14. Russia

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1. INTRODUCTION

In Article 1(1) of the Constitution of the Russian Federation (Constitution)¹ Russia is referred to as ‘a democratic federal law-bound state with a republican form of government’. Russia builds on a representative democratic system.² According to Article 3(3) of the Constitution, ‘the supreme direct expression of the power of the people shall be referenda and free elections’. Article 32(2) enshrines the individual right of Russian citizens to participate in referendums (as well as the right to elect and to be elected). Direct-democratic instruments exist at the federal, regional and municipal levels,³ including optional and law-initiated (mandatory) referendums as well as an agenda initiative.

In view of its constitutional status, the referendum should play a central role in Russian politics.⁴ However, up to now the referendum has mainly been

¹ Конституция Российской Федерации, принята всенародным голосованием 12 декабря 1993 с изменениями, одобренными в ходе общероссийского голосования 1 июля 2020 (Constitution of the Russian Federation, adopted by popular vote on 12 December 1993 with amendments approved in the nationwide vote of 1 July 2020), <http://publication.pravo.gov.ru/Document/View/0001202007040001?index=1&rangeSize=1>. An English translation of the former text is available at <www.constitution.ru/en/10003000-01.htm> both accessed 8 July 2020. At the time of writing this chapter, the recently approved constitutional amendments have not yet been officially translated.

² Otto Luchterhandt, ‘Artikel 1’ in Bernd Wieser (ed), *Handbuch der russischen Verfassung* (Verlag Österreich 2014) para 14.

³ The Russian Federation is a federal state with 85 constituent entities, the federal subjects of the Russian Federation. According to Art. 5(1) and 65(1) of the Constitution there are six different types of federal subjects. Furthermore, there is a municipal level, the so-called ‘local self-government’ that is regulated in Art. 130–33 of the Constitution. See for the federal structure Марат Викторович Баглай, *Конституционное право Российской Федерации* (Constitutional Law of the Russian Federation) (12th edn, Норма ИНФРА-М 2017) 130–32.

⁴ See for the constitutional status of the referendum Валентина Викторовна Комарова, *Референдумное право и процесс в России* (Referendum law and process

used at the regional and municipal levels. At the federal level, the first referendum since 1993 has been held only on 1 July 2020 on several constitutional amendments.⁵

The lack of practical relevance of the referendum in Russia can be explained by the high legal hurdles (both formal and substantive admissibility requirements) imposed on it by the legislator and the restrictive practice of Russian courts in the remedy procedures.⁶

2. DIRECT-DEMOCRATIC INSTRUMENTS

The direct-democratic instruments at the federal level include the optional citizen-initiated referendum, the mandatory (law-initiated) referendum and the citizens' agenda initiative. At the regional level, the optional citizen-initiated referendum and the referendum on the formation of a new federal subject are provided for by federal law. Beyond that, the regional legislator may foresee executive-, legislative- or subnational entity-initiated regional referendums. At the municipal level exist citizen-, executive- and legislative-initiated referendums.

The referendum at the federal level is regulated by the Federal Constitutional Act No. 5-FKZ 'on the Referendum of the Russian Federation' (Referendum Act).⁷ As a federal constitutional law, it derogates the Federal Act No. 67-FZ 'on the basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum'⁸ (Basic Guarantees Act)

in Russia) (Социум 2007) 16–18; Сурен Адиебекович Авакьян, *Конституционное право России: Том I* (Constitutional Law of Russia: Volume I) (5th edn, Норма ИНФРА-М 2017) 394–95.

⁵ See Section 6 below.

⁶ See for this contrast on a legislative level Julian Ivan Beriger, 'Sein und Schein von Gesetzgebung im Referendumsrecht Russlands' in Damiano Canapa/Robin Landolt/Nicola Müller (eds), *Sein und Schein von Gesetzgebung: Erwartungen – Auswirkungen – Kritik* (DIKE 2018).

⁷ Федеральный конституционный закон от 28 июня 2004 № 5-ФКЗ 'О референдуме Российской Федерации' (Federal Constitutional Act of 28 June 2004 No. 5-FKZ 'on the referendum of the Russian Federation') // СЗ РФ 5.7.2004 № 27 ст. 2710.

⁸ Федеральный закон от 12 июня 2002 № 67-ФЗ 'Об основных гарантиях избирательных прав и права на участие в референдуме граждан Российской Федерации' (Federal Act of 12 June 2002 No. 67-FZ 'on the basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum') // СЗ РФ 17.6.2002 № 24 ст. 2253. An English translation of an earlier version of the text is available at www.legislationline.org/documents/action/popup/id/4170, accessed 8 July 2020.

that applies only in a subsidiary way.⁹ Since the Referendum Act leaves almost no room for the Basic Guarantees Act, the latter *de facto* applies only to referendums at the regional and municipal levels. The municipal referendum is also regulated by the Federal Act No. 131-FZ ‘on the general principles of the organization of local self-government in the Russian Federation’ (Self-Government Act).¹⁰ This Act also provides for other instruments of direct democracy at the local level, such as town meetings.¹¹

2.1 Optional Referendum

2.1.1 Federal level

According to the legal definition in Article 1 of the Referendum Act, the referendum at the federal level is a popular vote on ‘issues of national importance’. Any issue of national importance in the jurisdiction of the Russian Federation or the joint jurisdiction of the Russian Federation and its subjects is subject to the optional referendum.¹² Depending on whether the optional referendum is used to make a proposal or to attack a law, it can be classified as either a citizen-initiated proactive or rejective referendum. It can be initiated by at least 2 million Russian citizens eligible to vote, provided that no more than 50,000 of them reside in the territory of the same federal subject or outside the territory of the Russian Federation.¹³ The signatures have to be collected by a national (referendum) initiative group consisting of regional subgroups of at least 100 members within 45 days following the day of the registration of the national initiative group.¹⁴

For the direct vote to be valid, the turnout quorum is at least 50 per cent of the registered voters.¹⁵ More than 50 per cent of the referendum participants have to approve the referendum for it to pass.¹⁶ The referendum result is binding and does not need additional approval.¹⁷

⁹ However, according to Art. 1(3) Basic Guarantees Act, the basic electoral rights and guarantees cannot be undermined, even by federal constitutional law.

¹⁰ Федеральный закон от 6 октября 2003 № 131-ФЗ ‘Об общих принципах организации местного самоуправления в Российской Федерации’ (Federal Act of 6 October 2003 No. 131-FZ ‘on the general principles of the organization of local self-government in the Russian Federation’) // СЗ РФ 6.10.2003 № 40 ст. 3822.

¹¹ Art. 25 and 25.1 Self-Government Act.

¹² Art. 6(3) and (4) Referendum Act. According to Art. 130(2) Constitution, issues of local importance are reserved to the municipal referendum.

¹³ Art. 14(1) para. 1 and 17(1) Referendum Act.

¹⁴ Art. 17(2) Referendum Act.

¹⁵ Art. 80(5) Referendum Act.

¹⁶ Art. 80(7) Referendum Act.

¹⁷ Art. 83(2) Referendum Act.

The referendum at the federal level has almost no practical relevance. Since the referendums of, respectively, 25 April 1993 and 12 December 1993,¹⁸ only one national vote has been held, on 1 July 2020.¹⁹ Some citizen-initiated referendums were launched under the former Referendum Act²⁰ in 1997, 1998, 1999, 2000, 2002 and 2004. However, they have all failed to meet the formal or substantive admissibility requirements.²¹ These requirements have been heavily reinforced since the adoption of the current Referendum Act and its amendments in 2008.²² Thus, since 2004 only a few citizen-initiated referendums have been launched – in 2005,²³ 2006,²⁴ 2012²⁵ and 2018.²⁶ All of

¹⁸ See for these referendums Ronald J. Hill and Stephen White, ‘Referendums in Russia, the Former Soviet Union and Eastern Europe’ in Matt Qvortrup (ed), *Referendums Around the World* (Palgrave Macmillan 2018) 119–121.

¹⁹ See Section 6 below.

²⁰ Федеральный конституционный закон от 10 октября 1995 № 2-ФКЗ ‘О референдуме Российской Федерации’ (Federal Constitutional Act of 10 October 1995 No. 2-FKZ ‘on the referendum of the Russian Federation’) // СЗ РФ 6.10.1995 № 42 ст. 3921 (Referendum Act 1995).

