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Constitutional Foundations of Competition in the Russian Federation

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5.1.2. Public Law (State Law) Sciences

GENERAL OVERVIEW OF THE DISSERTATION RESEARCH

Relevance of the research topic. The concept of “competition” is considered in various fields of knowledge: law, economics, political science, sociology, philosophy. The interest in the institute of competition demonstrated by legal scholars stems from the fact that adoption of the new Constitution of the Russian Federation in 1993 introduced into the basics of the Russian constitutional system such principles as freedom of economic activity, competition support, separation of powers, ideological and political diversity, multiparty system. In this regard, legal relations arising between the subjects involved in competitive interaction are mediated by the provisions of constitutional law and constitute its subject matter. Economic and political competition play a pivotal role in the state and social development of Russia and are based on constitutional principles. At the same time, current constitutional regulation directly implies the need to develop and support competitive relations in various spheres, primarily in economics and politics.

Meanwhile, it is worth mentioning that the current understanding of competition as a complex legal category is not fully formed. The lack of comprehensive research on competition as a legal institution as well as doctrinal definition of competition predetermine the relevance of in-depth study of competition. In addition, literature presents controversial approaches towards understanding and establishing political competition. In this regard, the study of competition as an independent legal category and identification of its features, which opens up opportunities for legal comprehension of competition in various forms and spheres, becomes an important task within the framework of legal science.

In Russia, relations in the field of economic competition, which has a developed economic and legal theoretical basis and legislative means of its legal protection, prove to be sufficiently regulated. Competition in the economic sphere is determined by the special Federal Law of July 26, 2006 No. 135-FZ “On the

Protection of Competition¹” (hereinafter referred to as “the Law on Protection of Competition”). In particular, basic elements of economic competition are reflected in the current antimonopoly legislation, which is based on the Constitution of the Russian Federation as well as federal laws. Not only does the current legislation establish the definition of competition as well as other related categories (for instance, “dominant position”, “monopolistic activity”, “unfair competition”) but it also defines and enshrines the organizational and legal basis for the protection of competition, as well as the powers of authorities to protect competition, in particular related to the prevention and suppression of monopolistic activities and unfair competition in the commodity market.

Meanwhile, only competitive relations arising in the commodity market are governed by the current legislation. Relations in the sphere of political competition, in turn, are not sufficiently regulated by law, which leads to the need to determine acceptable legal means of its protection. The present study aims to demonstrate that both economic and political competition are based on the same principles. Not only can it be traced while studying their social, economic and political nature but also in the consideration of legal (including functional) features of the two types of competition. At the same time, from a scientific point of view, it is of paramount importance to find answers to the following questions that are of key significance for law enforcement practice:

Can it be stated that being a social phenomenon competition functions on the same principles both in politics and economics?

Can legal constructions in the sphere of antitrust regulation implement and accompany competition in the political sphere? What is the content of political competition as a legal constitutional category and constitutional relationship?

Understanding competition as a category of economic science made it possible to take a critical look at the definition of competition and related concepts used within the framework of antimonopoly regulation. This allowed us to draw

¹ Federal Law of July 26, 2006 No. 135-FZ “On the Protection of Competition” // SZ RF. 2006. No. 31. Art. 3434.

conclusions regarding the possibility of applying the analogy of the Law on Protection of Competition to social relations in the field of political competition.

It should be noted that specialists from different fields of knowledge investigate political competition and related concepts based on the subject and theoretical approaches of the relevant sciences. At the same time, identifying the legal content of political competition would make it possible to introduce legislative proposals aimed at regulating of political advertising, preventing and suppressing unfair competition within the elections, defining the powers of election commissions in the field of political competition, etc.

The degree of scientific elaboration of the dissertation research problem.

The scientific works of legal scholars are devoted primarily to economic competition, while much less attention is paid to political competition. It is also worth mentioning that even legal studies fail to take into consideration legal characteristics of these types of competition. In particular, competition in the relevant field is considered either based on approaches developed within the framework of economics, political science or sociology, or without taking into account any doctrinal characteristics of competition at all.

