provision cannot be seen as implementing the Constitutional Court's ruling when it comes to non-differentiated restrictions on the right to be elected.

The new provision was contested in the Constitutional Court on a number of occasions, but the Court always came back with negative rulings. One of the contested points was the restriction on the right to be elected for persons who were given a suspended sentence. To this the Constitutional Court replied in its Ruling №2508-O of 9 November, 2017, noting that “in the existing system of criminal statutory regulations, punishment in the form of imprisonment for a certain period of time, regardless of whether it was or wasn't suspended, is the harshest punishment, and imposition of such punishment attests to the distinct danger that the unlawful actions of the citizen pose to society.”

A member of the Constitutional Court K. Aranovsky (an expert in election legislation and the former chairman of the Election Commission of Primorsky Krai), filed a dissenting opinion, which states that a “suspended sentence usually testifies to the moderate danger that the action poses to society, even if the criminal

law considers it a grave offence. The danger of the action is determined not just by law, but also by the court, which evaluates its actual graveness in its ruling and the imposed punishment. If the court decides that the crime does not merit actual imprisonment and a suspended sentence is sufficient, this reflects the graveness of the crime in the context of its nature and danger to society, directly following part 2 of article 73 of the Criminal Code of the Russian Federation.”

It should also be noted separately that article 15 of the Criminal Code specifies that the only criterion for differentiating categories of grave and especially grave offences from crimes of average gravity can be found in the maximum prison sentences imposed for such crimes. It states, in particular, that premeditated crimes of average gravity should be punished by no more than five years, grave offences should be punished by up to 10 years, and especially grave offences — by sentences of more than 10 years, or more serious punishments. Thus, we agree with Aranovsky’s position and believe that the classification of crimes on the basis of article 15 of the Criminal Code cannot be used as foundation for differentiation of restrictions on the right to be elected, because it does not reflect the real degree of the candidate’s danger to society.

We cannot say categorically that the deprivation of persons with suspended sentences of their right to be elected is not consistent with the Russian Constitution. But even if we allow that this provision is consistent with the Constitution, we consider it anti-democratic and believe that it makes the elections significantly less competitive.

3. Introduction of additional requirements and documents for candidate registration

From 7 May 2013, Federal law №102-FZ stipulated that the package of documents submitted by a candidate to the Central Election Commission of the Russian Federation should include, among other things:

- 1) information about real estate property owned by the candidate, his/her

spouse and minor children outside of the Russian Federation, information about sources of income that was used to purchase the said real estate, as well as information about liabilities of the candidate, his/her spouse and minor children beyond the borders of the Russian Federation;

2) information about the candidate's expenses, as well as the expenses of his/her spouse and minor children, in each deal that involved the acquisition of a land lot, other real estate properties, transport, securities, shares (stockholdings/equity interest in the equity capital of organizations) that was completed in the last three years, if the sum of the deal exceeds the aggregate incomes of the candidate and his/her spouse for the last three years prior to execution of the contract, as well as information on the sources of such funds that were used to complete the deal.

The same law stipulated that at the time of submitting the documents required for candidate registration, the candidate is obligated to close the accounts (bank deposits) and to stop the safekeeping of cash and valuables in foreign banks located outside of the Russian Federation, and/or to dispose of the foreign financial instruments.

The failure to fulfil these obligations constitutes grounds for refusal of registration.

Evidence suggests that the introduction of similar requirements at elections on lower levels has regularly resulted in refusals to register well-known and promising candidates, while certain candidates from the business community decided to forego elections altogether because they couldn't afford to give up on the use of foreign financial instruments.

It should also be noted that the legal requirements lack uniformity. The candidates that occupy positions incompatible with the position, for which they are running, are obliged to give up the position only if they are elected. But here we see a different approach, as the candidate is obliged to make all the necessary steps at the time of submitting documents for registration, which is unlikely to be justified.

4. Changes to the rules of campaigning

The articles concerned with information for the voters and campaigning were augmented to account for a new subject of the law in the form of the editorial offices of online media. They are presented with the same requirements as the traditional mass media organizations.

The campaign materials can no longer use statements about the candidate or the political party that nominated the candidate made by private persons who, in accordance with the law, do not have the right to campaign.

The use of private persons' images in campaign materials is only allowed if the political party uses the images of its candidate, including those among an unspecified group of people, or if the candidate uses his/her own images, including those among an unspecified group of people.