²¹ See Комарова (n 4) 46–52.

²² Федеральный конституционный закон от 24 апреля 2008 № 1-ФКЗ ‘О внесении изменений в Федеральный конституционный закон “О референдуме Российской Федерации”’ (Federal Constitutional Act of 24 April 2008 No. 1-FKZ ‘on the amendment of the Federal Constitutional Act “on the Referendum RF”’) // СЗ РФ 28.4.2008 № 17 ст. 1754.

²³ Постановление Центральной избирательной комиссии Российской Федерации от 7 апреля 2005 № 142/974-4 (Decision of the Central Election Commission of the Russian Federation [CEC RF] of 7 April 2005 No. 142/974-4) // Российская Газета (РГ) 13 April 2005 <https://rg.ru/2005/04/13/izbirkom-doc.html>; Постановление Центральной избирательной комиссии Российской Федерации от 20 апреля 2005 № 143/981-4 (Decision of the CEC RF of 20 April 2005 No. 143/981-4) // РГ 14 May 2005 <https://rg.ru/2005/05/14/izbirkom.html>, both accessed 8 July 2020 [remark: all decisions of the CEC RF are cited in a shortened form without description of the subject. The full naming in Russian is available from the indicated websites].

²⁴ Постановление Центральной избирательной комиссии Российской Федерации от 27 сентября 2006 № 187/1180-4 (Decision of the CEC RF of 27 September 2006 No. 187/1180-4) // РГ 3 October 2006 <https://rg.ru/2006/10/03/cik-doc.html>, accessed 8 July 2020.

²⁵ Постановление Центральной избирательной комиссии Российской Федерации от 13 апреля 2012 № 118/917-6 (Decision of the CEC RF of 13 April 2012 No. 118/917-6) // РГ 17 April 2012 <https://rg.ru/2012/04/16/vto-site-dok.html>; Постановление Центральной избирательной комиссии Российской Федерации от 19 июля 2012 № 132/1011-6 (Decision of the CEC RF of 19 July 2012 No. 132/1011-6) // РГ 25 July 2012 <https://rg.ru/2012/07/25/referendum-dok.html>, both accessed 8 July 2020.

²⁶ Постановление Центральной избирательной комиссии Российской Федерации от 17 октября 2018 № 186/1459-7 (Decision of the CEC RF of 17 October

them have been declared inadmissible. Since there are no reliable statistics, the actual number of referendums launched might be significantly higher.

2.1.2 Regional and municipal levels

According to Article 12(2) of the Basic Guarantees Act, the regional referendum is a popular vote on issues in the jurisdiction of the federal subjects or the joint jurisdiction of the Russian Federation and its federal subjects.²⁷ The municipal referendum is a vote on issues of local importance.²⁸

The referendum can be initiated by Russian citizens eligible to vote or by executive or legislative actors foreseen by regional referendum law.²⁹ It can be used in either a proactive or a rejective way. The number of signatures that have to be collected in support of the initiative is established by regional law and may not exceed 2 per cent of the number of registered voters in the territory where the referendum is being held (in case of the municipal referendum 5 per cent, but no less than 25 signatures).³⁰ The signatures have to be collected within a period established by regional law of no less than 30 days (20 days in the case of the municipal referendum).³¹ The turnout quorum is established by regional law and has to be at least 50 per cent of the registered voters. More than 50 per cent of the voters have to approve the referendum for it to pass.³² The referendum result is binding and does not need additional approval.³³

The optional citizen-initiated regional referendum is of some practical relevance. Since 1993 around 16 popular votes have been held. However, it is difficult to establish the exact number, since the referendums have not been consistently registered in the databases of the Central Election Commission of the Russian Federation (CEC RF) or the regional election commissions.³⁴

The regional referendum on the formation of new federal subjects has also been of some practical relevance. There have been five mergers of federal subjects between 2003 and 2007 and eleven referendums which have been

2018 No. 186/1459-7) // PF 19 October 2018 <https://rg.ru/2018/10/19/cik-dok.html>, accessed 8 July 2020.

²⁷ For the jurisdiction of the Russian Federation see Art. 71 Constitution, for the joint jurisdiction Art. 72 Constitution.

²⁸ Art. 12(3) Basic Guarantees Act.

²⁹ Art. 14(1) and (2) Basic Guarantees Act.

³⁰ Art. 37(1) Basic Guarantees Act.

³¹ Art. 37(5) Basic Guarantees Act.

³² Art. 70(8) Basic Guarantees Act.

³³ Art. 73(1) Referendum Act.

³⁴ See for an analysis of these referendums Julian Ivan Beriger, *Das Referendum in den Föderationssubjekten und Gemeinden des heutigen Russlands – Eine Analyse der normativen Ausgestaltung und praktischen Anwendung* (Nomos 2016) 165–98.

conducted in the corresponding territories.³⁵ These referendums were politically controversial because the mergers included ethnic-based federal subjects that were integrated into larger territories.³⁶ The legal basis for this type of referendum is the Federal Constitutional Act ‘on the procedure for admitting to the Russian Federation and formation of a new subject of the Russian Federation’ (Admission Act).³⁷ In one case, the referendum was mandatory, as it was triggered by the formation of a new federal subject.³⁸ In 2005, there were amendments to Article 11³⁹ and, as a result, the instrument now has to be classified as optional institution-initiated referendum. According to Article 11(1.1) of the Admission Act, the referendum can now be initiated by the senior officials (heads of the executive organs) of the ‘interested’ federal subjects. However, it can only be held if there have been ‘appropriate consultations’ with the Russian President and if he or she supports the referendum initiative.⁴⁰ The procedural provisions established by the Basic Guarantees Act are applicable.⁴¹

³⁵ The territorial mergers were the following: 1. Perm Oblast and Komi-Permyak Autonomous Okrug to Perm Krai (2003), 2. Evenk and Taymyr Autonomous Okrugs into the territory of Krasnoyarsk Krai (2005), 3. Kamchatka Oblast and Koryak Autonomous Okrug to Kamchatka Krai (2005), 4. Ust-Orda Buryat Autonomous Okrug into the territory of Irkutsk Oblast (2006), 5. Chita Oblast and Agin-Buryat Autonomous Okrug to Zabaykalsky Krai (2007). All referendums are registered in the database of the CEC RF and are available at <http://www.izbirkom.ru/region/izbirkom>, accessed 8 July 2020.

³⁶ See for an analysis of these referendums Beriger (n 34) 127–65.

³⁷ Федеральный конституционный закон от 17 декабря 2001 № 6-ФКЗ ‘О порядке принятия в Российскую Федерацию и образования в ее составе нового субъекта Российской Федерации’ (Federal Constitutional Act of 17 December 2001 No. 6-FKZ ‘on the procedure for admitting to the Russian Federation and formation of a new subject of the Russian Federation’) // СЗ РФ 24.12.2001 № 52 (часть 1) ст. 4916.

³⁸ Art. 11(1) Admission Act in its first version of 17 December 2001; Комарова (n 4) 70.

³⁹ Федеральный конституционный закон от 31 октября 2005 № 7-ФКЗ ‘О внесении изменений в статьи 10 и 11 Федерального конституционного закона “О порядке принятия в Российскую Федерацию и образования в ее составе нового субъекта Российской Федерации”’ (Federal Constitutional Act of 31 October 2005 No. 7-FKZ ‘on the amendment of Art. 10 and 11 Admission Act’) // СЗ РФ 7.11.2005 № 45 ст. 4581.

⁴⁰ Art. 11(1) Admission Act. See Владимир Александрович Кочев, ‘Особенности подготовки и проведения референдума субъекта РФ по вопросу об образовании нового субъекта’ (‘Features of the preparation and holding of the referendum of a subject of the Russian Federation on the formation of a new federal subject’) (2010) 3 Вестник Пермского Университета 73, 73–4.

⁴¹ Art. 11(2) Admission Act.

The referendum at the municipal level has been used quite often. According to the database of the CEC RF, 4,672 municipal referendums have been held since 1993 at the time of writing this chapter.⁴² Most of them have not been citizen-initiated but mandatory referendums concerning the introduction of means of self-taxation.