For the purpose of a comprehensive legal analysis of competition as a legal phenomenon, the research examined doctrinal approaches to defining the concept and characteristics of competition in sociology, economics and political science. The study of the social nature of competition is provided in the works of G.M. Avetov, V.V. Radev, M.S. Lebedev, A.G. Shmelev, O.V. Letunova, I.V. Serebruev, M.L. Razu, A.V. Filippov. Mentioned works made it possible to identify general social features of competition and formulate its definition as an interdisciplinary phenomenon.

The dissertation uses the studies of a wide range of economists, including: V.S. Avtonomov, A.M. Arkhipov, S.A. Afontsev, Sh.M. Tagirov, V.V. Melnikov, Y.V. Taranukha, S.V. Kravtsevich. Consideration of competition as an economic phenomenon allowed to identify the characteristics inherent in competition between economic entities in the commodity market.

The dissertation is also based on the researches of scientists who studied political competition: Y.A. Nisnevich, A.G. Kutsenko, D.I. Koshel, I.L. Kinserskaya, D.V. Obukhov, V.N. Shilov. The study of the political nature of competition allowed to identify its essential characteristics which were used in formulating the definition of political competition from the legal point of view.

In Russian legal science a significant number of studies are devoted to economic competition, revealing the legal characteristics of competition, the basis of support and protection of competition in Russia, and analyze law enforcement practice. Researches of I.Y. Artemyev, G.A. Gadzhiev, M.A. Egorova, V.D. Mazaev, S.A. Parashchuk, K.A. Pisenko, S.A. Puzyrevsky, D.I. Seregin, K.Y. Totyev, A.Y. Kinev, T.Y. Khabrieva were used as a theoretical basis for studying the legal foundations of economic competition.

The concept of political competition was considered from the perspective of legal science in the works of such Russian legal scholars as: S.A. Avakyan, M.A. Krasnov, E.A. Lukyanova, S.V. Maslennikova (Vasilieva), A.N. Medushevsky, I.G. Shablinsky and other authors who formulated their own approaches to understanding political competition from the legal point of view. In addition, an important role in the theoretical understanding of the relations in the field of political competition have the works of such legal scholars as: S.S. Alekseev, M.V. Baglay, V.A. Vinogradov, N.V. Vitruk, A.A. Klishas, E.I. Kozlova, O.E. Kutafin, E.I. Koliushin, A.S. Koshel, L.A. Tkhabisimova, V.E. Chirkin, D.G. Shustrov, B.S. Ebzeev and others scholars.

Also, the research is based on the works of foreign scientists devoted to the analysis of the nature and essence of competition and competitive relations in economics and politics. These include the works of Max Weber, Ludwig von Mises, Joseph Schumpeter, Adam Smith, and George D. Stiegler.

The object and the subject of the research. The object of the research is social relations in the field of competition, including relations in the field of economic and political competition.

The subject of this research is: legal characteristics and content of competition as a legal phenomenon; the legal nature of economic and political competition; norms of the Constitution of the Russian Federation and laws regulating social relations in the field of economic and political competition; constitutional practice.

The purpose and the objectives of the research. The purpose of the dissertation research is to determine the concept, characteristics and legal content of competition as an independent legal category and political competition as one of its types from the position of constitutional law, including the identification of measures to improve legal regulation and protection of political competition in the Russian Federation.

In order to achieve the research purpose, the following tasks (solution of which forms the basis of the research) have been set:

1. Identify the features of competition as a social phenomenon, as well as the characteristics of economic and political competition based on doctrinal approaches in sociology, economics and political science.
2. Identify the definition and legal features of competition as an independent legal category.
3. Study doctrinal approaches to understanding political competition in constitutional science, identify the legal nature of political competition, highlight its legal features and formulate a legal definition of political competition.
4. Analyze and assess the state of legal regulation of economic and political competition in the Russian Federation.
5. Study and summarize the practice of the Constitutional Court of the Russian Federation related to political competition.
6. Conduct an analysis of the structural elements of political competition (object, subject and content) as a constitutional relationship.
7. Study the constitutional foundations of state regulation of competition and outline the powers of state authorities regarding the regulation and protection of economic and political competition.