It has been specified that the candidates are allowed to pass out campaign materials providing the cost does not exceed 100 rubles per unit.

5. Changes to the order of forming electoral districts and district election commissions

Up until 2013, electoral districts were created from scratch for each election. District election commissions were also formed anew for each election.

From October 2 2012, Federal law №157-FZ established that electoral districts remain consistent for all the elections and referenda that take place on the relevant territory. In accordance with this law, the electoral districts have to be created for a period of five years. The following grounds were envisioned for the adjustment of lists and borders of electoral districts: transformation of municipal entity; increase in the number of voters at a specific electoral district to more than 3,100; reduction in the number of voters to 50 and less; and transversion of the

borders of electoral precincts by the borders of electoral districts.

The same law stipulated the five-year term of tenure for the district election commissions (except for commissions created at special electoral districts). It was also specified that candidates who were nominated to the district commission, but were not appointed to this position, would be added to the reserve crew of the district commissions. Having said that, the new members of the district election commission who replace the dropouts have to be appointed from the reserve crew of the commission.

From June 1 2017, Federal law №104-FZ amended the order of creating electoral districts. Now, the borders of such districts can go unrevised if there is no need for this. The said law has added several new reasons for the adjustment of lists and borders of electoral districts: to reduce the maximum number of voters to 1,500; to increase the maximum number of voters to 3,000; to guarantee the greatest convenience for the voters taking into account the commissioning of new apartment buildings in the electoral district; or if the voting premises have to be replaced with new ones.

The waiving of needless electoral district revision should be welcomed. The continuity of the lists of electoral districts is convenient for the voters and election observers, and allows for the comparison of election results from different years.

From June 1 2017, Federal law №104-FZ has opened up a way for the downsizing of electoral districts with more than 1,500 voters (there are many such districts in large cities) on the eve of the presidential elections. Overall, such an idea should be welcomed. Experts say that the maximum number of voters per district specified by the Russian legislation (3,000 people) is one of the worlds highest. This number is a holdover from Soviet times, when at the “elections” the voters didn’t have to fill out any ballot cards, and the election commission needed much less time to tally the votes.

In current conditions, when the voters demonstrate relatively high levels of activity (as usually happens during presidential elections), large electoral districts have a hard time managing the flow of voters. Tallying the votes in cases of high

voter turnout and/or a combination of several elections while strictly adhering to the legal requirements takes a long time, tiring out members of the district election commission, which inevitably leads to mistakes. Another important consideration is that electoral districts with fewer voters require smaller premises for the ballot station (observing elections abroad, we have seen that the ballot stations are often located in school classrooms).

Gradual downsizing of electoral districts would be the right move, but it should be done with great attention and judiciously so as not to complicate the voters' participation and to preserve people's trust in the elections. Some people are also voicing concerns that the increased number of electoral districts may lead to the slackening of control, because more districts will require more election observers.

At the same time, we are surprised by the introduction of a provision aimed at consolidation of electoral districts, including those that were previously downsized. It's true that voter turnout for the regional and municipal elections in the large cities is usually much lower than that for the presidential elections, but we believe that this fact should not be interpreted as the reason for bringing back the large electoral districts, especially when a lot of elections are held on one day. It would be advisable if the (careful and gradual) downsizing of electoral districts was irreversible.

As for the five-year term of election commissions' tenure, the decision brings mixed reactions. On the one hand, the permanence of election commission crews is useful. But in real life we observe a large turnover among members of such commissions, and it can be said that on the eve of each election the composition of election commissions is greatly refreshed. Furthermore, a five year term is a long enough period of time for the appearance of new political parties and new activists and volunteers who cannot become a part of the election commission because of the permanency provision.

6. Rescheduling the voting day

Beginning in 2003, the federal law “On Elections of the President of the Russian Federation” stipulated that the Russian presidential elections have to be held on the second Sunday of the same month, the previous presidential elections were held. Having said that, in 2000 the President of Russia was elected at the pre-term elections of March 26, which meant that the second Sunday in March was supposed to become the day of the election. In 2004, the elections were held on March 14. However, the second Sunday in March often coincides either with the holiday of March 8, or with the day that precedes or follows it, or it was even designated as a business day, when elections cannot be held. The law stipulated that under such conditions the elections should be held a week earlier, which is what happened in 2008 and 2012, when the day of voting was set for the first Sunday in March (March 2 and March 4, respectively).