2.2 Law-initiated Referendum

According to Article 135(3) of the Constitution, the draft of a new Constitution can be submitted to a referendum by the Constitutional Assembly.⁴³ The procedure applies only in case of amendments to Chapters 1, 2 and 9 of the Constitution.⁴⁴ It was therefore not applicable to the recent constitutional amendments which affected only provisions in Chapters 3 to 8 of the Constitution.⁴⁵ This constitutional referendum could be classified as a law-initiated referendum.⁴⁶ The provisions of the Referendum Act are applicable.⁴⁷ However, the modalities of calling this referendum are quite unclear, since the Federal Constitutional Act on the Constitutional Assembly has never been adopted by the Russian Parliament.⁴⁸

According to Article 6(2) and 22(1) of the Referendum Act, a draft normative act or an issue of national importance shall be submitted to a referendum if an international treaty of the Russian Federation foresees it. The referendum

⁴² The database is available at <http://www.izbirkom.ru/region/izbirkom>, accessed 8 July 2020.

⁴³ 'The Constitutional Assembly shall either confirm the invariability of the Constitution of the Russian Federation or draft a new Constitution of the Russian Federation which shall be adopted by the Constitutional Assembly by two-thirds of the total number of its members or submitted to a referendum.'

⁴⁴ According to Art. 135(1) Constitution, the provisions in Chapters 1, 2 and 9 may not be revised by the Federal Assembly and therefore a new Constitution has to be drafted in case of amendments to these chapters. See Борис Сафарович Эбзеев, 'статья 135' ('Article 135') in Валерий Зорькин (ed), *Комментарий к Конституции Российской Федерации* (Commentary on the Constitution of the Russian Federation) (3rd edn, Норма ИНФРА-М 2013) 1024.

⁴⁵ See Section 6 below.

⁴⁶ The English text of the Constitution 'shall be submitted to a referendum' suggests that a referendum is mandatory in case less than two-thirds of the Constitutional Assembly support the draft of a new Constitution. However, according to Art. 6(1) Referendum Act, the Constitutional Assembly has 'the right' to propose the draft of the new Constitution to a referendum, which would also allow to classify the referendum as institution-initiated.

⁴⁷ See Art. 6(1) and 21 Referendum Act.

⁴⁸ See Эбзеев (n 44) 1024–25. There have been some draft bills, but they have all been rejected by the Russian Parliament. For example, Draft No. 874565-6 from 2015 is available at <<https://sozd.duma.gov.ru/bill/874565-6>> accessed 8 July 2020.

can be qualified as mandatory, since it is triggered in case an international treaty provides for it.⁴⁹ The referendum procedure foreseen in the Referendum Act is applicable, taking into account special provisions established by the international treaty.⁵⁰ So far, the law-initiated referendum at the federal level has never been used in practice.⁵¹

For the municipal level, federal law foresees a law-initiated referendum on the introduction and the use of means of self-taxation of citizens⁵² and the structure of municipal organs in certain cases.⁵³ According to the database of the CEC RF, the greatest part of the 4,672 municipal referendums have concerned means of self-taxation.⁵⁴

2.3 Agenda Initiative

The legal basis for the ‘Russian public initiative’ (RPI) is Presidential Decree No. 183 and the ‘Rules for the consideration of public initiatives, submitted by citizens of the Russian Federation using the Russian Public Initiative Internet resource’ in the annex to the Decree (Rules RPI).⁵⁵

The RPI allows Russian citizens who have reached the age of 18 and are registered on the ‘Public Services Portal of the Russian Federation’ (www.gosuslugi.ru) to formally put an issue on the agenda of a state organ, provided

⁴⁹ Авакьян (п 4) 402.

⁵⁰ Art. 6(2) Referendum Act; Борис Иванович Осминин, *Принятие и реализация государствами международных договорных обязательств* (Acceptance and implementation of international treaty obligations by states) (Wolters Kluwer Russia 2006) 290–91.

⁵¹ The Treaty on the creation of a Union State between Russia and Belarus foresaw the holding of mandatory referendums in the participating states in Article 62(2). However, these referendums have never been held. Договор между РФ и Республикой Беларусь от 8 декабря 1999 ‘О создании Союзного государства’ (Treaty between the RF and the Republic of Belarus of 8 December 1999 ‘on the establishment of a Union State’) // СЗ РФ 14.2.2000 № 7 ст. 786.

⁵² According to Art. 56(1) Self-Government Act means of self-taxation are one-time payments of citizens made to address specific issues of local importance.

⁵³ Art. 56(2) and 34(5) Self-Government Act. The municipal referendum on the structure of local government is foreseen if a new municipal entity is created on inter-settlement territory (territory, located outside the boundaries of a settlement) or if an existing municipal entity is transformed.

⁵⁴ See for an analysis of the practice Beriger (n 34) 240–49.

⁵⁵ Указ Президента РФ от 4 марта 2013 № 183 ‘О рассмотрении общественных инициатив, направленных гражданами Российской Федерации с использованием интернет-ресурса “Российская общественная инициатива”’ (Decree of the President of the Russian Federation of 4 March 2013 No. 183 ‘on the consideration of public initiatives submitted by citizens of the Russian Federation using the Internet resource “Russian Public Initiative”’) // СЗ РФ 11.3.2013 № 10 ст. 1019.

that the initiative is supported by 100,000 votes of registered Russian citizens. The votes have to be collected electronically over the Internet platform (www.roi.ru) within one year after posting the initiative on the Internet.⁵⁶ Once an initiative has reached the necessary support, it will be put on the agenda of the corresponding state organ and an 'expert working group' has to prepare an opinion on the initiative.⁵⁷ The initiative can also be addressed to regional or municipal organs. The support needed for a regional initiative is at least 5 per cent of the votes of citizens permanently residing in the territory of the corresponding federal subject (in subjects with a population of more than 2 million at least 100,000 votes) and for a municipal initiative at least 5 per cent of the votes of citizens permanently residing in the territory of the municipality.⁵⁸

So far, 17,367 public initiatives have been published on the federal, regional and municipal levels.⁵⁹ However, only a small fraction of the RPIs at the federal level have managed to reach the necessary support of 100,000 votes and have been recommended for implementation by the corresponding expert group.⁶⁰ For example, the ecological initiative 'Green Shield around Moscow' has reached the necessary support of the voters and has received a positive expert opinion. Nevertheless, it has never been implemented.⁶¹ One of the few initiatives that has been implemented at the federal level is on the installation of video registration systems on railway crossings.⁶² There are neither official statistics of RPI, nor is there a monitoring of their implementation, making them a rather non-transparent instrument.

3. LEGAL LIMITS AT THE FEDERAL LEVEL

The legal limits imposed on the referendum at the federal level are the main reason for its having little practical relevance.⁶³ In 2003, the Constitutional Court of the Russian Federation (Constitutional Court) stipulated that the

⁵⁶ Para. 2 and 14 let a Rules RPI.

⁵⁷ Para. 19 and 24 Rules RPI.

⁵⁸ Para. 14 let b and c Rules RPI.

⁵⁹ See <<https://www.roi.ru/>> accessed 8 July 2020.

⁶⁰ Анна Аскольдовна Волошинская, 'Российская общественная инициатива: парадоксы отечественной электронной демократии' ('The Russian public initiative: the paradoxes of domestic e-democracy') (2016) 1 Власть 47, 47–49.

⁶¹ The initiative, the expert opinion and the proposed measures for implementation are available at <https://www.roi.ru/22543/>, accessed 8 July 2020.

⁶² The initiative, the expert opinion and the proposed measures for implementation are available at <https://www.roi.ru/21892/>, accessed 8 July 2020.

⁶³ See for an overview of the legal limits on the referendum Наталия Валерьевна Петухова, 'Правовые ограничения инициирования, назначения и проведения референдумов в Российской Федерации: понятие и система' ('The legal limits on

federal legislator could not undermine the right of Russian citizens to a referendum when determining the referendum procedure.⁶⁴ Russian legal literature has specified that restrictions of the referendum right were allowed only if they have been introduced by the legislator and are well founded, necessary and proportionate.⁶⁵

3.1 Formal Limits

3.1.1 Clarity of the referendum question

According to Article 6(7) of the Referendum Act, the referendum question must be formulated in such a way as to exclude the possibility of multiple interpretations, that is, to give only a definite answer to the question and to exclude uncertainty in regard to the legal consequences of the decision. The Constitutional Court has observed that this provision was designed to ensure the genuine formation of the voter's will.⁶⁶ It read a consistency of the subject matter requirement into this provision, which has probably been a reaction to the catalogues of up to 17 referendum questions that were proposed to vote

the initiation, calling and holding of referenda in the Russian Federation: concept and system') (2010) 10 *Государство и Право* 112, 113–15.