8. Identify the legal characteristics of monopolistic activity and unfair competition in politics.

9. Investigate the admissibility and necessity of applying the analogy of law and analogy of the law (in particular, the analogy of the Law on Protection of Competition) within the social relations in the field of political competition.

10. Develop and formulate legislative proposals aimed at improving the legal regulation and protection of political competition in the Russian Federation.

Research methodology and methods. Comprehensive approach, including the use of general scientific and special legal methods, was applied in the research.

The following general scientific methods were used: formal logical method, comparative method, generalization method, analysis and synthesis, induction and deduction, methods of comparison and analogy. The use of these methods is determined by the goals and objectives of the research. In particular, these methods allowed to study competition as a general social, economic and political phenomenon as well as identify its characteristics.

The following special legal methods were also used: formal legal method, systemic-structural method, method of legal hermeneutics, method of legal analogy. The use of these methods allowed to: identify the definition and features of competition as an independent legal phenomenon; define the concept, legal content and characteristics of economic and political competition; analyze and interpret the rules regulating social relations in the field of political competition; study and summarize constitutional practice and legal positions of the highest courts (primarily the Constitutional Court of the Russian Federation) related to political competition; explore the possibility of applying the analogy of law and analogy of the Law on Protection of Competition to political competition; identify the concept, legal content and features of monopolistic activity and unfair competition in politics and economics; assess the impact of current regulation on political competition and the legal status of its subjects.

The method of legal analogy of law and analogy of the law (in particular, analogy of the Law on Protection of Competition) was used to eradicate the gaps in

understanding of competition and determining the measures of its legal regulation. The possibility of applying the method of legal analogy to social relations in the field of political competition is determined by a number of general theoretical and legal factors, including the essential characteristics of competition as a general social phenomenon, general features of social relations in the sphere of economic and political competition, as well as specific legal features inherent in these two types of competition.

The author highlights problems based on the legal theory and constitutional law indicating the impossibility of universal application of the analogy of the Law on Protection of Competition to overcome gaps in the legal regulation of political competition and to identify its concept and legal attributes. It is concluded that political competition should be defined using an analogy of law based on general legal characteristics of competition, including by defining the concept of political competition as a constitutional category.

Regulatory and empirical basis of the research. The regulatory basis of the research includes the Constitution of the Russian Federation, laws on amendments to the Constitution of the Russian Federation, federal constitutional laws, federal laws, decisions of the highest courts of the Russian Federation and other regulatory legal acts, including acts of executive authorities related to the object of the study.

The legal positions presented in the decisions of the Constitutional Court of the Russian Federation on a wide range of issues directly related to the object of the research occupy a special place in the system of empirical sources of the dissertation. These include, in particular, the Court's legal positions on: freedom of economic (entrepreneurial) activity, the limits of state intervention in the regulation of economic relations, the control function of the state in the economy, economic competition, political competition, the principle of separation of powers (checks and balances), the legislative process, electoral legislation, political agitation.

The scientific novelty of the dissertation research. The scientific novelty of the research lies in the identification of the definition and characteristics of competition as a legal phenomenon based on the general theory of law and considers

the peculiarities of the constitutional regulation of competitive relations in the Russian Federation. The author identifies the legal characteristics of political competition as a constitutional category and provides a definition of political competition, which can also be used as the basis for legislative regulation. Meanwhile, the analysis of political competition is carried out taking into account the features of competition as a legal phenomenon and on the basis of an analysis of the admissibility of applying the analogy of law and the analogy of the law to the corresponding social relations, which allows us to introduce a qualitatively new approach to the content of political competition. The study also analyzes the provisions of the Constitution of the Russian Federation and legislation on the sufficiency of legal regulation of social relations in the field of political competition.