In 2018, the second Sunday in March, just as it did in 2012, falls on 11 March. This time it isn't designated as a business day, and according to the rules that were used in 2003-2017, March 11 is supposed to become the Election Day. However, this date falls on the fourth day off in a row, and in Russia it would be inexpedient to organize any type of a serious event on the last day of a long weekend.

In connection with this, from 1 June 2017, two changes were made in federal law №103-FZ. First, the reason for rescheduling the voting day is stated in the following way: “this Sunday falls on a week that includes a public holiday.” De facto, this means the impossibility of holding the elections on the second Sunday of March while March 8 remains a public holiday, because this Sunday will always fall on a week that includes this date.

Second, the elections in this case have to be rescheduled not to the previous (first), but to the following (third) Sunday. In other words, the elections of 2018 have to take place on March 18, not March 4. Naturally, from the point of simplifying the legislation, it would be better to simply state that elections are held

on the third Sunday of the month when the previous presidential elections took place, especially since the second Sunday usually falls on a public holiday week in some of the other months as well (May, June).

But the principal essence of this decision is political. The authors of the suggested changes didn't conceal the fact that they want to hold the presidential elections on the anniversary of the Crimea's acceptance into the Russian Federation. However, such a political decision has a major shortcoming. On the day of the elections, there are sure to be festivities, and the current President will be in the center of their narrative. At the same time he is most likely to run for re-election once again, which means that on voting day there will be activities that may be classified as campaigning for the current President. In this way the festivities will provide a motive for accusations and conflicts.

7. Replacement of absentee voter certificates with a different mechanism for voting at the current location

Previously, the absentee voter certificates used to be the principal voting mechanism for voters absent from their place of registration on the Election Day. These certificates have been used for presidential elections since 1995. That being said, the system of absentee voting had two major shortcomings.

The first problem resulted from the fact that the absentee voter certificate could only be received at the voter's place of permanent registration. This de facto barred a large group of citizens (several million people) from voting, because they permanently or mostly live far from their official place of residence. Clearly, a special trip to the place of their permanent registration to collect the absentee ballot certificate required excessive spending of time and money. Although the law provided that the absentee voter certificate could be collected by another person with a notarized power of attorney, in practice such a right was difficult to exercise.

The second problem was associated with the difficulties of controlling the

voting by absentee ballots. The voters with absentee voter certificates were allowed to vote at any electoral district (within the limits of the electoral precinct where the citizen has a right to vote). This fact lent itself to the misuse of absentee voter certificates, such as repeated voting by a group of persons; forcing the voters to cast their ballots at certain electoral districts, where the secrecy of ballot could not be guaranteed. Although the law envisioned a number of measures aimed against repeated voting and other abuse, the measures proved to be inefficient, because the parties, candidates and public activists who tried to control the fairness of elections had no prior information about where the absentee ballots would be cast.

This consequently led to the idea of abandoning the absentee voter certificates, replacing them with a procedure that would allow the voter to file a preliminary request and be included on the voter roll at the specific electoral district where they will be present on Election Day. However, implementation of this idea in federal law №103-FZ from 1 June, 2017, turned out to be less than effective.

The new procedure is articulated in the law too briefly. The right of detailed regulation was given to the Central Election Commission, which on 1 November, 2017, approved the “Procedure for filing an application to include the voter in the voter roll at the place of current residence for the elections of the President of the Russian Federation.”

The document introduces two significantly different procedures. The first procedure envisions that the voter files an application between 45 and 5 days prior to the Election Day at any of the territorial election commissions, or via the multifunctional center of state and municipal services, or online at the Single Portal of State and Municipal Services. It also states that between 20 and 5 days prior to Election Day the application may be filed with any district election commission (except those functioning abroad). In the application the voter has to specify the ballot station where he wishes to vote, and is given the right to vote only at that specific ballot station. All of the voters that submit such an application

are included in the single database, and the system of election commissions ensures that the voter is removed from the voter roll at the place of permanent registration. Information on the number of voters that submitted such applications is published for each electoral district. Overall, this mechanism guarantees the opportunity to vote for a substantial number of voters and also the ability to control the voting process.

But for those voters that need to travel somewhere in the last five days before the election date, the Central Election Commission suggested a second procedure, which is much more controversial. These voters can submit a special application to the ballot site commission at their place of residence (where they will be removed from the voter rolls) no earlier than 4 days before the election and no later than at 2 pm on the day prior to the election. In the application, the voter also has to specify the ballot station where he wishes to vote, but this information is not included in the single database and is not shared with the ballot site commission at the requested electoral district.