⁶⁴ '(...) the federal legislator (...) cannot cancel or abrogate the right of citizens of the Russian Federation to participate in a referendum, introduce disproportionate limitations.' Постановление Конституционного Суда РФ от 11 июня 2003 № 10-П (Judgment of the Constitutional Court of 11 June 2003 No. 10-П) стр. 3 п. 2.2 // *СЗ РФ* 23.6.2003 № 25 ст. 2564. See for an overview of the case law of the Constitutional Court on the referendum Аналитическое Управление Совета Федерации, 'Референдум как институт непосредственной демократии' ('The referendum as an institute of direct democracy') (2007) 6 *Государственная Власть и Местное Самоуправление* 11, 17–19. Apart from the already cited case, the following leading cases deal with the referendum: Постановление Конституционного Суда РСФСР от 13 Марта 1992 № П-РЗ-I (Judgment of the Constitutional Court RSFSR of 13 March 1992 No. П-РЗ-I) // *Ведомости СНД и ВС РФ* 1992 № 13 ст. 671; Постановление Конституционного Суда РФ от 24 января 1997 № 1-П (Judgment of the Constitutional Court of 24 January 1997 No. 1-П) // *СЗ РФ* 3.2.1997 № 5 ст. 708; Постановление Конституционного Суда РФ от 10 июня 1998 № 17-П (Judgment of the Constitutional Court of 10 June 1998 No. 17-П) // *СЗ РФ* 22.6.1998 № 25 ст. 3002; Постановление Конституционного Суда РФ от 21 марта 2007 № 3-П (Judgment of the Constitutional Court of 21 March 2007 No. 3-П) // *СЗ РФ* 2.4.2007 № 14 ст. 1741.

⁶⁵ Алексей Аронович Сергеев, 'Об ограничении предмета референдума Российской Федерации' ('On the limitation of the subject of the referendum of the Russian Federation') (2008) 19 *Конституционное и Муниципальное Право* 7, 11.

⁶⁶ '(...) the wording of the issue submitted to the referendum should allow to perceive it as a whole, so that citizens are not forced to vote at the same time for several unrelated issues connected in one sentence (...).' Judgment of the Constitutional Court of 21 March 2007 No. 3-П (n 64) стр. 15 п. 4.

on at the federal level in 2005.⁶⁷ In practice, the CEC RF often invalidated citizen-initiated referendums based on both the catalogue of prohibited issues⁶⁸ and the clarity of question requirement at the same time. In 2005, a large part of the 17 referendum issues were declared inadmissible due to uncertainty in regard to the legal consequences,⁶⁹ for instance issue No. 4: ‘Do you agree that the payments for residential premises and utilities as a whole should not exceed 10 per cent of the total income of family members living together?’ or issue No. 5: ‘Do you agree that the Housing Code of the Russian Federation, worsening the conditions for the implementation of the constitutional right to housing, should lose force after expiration of one month from the day of the holding of the referendum?’ According to the CEC RF, either the financial consequences would be unclear or there would be a legal vacuum in the regulation of housing relations. Based on Article 6(7) of the Referendum Act and other substantive provisions, the CEC RF declared the following referendum question inadmissible: ‘Do you agree that the same person should not be allowed to hold the office of the President of the Russian Federation for more than two consecutive terms?’⁷⁰ It held that multiple interpretations of the referendum question were possible since, in the end, it was not clear for how many terms the same person could hold the office of the Russian President (more than two terms if they are not consecutive).

3.1.2 Formation of the initiative group and signature collection

Compared with the Referendum Act 1995, the procedure to form an initiative group has been heavily reinforced in the current Referendum Act.⁷¹ The national initiative group now counts at least 4,300 members (Referendum Act 1995: 100 members)⁷² since regional subgroups of at least 100 members have to be formed in more than half of the federal subjects.⁷³ The Referendum Act establishes detailed formal requirements, for instance to the meeting on which every regional subgroup has to be formed and to the documents attached to the registration application.⁷⁴

⁶⁷ See Section 3.2.1 below.

⁶⁸ See Section 3.2.1 below.

⁶⁹ Decision of the CEC RF of 20 April 2005 No. 143/981-4 (n 23).

⁷⁰ Decision of the CEC RF of 27 September 2006 No. 187/1180-4 (n 24). The referendum was initiated by the North Ossetian social movement ‘Concord and stability’ (‘Согласие и стабильность’).

⁷¹ See Section 2.1.1 above.

⁷² Art. 9(1) Referendum Act 1995.

⁷³ Art. 15(2) Referendum Act.

⁷⁴ Art. 15(3–9) and (11) Referendum Act.

These formal requirements led to the invalidation of a citizen-initiated referendum at the federal level in 2018. In its Decision of 17 October 2018, the CEC RF stated that no application of the regional subgroups to register the national initiative group had been submitted within two months from the registration of the first regional subgroup and that the referendum initiative would therefore be invalidated in accordance with Article 15(26) of the Referendum Act.⁷⁵

3.2 Substantive Limits

A first substantive limit results from the scope of the referendum which includes only ‘issues of national importance’ in the jurisdiction of the Russian Federation or in the joint jurisdiction of the Russian Federation and its subjects.⁷⁶ Second, a referendum on the same question can be held not earlier than two years after the publication of the results of the first referendum, which creates a temporary limit on certain issues.⁷⁷ However, in practice the broad catalogue of prohibited issue is a far more important substantive limit.

3.2.1 Prohibited issues

According to Article 6(5) of the Referendum Act, the following issues cannot be subject to the referendum at the federal level:

- (1) changes to the constitutional status of a subject (the subjects) of the Russian Federation enshrined in the Constitution;
- (2) the early termination or prolongation of the term of office of the President of the Russian Federation or the State Duma, the holding of early elections of the Russian President, deputies of the State Duma or the postponement of such elections;
- (3) the election, the appointment to office, early termination, suspension or prolongation of the powers of persons holding public offices of the Russian Federation;
- (4) the personal composition of federal state organs or other federal government bodies;
- (5) the election, early termination, suspension or prolongation of the term of office of bodies formed in accordance with an international treaty of the Russian Federation or of officials elected or appointed to office in accordance with an international treaty of the Russian Federation, as well as on the formation of such bodies or appointment to office of

⁷⁵ Decision of the CEC RF of 17 October 2018 No. 186/1459-7 (n 26).

⁷⁶ Art. 1 and 6(4) Referendum Act.

⁷⁷ Art. 7(5) Referendum Act.

- such persons, unless otherwise provided by an international treaty of the Russian Federation;
- (6) the adoption of emergency and urgent measures to ensure the health and safety of the population;
 - (7) issues referred by the Constitution or federal constitutional acts to the exclusive competence of federal state organs.

The above-mentioned citizen-initiated referendums⁷⁸ have all been declared inadmissible by the CEC RF often based on both the catalogue of prohibited issues and formal admissibility requirements.⁷⁹

In its Decision of 7 April 2005,⁸⁰ the CEC RF decided on the admissibility of 12 referendum issues which were proposed to vote on at the same time by one initiative group. They concerned mostly questions of social welfare, for instance issue No. 1, 'Do you agree that within one year from the day of the holding of the referendum the minimum wage should be set at a level not lower than the subsistence minimum in the Russian Federation?' or issue No. 2, 'Do you agree that within one year from the day of the holding of the referendum the basic part of the old-age labour pension should be set at a level not lower than the subsistence minimum in the Russian Federation?' Issue No. 1 and 2 were declared inadmissible based on a former provision in the catalogue of prohibited issues that excluded issues regarding budgetary or other financial obligations of the Russian Federation. Apart from issue No. 12, 'Do you agree that at least half of the deputies of the State Duma of the Federal Assembly of the Russian Federation should be elected individually in single-mandate constituencies?' all other issues have been declared inadmissible based on the catalogue of prohibited issues and/or the clarity of question requirement. The initiative group did not start the registration procedure for one single question which could have been actually put to the vote.