The dissertation proposes legislative changes that consist of improving legal measures of political competition protection, including strengthening the role of election commissions in preventing and suppressing monopolistic activities and unfair political competition. The author also describes political competition as a legal institution. The work carried out the structuring of constitutional relations in the field of political competition, taking into account the identification of their object, subjects and the content of the corresponding legal relations.

Provisions submitted for defense based on the results of the research:

1. It is established that from a legal perspective, competition proves to be the legitimate activity of two or more subjects endowed with an equal rights and responsibilities, aimed at a result that, due to legal requirements, cannot be achieved in any other way than through competitive interaction.

The activity carried out to obtain a specific object of competition proves being a substantial legal feature of competition. Only legally permissible (i.e. not prohibited by law) activity using acceptable measures can be recognized as competition. The lawful nature of competition distinguishes it from methods of obtaining an object not provided for by law, for example, through the use of violence or other illegal measures. Competition presupposes the participation of at least two subjects with equal rights and obligations.

2. Despite the fact that political competition cannot be considered as an independent object of legal regulation, relations between subjects of political competition are to a certain extent regulated by the provisions of constitutional law and derive from the established constitutional principles of separation of powers (article 10 of the Constitution of the Russian Federation), ideological and political diversity, the principle of a multi-party system, equality of public associations (article 13 of the Constitution of the Russian Federation), as well as from the enshrined political rights and freedoms of man and citizen (article 29–32 of the Constitution of the Russian Federation).

As a constitutional category, political competition can be defined as legitimate activities carried out by subjects of constitutional relations to obtain and exercise power, associated with the implementation of the constitutional principles of separation of powers, ideological and political diversity, multi-party system and associated with the exercise of political rights and freedoms citizens and associations.

3. In a broad sense, the institution of political competition includes the entire set of legal relations in the field of the implementation of the constitutional principles of separation of powers, ideological and political diversity and multi-party system, equality of public associations as well as relations regarding the exercise of political rights and freedoms. In a broad sense, the institution of political competition is defined as a set of legal norms regulating relations regarding the exercise by citizens and associations of political rights and freedoms, as well as regulating relations related to the implementation of the constitutional principles of separation of powers, ideological and political diversity and multi-party system.

In a narrow sense, political competition is understood within the context of electoral relations and it is considered more broadly than the concept of elections. This is due to the fact that in electoral relations, political competition does not finish with the next election and is not tied to events defined in the legislation (in particular, to the period of the election campaign). Within this approach, political competition is defined as a set of legal norms governing relations regarding the exercise by

citizens of active, passive and other electoral rights that arise during the election campaign and election campaign and beyond this period.

4. The admissibility of using legal analogy (analogy of law and analogy of the law) within the framework of this study is determined as a possible way to eradicate gaps in understanding of the political competition and in determining measures to regulate it due to the following factors:

Firstly, the economic and political spheres of public life are interconnected and based on a single function - the distribution of limited public goods and resources, which tend to be the objects of these social relations. This also stems from the essence of competition as a social institution. Secondly, according to analysis of approaches towards understanding of competition in economics and politics, competition proves being a type of social interaction, is based on the same principles and has common characteristics. Thirdly, the study of competition as a legal category allows us to identify the presence of general legal features of competition in the economic and political spheres. Fourthly, economic and political competition are based on the principles enshrined in the fundamentals of the constitutional system (chapter 1 of the Constitution of the Russian Federation), which provides us with an opportunity to refer the admissibility of considering two types of competition as inextricably linked constitutional concepts.

5. It has been determined that the definition of economic competition stated in paragraph 7 of Art. 4 of the Law on Protection of Competition and used within the framework of antimonopoly regulation, does not contain the actual legal features of competition. It is based on a description of the economic model of interaction between economic subjects the result of which is the exclusion or limitation of the ability of “each of them to unilaterally influence the common conditions for the circulation of goods on the relevant commodity market”. This definition does not contain the identified legal characteristics of competition as the activity of subjects of social relations carried out for the possession of an object, which based on the established rules can only be obtained as a result of competition. Thus, the full application of analogy of the Law on Protection of Competition to

determine the definition and legal characteristics of political competition is not possible. In this regard, the approach of a number of authors, formulating the definition of political competition on the basis of the legislative definition of competition in the commodity market, seems insufficiently substantiated and not fully correct.