To prevent multiple voting, the Central Election Commission's document specifies that a two-part stamp is attached to the special application, and one of the stamp's parts is removed at the ballot station and affixed to the voter roll.

In this way, if the election commissions strictly observe the requirements of the federal law and the Central Election Commission's bylaws, multiple voting should be excluded through implementation of this procedure. Nonetheless, monitoring of this process is no less difficult than the oversight of absentee ballot voting.

8. Changes concerning the furnishing of polling stations

In time for the presidential elections of 2012, the Central Election Commission began the introduction of transparent or semi-transparent ballot boxes. From 21 December 2013, this requirement was established by federal law №364-FZ.

From December 1 2014, Federal law №419-FZ established the requirement to make the ballot stations wheelchair-accessible, guaranteeing easy access to the premises by handicapped voters.

9. Changes linked to election monitoring

From 1 June 2017, federal law №103-FZ extended the earlier requirement that was introduced in 2016 for other types of elections other than the presidential elections. The requirement states that the election commissions sessions devoted to the determination of vote returns and election results, as well as the counting of votes, can only be attended by those representatives of mass media publications that have been working in those publications for no less than two months prior to the official announcement of the date of elections, and this employment must be confirmed by the presence of a labour contract or independent contractor agreement. The said journalists must also be accredited in accordance with procedures established by the Central Election Commission. This provision substantially complicates the media coverage of elections and overall degrades the openness and transparency of the electoral process.

From 5 December 2017, federal law №374-FZ entitled the Civic Chamber of the Russian Federation and the civic chambers of the Russian Federation constituents to appoint election monitors. Whether this novelty will facilitate better public monitoring remains to be seen in the course of the campaign.

From 1 June 2017, federal law №103-FZ extended to the presidential elections another requirement that was also introduced in 2016 for other elections. This requirement stipulates that persons who have the right to be present during voting should be given access to the voting premises at least one hour before the start of the elections.

From 1 June 2017, the same federal law №103-FZ stipulates that the decision on removing a member of the ballot station election commission from

participation in the commission's work, or on removing a public observer or any other person from the voting premises, is to be made by the court at the location of this specific commission. This measure, along with the Central Election Commission's outreach, is supposed to facilitate a measurable reduction in the instances of removing election monitors and vote counting observers, de facto implementing a moratorium on such removals.

During the presidential elections of 2012, voting premises were equipped with video monitoring equipment and the video feeds could be watched online, but this process was unregulated by any laws. From 1 June 2017, federal law №103-FZ formalized this practice, establishing that video monitoring and transmission devices may be used at voting premises except for those that are located in the ballot stations set up in hospitals and other medical organizations with inpatient departments; at the detention facilities for suspects and accused; at other places of temporary residence; military units; vessels that will be at sea on election day; polar stations; and ballot stations set up in other countries. Video monitoring and transmission equipment can be used at voting premises located in ballot stations, where military personnel vote, except for the voting premises located at ballot stations in military units, with the agreement of the military unit's commander.

In addition to this, the law specifies that the ban on the publication of information about the election results does not apply to the distribution of information by video monitoring and transmission devices installed at the premises where votes are counted. This allows to keep the broadcast of video from the eastern regions of the country rolling, while the election continues in the European part.

From 5 December 2017, federal law №374-FZ also allows for the installation of video monitoring and transmission devices at the territorial election commissions, and this should be recognized as an important measure to facilitate greater openness and transparency of the territorial commissions' work.

10. Changes in the period for appeal of voting returns and elections results

Up until 2014, the period for appeal of voting returns and election results was set at one year from the day of the relevant election results' publication.

From 2 April 2014, federal law №51-FZ sets the deadline for filing an application to revoke the election commission's decision on voting returns at ten days from the day that the decision is made, while the deadline to file an appeal to revoke the election commission's decision on election results is set at three months from the day of the official publication of the relevant election's results. It states assertively that the specified procedural periods cannot be changed.

These novelties have disproportionately limited the ability of election process' participants to appeal the mistakes or conscious efforts to distort the voting returns. The analysis of voting returns usually demands time, and practice shows that serious distortions of voting returns, which can no longer be rectified, even if all the participants of the election process want to do this, are often discovered after the 10-day period has passed.

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