In the same year, another initiative group proposed to vote on 17 referendum issues at the same time which were partly identical to the issues in the Decision of the CEC RF of 7 April 2005 (issues No. 1–4, 6, 7, 9 and 12–15). These issues and part of the new ones (No. 5, 10, 11, 16 and 17) have been declared inadmissible in the Decision of the CEC RF of 20 April 2005⁸¹ again based on both the catalogue of prohibited issues (financial obligations) and the clarity of question requirement. Issue No. 17 had the following wording: 'Do you agree that federal constitutional law should establish that a question cannot be submitted to a referendum only if it contradicts the Constitution of the Russian

⁷⁸ See n 23–26.

⁷⁹ See for the formal limits Section 3.1 above.

⁸⁰ Decision of the CEC RF of 7 April 2005 No. 142/974-4 (n 23).

⁸¹ Decision of the CEC RF of 20 April 2005 No. 143/981-4 (n 23).

Federation, and that all other restrictions on the holding of a referendum should be lifted?' In the opinion of the CEC RF, an unlimited referendum right could lead to a violation of the rights and freedoms of man and citizen which contradicted Article 55(2) of the Constitution. Only the above-mentioned issue on the election of the deputies of the State Duma and issue No. 8, 'Do you agree that in the Russian Federation deferrals from military service valid as of 1 January 2005 should be maintained?' were found to be admissible. The initiative group did not start the registration procedure for the two remaining referendum issues.

In 2006, the CEC RF had to decide on the admissibility of only one referendum issue that should have been put to the vote. The question, 'Do you agree that the same person should not be allowed to hold the office of the President of the Russian Federation for more than two consecutive terms?' was, as already mentioned above, found to violate the clarity of question requirement.⁸²

In 2012, another two citizen-initiated referendums were launched. The CEC RF declared the issue, 'Do you support the accession of Russia to the World Trade Organization on the conditions and obligations under the Protocol signed on 16 December 2011?' inadmissible since it belonged to the exclusive competence of the federal state organs. According to the CEC RF, the ratification of international treaties of the Russian Federation was carried out in the form of a federal law that was adopted by the State Duma (a federal state organ).⁸³ In the same year, another referendum initiative group proposed to vote on the two issues, 'Do you support the need for a nationwide public discussion on the need of the Russian Federation to join the World Trade Organization?' and 'Do you agree to transfer part of the sovereignty of the Russian Federation to the jurisdiction of the World Trade Organization?' Both issues were declared inadmissible. According to the CEC RF, the first question violated the clarity of question requirement since the term 'public discussion' was not clear. In this Decision, the CEC RF also referred to the consistency of subject matter established by the Constitutional Court in its Judgment of 21 March 2007 No. 3-П⁸⁴ and held that the referendum issue had to be considered in conjunction with the other issues. The two issues in question were not logically connected and would mislead citizens over the purpose of the Russian Federation to join the World Trade Organization.⁸⁵

Some of the above-mentioned decisions of the CEC RF were challenged before the Supreme Court of the Russian Federation (Supreme Court) that

⁸² See Section 3.1.1 above and Decision of the CEC RF of 27 September 2006 No. 187/1180-4 (n 24).

⁸³ Decision of the CEC RF of 13 April 2012 No. 118/917-6 (n 25).

⁸⁴ See Section 3.1.1 above.

⁸⁵ Decision of the CEC RF of 19 July 2012 No. 132/1011-6 (n 25).

rejected the appeals, for instance the Decision of the CEC RF of 20 April 2005 No. 143/981-4. By mainly repeating the argumentation of the CEC RF, the Supreme Court confirmed that 15 referendum issues did not conform to the Referendum Act. They either fell into the catalogue of prohibited issues or violated the clarity of question requirement.⁸⁶ The Board of Cassation of the Supreme Court confirmed this decision.⁸⁷ The Decision of the CEC RF of 13 April 2012 No. 118/917-6 has also been challenged before the Supreme Court. In a judgment of five pages the Court confirmed the argumentation of the CEC RF and declared the referendum question inadmissible.⁸⁸ This decision was confirmed by the Board of Appeal of the Supreme Court.⁸⁹

The former provision in the catalogue of prohibited issues excluding budgetary or other financial obligations of the Russian Federation in Article 6(5), the clarity of question requirement in Article 6(7) and Article 15(13) Referendum Act (power of the CEC RF to check the referendum issue on its compatibility with the Referendum Act) have been challenged before the Constitutional Court. In an important precedent, the Court confirmed the constitutionality of these limits.⁹⁰ According to the Court, it follows directly from the Constitution that budgetary questions refer to the legislative power and therefore the former provision in Article 6(5) Referendum Act is constitutional. The clarity of question requirement ensures the adequate expression of the citizens' will and thus cannot violate the Constitution.⁹¹ However, it also follows from the judgment that the federal legislator should formulate the provisions in the catalogue of prohibited issues in a clear way.⁹² Despite this, the catalogue was amended in 2008 by abolishing several provisions and adding the vaguely formulated point

⁸⁶ Решение Верховного Суда РФ от 2 июня 2005 № ГКПИ05-589, 628 (Judgment of the Supreme Court of 2 June 2005 No. ГКПИ05-589, 628) available at <http://www.vsrfr.ru>, accessed 8 July 2020.

⁸⁷ Определение кассационной коллегии Верховного Суда РФ от 28 июля 2005 № КА05-329 (Judgment of the Board of Cassation of the Supreme Court of 28 July 2005 No. КА05-329) available at <http://www.consultant.ru>, accessed 8 July 2020.

⁸⁸ Решение Верховного Суда от 6 июня 2012 № АКПИ12-693 (Judgment of the Supreme Court of 6 June 2012 No. АКПИ12-693) available at <http://www.consultant.ru>, accessed 8 July 2020.

⁸⁹ Определение апелляционной коллегии Верховного Суда РФ от 20 сентября 2012 № АПЛ12-499 (Judgment of the Supreme Court of 20 September 2012 No. АПЛ12-499) available at <http://www.vsrfr.ru>, accessed 8 July 2020.

⁹⁰ Judgment of the Constitutional Court of 21 March 2007 No. 3-П (n 64). See for a detailed analysis of this case Галина Андреева/Александр Верещагин/Инга Старостина, 'Двери для референдума приоткрываются?' ('Do the doors for the referendum open?') (2007) 2 Сравнительное Конституционное Право.

⁹¹ Judgment of the Constitutional Court of 21 March 2007 No. 3-П (n 64) стр. 10–14 п. 3 and стр. 14–15 п. 4.

⁹² Сергеев (n 65) 11.

No. 7 (issues in the exclusive competence of federal state organs). This has led *de facto* to the opening of the catalogue which allows the CEC RF to invalidate referendums on an even broader basis.⁹³

3.2.2 Compliance with the Russian Constitution

The preamble of the Referendum Act states that the referendum cannot be used to make decisions which are contrary to the Constitution. Until 2008, Article 6(6) of the Referendum Act explicitly foresaw that referendum issues shall not contradict the Constitution. Now it is Article 23(1) of the Referendum Act which states that the Russian President, before calling the referendum requests the Constitutional Court to check the referendum question(s) for compliance with the Constitution. If the referendum question does not comply with the Constitution, the referendum is declared invalid.⁹⁴

In its Decision of 27 September 2006 No. 187/1180-4, the CEC RF based the invalidation of the referendum issue, 'Do you agree that the same person should not be allowed to hold the office of the President of the Russian Federation for more than two consecutive terms?' on both the lack of clarity of the referendum question and the violation of the Russian Constitution. The Commission argued in a not very convincing way that the referendum issue was identical to Article 81(3) of the Constitution and that such duplications would violate the Constitution.⁹⁵

3.2.3 Further substantive limits on the agenda initiative

The text of an RPI (be it at the federal, the regional or the municipal level) may not contain obscene or offensive language, threats to the life or health of citizens or calls for extremist activities.⁹⁶ Furthermore, according to Paragraph 13 of the Rules RPI, an initiative will not be published on the internet if it:

- (1) violates the Constitution, generally recognized principles and norms of international law, among them those in the field of rights, freedoms and legitimate interests of citizens;
- (2) violates Article 6 of the Referendum Act;
- (3) does not contain a description of the problem, does not suggest solutions to the problem or the proposed options are not justified.

⁹³ Burkhard Breig, 'Sachunmittelbare Demokratie in Russland' in Peter Neumann/Denise Renger (eds), *Sachunmittelbare Demokratie im interdisziplinären und internationalen Kontext 2010/2011* (Nomos 2012) 275–76; Cepreeв (n 65) 11–12.

⁹⁴ Art. 23(2) Referendum Act.

⁹⁵ Decision of the CEC RF of 27 September 2006 No. 187/1180-4 (n 24).

⁹⁶ Para. 7 Rules RPI.

However, these substantial limits are not very important in practice, since most of the RPIs at the federal level already fail to reach the necessary support of 100,000 votes.⁹⁷

4. LEGAL LIMITS AT THE REGIONAL AND MUNICIPAL LEVELS

The legal limits on the referendum established by the Basic Guarantees Act and regional legislation are weaker than at the federal level.

A first substantive limit results from the scope of the regional referendum which includes questions in the jurisdiction of the federal subjects or the joint jurisdiction of the Russian Federation and its subjects, if these matters are not already regulated by the Constitution or federal law.⁹⁸ The scope of the municipal referendum includes questions of local importance.⁹⁹ The Constitutional Court has held that the regional referendum should not be used to oppose the will of the federal legislator.¹⁰⁰ The issue of a regional or municipal referendum had to comply with higher-ranking law.¹⁰¹

Furthermore, the referendum issue should not limit or abrogate the universally recognized human and civil rights, freedoms and the constitutional guarantees to implement these rights.¹⁰²

According to Article 12(8) of the Basic Guarantees Act, the following issues cannot be subject to the regional or the municipal referendum:

- (1) the early termination or prolongation of the term of office of regional state authorities or municipal organs, the suspension of their powers, the holding of early elections of regional state authorities or municipal organs or the postponement of such elections;
- (2) the personal composition of regional or municipal authorities;

⁹⁷ See Волошинская (n 60) 47 and Section 2.3 above.

⁹⁸ Art. 12(2) Basic Guarantees Act. According to the Supreme Court, issues in the joint jurisdiction of the Russian Federation and its federal subjects can be subject to a regional referendum. For example, Определение Верховного Суда РФ от 27 октября 2003 № 76-Г03-2 (Judgment of the Supreme Court of 27 October 2003 No. 76-Г03-2) c. 3. However, this shall not apply if the issue has already been regulated by federal legislation. See for example, Определение Верховного Суда РФ от 13 ноября 2019 № 1-АПА 19–22 (Judgment of the Supreme Court of 13 November 2019 No. 1-АПА 19–22) c. 7. The judgments are available at <https://vsrf.ru/lk/practice/acts>, accessed 8 July 2020.

⁹⁹ Art. 12(3) Basic Guarantees Act.

¹⁰⁰ Judgment of the Constitutional Court of 10 June 1998 No. 17-П (n 64) c. 3 п. 2.

¹⁰¹ Art. 12(6) Basic Guarantees Act.

¹⁰² Art. 12(5) Basic Guarantees Act.

- (3) the election of deputies and officials, approval, appointment and dismissal of officials, consent to their appointment and dismissal;
- (4) the adoption of or amendments to the corresponding budget, fulfilment and modification of financial obligations of a federal subject or municipality;
- (5) the adoption of emergency and urgent measures to ensure the health and safety of the population.

The referendum question must be formulated in such a way as to exclude the possibility of multiple interpretations, that is, to give only a definite answer to the question and to exclude uncertainty in regard to the legal consequences of the decision.¹⁰³

Several referendums at the regional level have been declared inadmissible, as they failed to meet the substantial or formal limits established by the Basic Guarantees Act and regional legislation. The practice of the Supreme Court is rather restrictive, as it interprets these limits in a broad way. Accordingly, it supported the decisions of regional election commissions and regional courts not to register regional initiative groups due to failure to meet the formal or substantive admissibility requirements.¹⁰⁴ Furthermore, it annulled decisions of regional courts which had decided in favour of the initiative group.¹⁰⁵ Only rarely, the Court supported the initiative group and decided against the election commission.¹⁰⁶

5. INSTITUTIONAL AND PROCEDURAL FRAMEWORK

5.1 Federal Level

5.1.1 Optional referendum

In order to launch an optional referendum, the initiators have to form a national (referendum) initiative group that consists of regional subgroups. Before the registration of the first regional subgroup, the CEC RF reviews the referendum

¹⁰³ Art. 12(7) Basic Guarantees Act.

¹⁰⁴ See for example, Апелляционные определения Верховного Суда РФ от 14 августа 2019 № 1-АПА19-13; от 22 мая 2019 № 47-АПА19-2 (Appeal judgments of 14 August 2019 No. 1-АПА19-13; of 22 May 2019 No. 47-АПА19-2).

¹⁰⁵ See for example, Апелляционное определение Верховного Суда РФ от 25 июня 2019 № 1-АПА19-7 (Appeal judgment of 25 June 2019 No. 1-АПА19-7).

¹⁰⁶ See for example, Апелляционное определение Верховного Суда РФ от 31 января 2018 № 86-АПП17-5 (Appeal judgment of the Supreme Court of 31 January 2018 No. 86-АПП17-5). All judgments are available at <https://vsrf.ru/lk/practice/acts>, accessed 8 July 2020.

question for its compliance with Article 6 of the Referendum Act (clarity of question requirement, prohibited issues).¹⁰⁷

If the referendum question complies to the requirements, the regional subgroups are formed and registered by the respective regional election commissions.¹⁰⁸ The national initiative group can request registration from the CEC RF when regional subgroups have been registered in more than half of the federal subjects.¹⁰⁹ The national initiative group will be handed out a registration certificate which entitles it to collect signatures.¹¹⁰ After signature collection, the signature sheets are submitted to the CEC RF, which checks them formally (information on the signatories, authenticity).¹¹¹ If the national initiative group fails to meet the registration requirements, or if it could not collect the necessary number of valid signatures, the referendum is declared invalid by the CEC RF.¹¹²

According to Article 21(4) of the Basic Guarantees Act, the CEC RF consists of 15 members. The Russian President, the State Duma (lower house) and the Federation Council (upper house) each appoint five members. In accordance with Article 21(3) of the Basic Guarantees Act, the members are elected for five years. The Referendum Act establishes some due process guarantees in the procedure before the CEC RF. According to Article 33 of the Rules CEC,¹¹³ the Commission's sessions are held openly and publicly. Members or authorized representatives of the referendum initiative group are entitled to attend the sessions and also witness the work on the protocols on the referendum results. The chairperson can pass them the word (Article 37 Rules CEC), but there is no standardized hearing procedure.

The decisions of the CEC RF can be challenged before the Supreme Court.¹¹⁴ If the reason for the decision was non-conformity of the referendum issue with the Constitution, the Supreme Court transfers the request to the Constitutional Court.¹¹⁵ Since 2015, the referendum procedure is regulated by

¹⁰⁷ Art. 15(13) Referendum Act. See for these limits Sections 3.1.1 and 3.2.1 above.

¹⁰⁸ Art. 15(14–15) Referendum Act.

¹⁰⁹ Art. 15(19) Referendum Act.

¹¹⁰ Art. 15(22–23) Referendum Act.

¹¹¹ Art. 19 Referendum Act.

¹¹² Art. 15(26) and 20(3) Referendum Act.

¹¹³ Постановление ЦИК РФ от 28 июня 1995 № 7/46-II 'О Регламенте Центральной избирательной комиссии Российской Федерации' (Decree of the CEC RF of 28 June 1995 No. 7/46-II 'On the Rules of the Central Election Commission of the Russian Federation') <http://www.consultant.ru>, accessed 8 July 2020.

¹¹⁴ Art. 15(25), 20(5) and 87 Referendum Act.

¹¹⁵ Art. 15(17) Referendum Act.

the Code of Administrative Jurisdiction of the Russian Federation (CAJ).¹¹⁶ There are special procedural provisions in Chapter 24 of the CAJ for election and referendum procedures (Articles 239–244), concretizing mainly the right to appeal a decision (Article 239) and establishing shorter deadlines to file appeals in certain cases concerning electoral and referendum matters (see Article 240) and also to deal with them for the Court (Article 241). Article 6 of the CAJ contains due process guarantees (for example, the principle of equality, transparency of proceedings, independence of judges, the principle of legality). The circle of persons entitled to appeal the decisions of the CEC RF before the Supreme Court is rather wide.¹¹⁷

If the signatures meet the requirements, all the documents necessary to call the referendum are sent to the Russian President. He or she transmits them to the Constitutional Court, which reviews the referendum issue for its compliance with the Constitution.¹¹⁸ If the initiative is found to comply with the Constitution, it is put to the vote. Otherwise, it is declared invalid and all procedures for its implementation are terminated.¹¹⁹

5.1.2 Mandatory referendum

The mandatory referendum foreseen by an international treaty of the Russian Federation is called by the federal state organ in whose competence the consideration of the draft normative act or the issue of national importance falls according to the international treaty.¹²⁰ According to Article 6(2) Referendum Act, all the procedural provisions (calling, preparation and holding of the ref-

¹¹⁶ Кодекс административного судопроизводства Российской Федерации от 8 марта 2015 № 21-ФЗ (Code of Administrative Jurisdiction of the Russian Federation of 8 March 2015 No. 21-ФЗ) // СЗ РФ 9.3.2015 № 10 ст. 1391.

¹¹⁷ According to Art. 239(1) and (2) CAJ, the following subjects are entitled to appeal decisions of the CEC RF or other state organs: voters, referendum participants, candidates and electoral associations, their confidants, political parties, their regional branches and other structural units, other public associations, referendum initiative groups, other groups of referendum participants and their authorized representatives, whose (electoral) rights, freedoms and legitimate interests have been violated by the decision.

¹¹⁸ Art. 23(1) Referendum Act. The Constitutional Court mainly decides on the constitutionality of laws, presidential and governmental decrees and laws of federal subjects, as well as on the constitutionality of the application of a law in a concrete case (see Art. 3 Федеральный конституционный закон от 21 июля 1994 № 1-ФКЗ ‘О Конституционном Суде Российской Федерации’; Federal Constitutional Act of 21 July 1994 No. 1-FKZ ‘on the Constitutional Court of the Russian Federation’ // СЗ РФ 25.07.1994 № 13 ст. 1447).

¹¹⁹ Art. 23(2) Referendum Act.

¹²⁰ Art. 22(1) Referendum Act.

erendum) of the Referendum Act are basically applicable, taking into account special provisions foreseen by the international treaty in question.

5.1.3 Agenda initiative

In order to launch an RPI, the initiator has to register in the federal state information system () and submit the text of the initiative by filling out a special form on the internet platform ().¹²¹ Before publication, the initiative has to undergo preliminary examination, except if its text contains offensive language, threats to the life or health of citizens or calls for extremist activities. Such initiatives are removed from the platform without preliminary examination.¹²² The same applies in case of repeated submission of the same initiative under certain circumstances.¹²³ The aim of the preliminary examination is to review the initiative for its compliance with the limits set out above.¹²⁴ After the examination, the initiative is published on the internet platform and the voting process begins. If the initiative has gained the necessary number of votes,¹²⁵ it will be put on the agenda of the respective state organ (at the federal, regional or municipal level).¹²⁶

The decision to remove a public initiative without preliminary examination or not to publish it on the platform is taken by an authorized non-profit organization (that is, a private entity) called 'Information Democracy Fund'.¹²⁷ This organization also carries out the preliminary examination.¹²⁸ By Presidential Decree No. 183 of 4 March 2013 the 'Information Democracy Fund' was appointed the operator of the Russian Public Initiative Internet resource.¹²⁹ A remedy procedure is not foreseen in the Rules. However, there are some transparency requirements for the decisions of the organization, for instance the obligation to notify the initiator of the RPI electronically on the decision to remove an initiative without preliminary examination or to motivate its decision not to publish an initiative after preliminary examination.¹³⁰

¹²¹ Para. 2 and 6 Rules RPI.

¹²² Para. 7 Rules RPI.

¹²³ See para. 9 Rules RPI.

¹²⁴ Para. 10 Rules RPI. See for these limits Section 3.2.3 above.

¹²⁵ See Section 2.3 above.

¹²⁶ Para. 19 Rules RPI.

¹²⁷ Para. 4, 9 and 13 Rules RPI. See <https://www.f-id.ru/about/>, accessed 8 July 2020.

¹²⁸ Para. 4 Rules RPI.

¹²⁹ See for the Presidential Decree (n 55).

¹³⁰ See para. 9 and 12 RPI.

5.2 Regional and Municipal Levels

In order to launch an optional referendum, the initiators have to form a referendum (initiative) group and apply to the regional or municipal election commission for registration.¹³¹ The regional or municipal election commission carries out a preliminary formal examination of the registration documents.¹³² After the examination, the documents are transferred to the regional or municipal parliament (representative organ). It reviews the referendum question for its compliance with the formal and substantive admissibility requirements set out in Article 12 of the Basic Guarantees Act.¹³³ If the parliament finds the question does not comply with these requirements, the regional or municipal election commission refuses to register the initiative group.¹³⁴ The wording of this provision indicates that the election commissions are bound by the parliamentary decisions. If the initiative is found to comply with these requirements, the referendum group is registered and handed out a registration certificate that entitles it to collect signatures.¹³⁵ After signature collection and check of the signatures, the referendum issue is put to the vote.¹³⁶

According to Article 75(1) of the Basic Guarantees Act, decisions and actions (or inaction) of regional or municipal state organs that violate the electoral rights or the right of citizens to participate in a referendum may be appealed to a court.¹³⁷ The decisions of the regional election commissions (for example, their refusal to register a referendum initiative group) and those of the regional parliaments on the referendum issue can be challenged before the regional supreme courts (in case of the municipal referendum the district courts) and before the Russian Supreme Court.¹³⁸ The provisions in Chapter 24 (Articles 239–44) of the CAJ are applicable.¹³⁹ The procedural provisions in the Basic Guarantees Act also apply to the optional institution-initiated referendum at the regional level.¹⁴⁰

¹³¹ Art. 36(2–4) Basic Guarantees Act.

¹³² Art. 36(5) Basic Guarantees Act.

¹³³ Art. 36(5–6) Basic Guarantees Act. See for the substantive limits Section 3.2 above.

¹³⁴ Art. 36(11) Basic Guarantees Act.

¹³⁵ Art. 36(8) Basic Guarantees Act.

¹³⁶ See Art. 15(1) Basic Guarantees Act.

¹³⁷ See also Art. 239(1–4) CAJ.

¹³⁸ Art. 75(2) Basic Guarantees Act. Both decisions – the one of the regional parliament and the one of the election commission – can be challenged before the court. For example, Апелляционное определение от 13 ноября 2019 № 1-АПА 19–22 (Judgment of the Supreme Court of 13 November 2019 No. 1-АПА 19–22) c. 9.

¹³⁹ See for these provisions Section 5.1.1 above.

¹⁴⁰ Art. 11(2) Admission Act. See for this referendum Section 2.1.2 above.

6. THE ‘ALL-RUSSIAN VOTE’ 2020

On 1 July 2020 (initial date 22 April 2020)¹⁴¹ the first referendum at the federal level on several amendments to the Russian Constitution was held. The proposed amendments were approved by a majority of 77.92 per cent of the referendum participants. Turnout was 67.97 per cent of registered voters.¹⁴² From a judicial point of view, there was no need for this vote since the amendments¹⁴³ did not affect Chapters 1, 2 or 9 of the Constitution¹⁴⁴ and the parliament had already approved them on 11 March 2020.¹⁴⁵

Officially, the vote has been referred to as the ‘all-Russian vote’ and it has been conducted in accordance with special legislation,¹⁴⁶ and not the Referendum Act. According to Article 2(2) Public Authority Act, the vote is initiated by the Russian President and can thus be qualified as an institution-initiated referendum. More than 50 per cent of the referendum

¹⁴¹ The vote had to be postponed due to the coronavirus outbreak. Указ Президента РФ от 25 Марта 2020 № 205 ‘О переносе даты общероссийского голосования по вопросу одобрения изменений в Конституцию Российской Федерации’ (Decree of the President RF of 25 March 2020 No. 205 ‘on the postponement of the date of the all-Russian vote on the approval of amendments to the Constitution of the Russian Federation’) // СЗ РФ 30.3.2020 № 13 ст. 1897.

¹⁴² Постановление ЦИК от 3 июля 2020 № 256/1888-7 ‘О результатах общероссийского голосования по вопросу одобрения изменений в Конституцию Российской Федерации’ (Decree of the CEC RF of 3 July 2020 No. 256/1888-7 ‘on the results of the all-Russian vote on the approval of amendments to the Constitution of the Russian Federation’) // ПГ 4.7.2020 № 256; <http://www.cikrf.ru/news/cec/46749/>, accessed 8 July 2020.

¹⁴³ According to Art. 1 Public Authority Act, there have been amendments to the following Articles of the Constitution: 67, 67.1, 68, 69, 70, 71, 72(1), 75, 75.1, 77(3), 78(5), 79, 79.1, 80(2), 81, 82(2), 83, 92.1, 93, 95, 97, 98(1), 100(3), 102, 103(1), 103.1, 104(1), 107(3), 108(2), 109(1), 110, 111, 112, 113, 114(1), 115, 117, 118, 119, 125, 126, 128, 129, 131, 132 and 133.

¹⁴⁴ See Section 2.2 above.

¹⁴⁵ See <https://sozd.duma.gov.ru/bill/885214-7>, accessed 8 July 2020.

¹⁴⁶ Закон РФ о поправке к Конституции РФ от 14 марта 2020 № 1-ФКЗ ‘О совершенствовании регулирования отдельных вопросов организации и функционирования публичной власти’ (Federal Act on the amendment of the Russian Constitution of 14 March 2020 No. 1-FKZ ‘on improving the regulation of certain issues of the organization and functioning of public authority’) // СЗ РФ 16.3.2020 № 11 ст. 1416 (Public Authority Act) and Постановление ЦИК от 20 марта 2020 № 244/1804-7 ‘О порядке общероссийского голосования по вопросу одобрения изменений в Конституцию Российской Федерации’ (Decree of the CEC RF of 20 March 2020 No. 244/1804-7 ‘on the procedure for the all-Russian vote on the approval of the amendments to the Russian Constitution’) // ‘Вестник ЦИК России’ № 3 2020.

participants had to approve the referendum for it to pass.¹⁴⁷ The vote has been appointed by Presidential Decree No. 354.¹⁴⁸ The voters had seven days (from 25 June to 1 July 2020) to cast their votes. In certain regions remote electronic voting was also available.¹⁴⁹

In Article 3 Public Authority Act was enshrined a special admissibility procedure before the Constitutional Court. In accordance with Article 3(3) Public Authority Act, the Court had to confirm the conformity of the proposed amendments to Chapters 1, 2 and 9 of the Constitution which it did in its opinion of 16 March 2020.¹⁵⁰ However, the referendum issue, ‘Do you approve the changes in the Constitution of the Russian Federation?’ has been determined by Presidential Decree No. 188.¹⁵¹ It has not been subject to the admissibility check by the Constitutional Court. The formal and substantive admissibility requirements of the Referendum Act (catalogue of prohibited issues, clarity of question requirement) were not applicable.¹⁵² The formulation of the referendum question would have hardly met these requirements since the voters had to decide on the bill as a whole. The constitutional amendments have far-reaching consequences and cover a broad range of issues. For instance, new Article 81(3.1) of the Constitution sets the incumbent President’s previous presidential terms to zero and therefore allows him or her to extend his or her rule for two more terms until at least 2036. According to new Article 79 of the Constitution, decisions of interstate bodies which are contrary to the Russian Constitution shall not be implemented in the Russian Federation.

¹⁴⁷ Art. 3(5) Public Authority Act.

¹⁴⁸ See Указ Президента РФ от 1 июня 2020 № 354 ‘об определении даты проведения общероссийского голосования по вопросу одобрения изменений в Конституцию Российской Федерации’ (Decree of the President RF of 1 June 2020 ‘on the determination of the date of the holding of the all-Russian vote on the approval of amendments to the Constitution RF’) // СЗ РФ 8.6.2020 № 23, ст. 3622.

¹⁴⁹ See online at, <https://rg.ru/2020/06/09/popravki-v-konstituciiu-kak-i-gde-budem-golosovat-s-25-i-iunia-po-1-i-iuliu.html>, accessed 8 July 2020.

¹⁵⁰ Заключение Конституционного Суда РФ от 16 марта 2020 № 1-3 (Opinion of the Constitutional Court RF of 16 March 2020 No. 1-3) available at <<https://rg.ru/2020/03/17/ks-rf-popravki-dok.html>> accessed 8 July 2020 [remark: the opinion of the Constitutional Court is cited in a shortened form without description of the subject. The full naming in Russian is accessible from the indicated website].

¹⁵¹ Указ Президента РФ от 17 Марта 2020 № 188 ‘О назначении общероссийского голосования по вопросу одобрения изменений в Конституцию Российской Федерации’ (Decree of the President of the Russian Federation of 17 March 2020 No. 188 ‘on the appointment of an all-Russian vote on the approval of the amendments to the Constitution of the Russian Federation’) // СЗ РФ 23.3.2020 № 12 ст. 1743.

¹⁵² See for the clarity of the referendum question Section 3.1.1 and for the catalogue of prohibited issues Section 3.2.1 above.

Other amendments were very favourable to Russian people, for instance the guarantees for a minimal pension and compulsory social insurance as well as their indexation in new Article 75(6) and (7) of the Constitution. Against this background, the referendum question could not ensure the freedom of voters to form an opinion that is enshrined in paragraph 3.1 of the Code of Good Practice on Referendums.¹⁵³

7. CONCLUSION

The constitutional role of the referendum as a central instrument of direct democracy in Russia is of a rather theoretical nature. Restrictions have been imposed on the referendum at two levels: legislation and judicial practice. There are high technical hurdles to form a referendum (initiative) group and collect the necessary number of signatures. The legislator has also reinforced the substantive and formal admissibility requirements in Russian referendum law, especially at the federal level.¹⁵⁴ These legal limits have been criticized as politically motivated limitations of the right to a referendum.¹⁵⁵ Russian courts follow a rather restrictive practice in remedy procedures and often decide in favour of the election commissions. This practice could impair the right to an effective system of appeal, enshrined in paragraph 3.3 of the Code of Good Practice on Referendums of the Venice Commission.

At the federal level, the first referendum since 1993 was held on 1 July 2020, but not in accordance with the Referendum Act.¹⁵⁶ At the regional level, the referendum has been used to legitimize the politically controversial mergers of several federal subjects. At the municipal level, many mandatory referendums have been held, mainly on the introduction of means of self-taxation.¹⁵⁷ Furthermore, a lot of RPIs have been launched. However, in practice only a few RPIs have actually gained the necessary support of the voters at the federal level and it has been rather difficult to monitor their implementation.¹⁵⁸

In conclusion, there is a strong contrast between the constitutional status and the practical use of the referendum in Russia. Apart from the local level and

¹⁵³ Code of Good Practice on Referendums, adopted by the Council for Democratic Elections at its 19th meeting (Venice, 16 December 2006) and the Venice Commission at its 70th plenary session (Venice, 16–17 March 2007), CDL-AD (2007) 008rev.

¹⁵⁴ See for these requirements Sections 3.1 and 3.2 above.

¹⁵⁵ Сергеев (n 65) 12; Петухова (n 63) 115; Марина Михайловна Курячая, 'Проблемы реализации права граждан на референдум' ('Problems of realization of the right of citizens to a referendum') (2005) 9 *Право и Политика* 11, 18.

¹⁵⁶ See Section 6 above.

¹⁵⁷ See for the mandatory referendums Section 2.2 above.

¹⁵⁸ See for the agenda initiative Section 2.3 above.

the RPI, the referendum has been either restricted by legislation and judicial practice to a political instrument of little practical relevance or it has been used to decide on politically controversial issues. The recent vote on the constitutional amendments at the federal level indicates a plebiscitary use of the referendum in Russia. The vote allowed President Putin to publicly approve the extension of his power until at least 2036 by circumventing the legal limits of the Referendum Act.¹⁵⁹ Against this background, the referendum in Russia currently appears as an instrument not of a free, but rather of a ‘guided democracy’.¹⁶⁰

¹⁵⁹ See <https://www.nytimes.com/2020/07/01/world/europe/putin-referendum-vote-russia.html>, accessed 8 July 2020.

¹⁶⁰ See for this term Margareta Mommsen, ‘Putins “gelenkte Demokratie”: “Vertikale der Macht” statt Gewaltenteilung’ in Matthes Buhbe/Gabriele Gorzka (eds), *Russland heute: Rezentralisierung des Staates unter Putin* (VS Verlag für Sozialwissenschaften 2007) 237.