6. To eradicate gaps in understanding political competition and determining measures of its legal regulation, the method of legal analogy is applicable only in relation to those concepts and categories in which the legislator initially laid the legal characteristics.

Since the legislative definition of economic competition does not establish its legal characteristics, it is impossible to use the analogy of the Law on Protection of Competition to define the political competition. In this regard, the priority form is the use of an analogy of law which is based on the general principles and meaning of the constitutional and legal regulation of social relations. The use of an analogy of law provides us with an opportunity to determine the definition and characteristics of competition as a legal phenomenon, as well as to formulate on its basis the legal categories and definitions necessary for constitutional regulation. At the same time, the analogy of the Law on Protection of Competition can be partially applied when developing the elements of monopolistic activity and unfair competition in the political sphere, in particular in electoral relations. This allows us to propose legislative changes aimed at improving legal regulation and protection of political competition in Russia.

7. Protection of political competition can be carried out primarily under the framework of special (administrative and criminal) regulation, since the provisions of constitutional law cannot be considered a comprehensive basis for the legal protection of political competition. This is due to the fact that the nature of the relations regarding political competition gives a rise to the possibility of its legal protection only within the framework of a narrow understanding (in the context of electoral relations). In this regard, the legal basis for the protection of political competition and measures of legal liability are within the administrative and criminal

offences that cover the sphere of protection of social relations to ensure the activities of election commissions, protect the electoral rights of citizens and candidates for elective positions, and conduct election campaigning.

Meanwhile, measures of constitutional and legal responsibility aimed at preventing violations of constitutional norms by the branches of government can be applied to competitive relations in the system of separation of powers. In this sense, only those measures that were implemented in order to protect the foundations of the constitutional order will be considered as constitutional responsibility. Moreover, within the framework of political competition, constitutional liability cannot arise if there is no violation of constitutional norms.

8. The following proposals are formulated in the research so as to improve the legislation.

Firstly, in order to enshrine the legal definition of political competition to establish the legal basis for its regulation in the field of electoral relations, it is proposed to include in Art. 2 of the Federal Law of June 12, 2002 No. 67-FZ “On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum²” (hereinafter referred to as “the Law on Basic Guarantees of Electoral Rights”) the definition of political competition and unfair political competition formulated within the framework of this research.

Secondly, to implement measures related to legal liability for violation of election legislation, a definition of this offense is required. In this regard, it is proposed to supplement the Code of the Russian Federation on Administrative Offenses with Article 5.8.1. “Unfair political competition”.

Thirdly, it is also proposed to supplement the Law on Basic Guarantees of Electoral Rights with Article 5.1. “Prohibition on Unfair Political Competition”, which enshrines the competitive nature of elections and the prohibition of the unfair political competition.

² Federal Law of June 12, 2002 No. 67-FZ “On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum” // SZ RF. 2002. No. 24. Art. 2253.

Fourthly, in order to strengthen the independence of election commissions and specify their role in the field of protecting political competition, it is proposed to amend the Law on Basic Guarantees of Electoral Rights, including those aimed at strengthening party and public principles in the formation of the Central Election Commission of the Russian Federation.

Theoretical importance of the dissertation research. The results of the research allowed us to enrich the theory of constitutional law. The theoretical contribution to legal science and, in particular, to the theory of constitutional law is to highlight competition as an independent legal category. It allowed to formulate the concept of competition from the position of law and highlight its characteristics. The research carried out a comprehensive constitutional study of political competition, defined the institution of political competition, and also identified the content of political competition as a constitutional relationship. The theoretical considerations and conclusions presented in the dissertation will allow further research into competition as a legal phenomenon and political competition from the perspective of constitutional science.

Practical importance of the dissertation research. The results of the study can be used in legislative and law enforcement practice, primarily in regulating legal relations in the field of political competition (in particular, elections). Conclusions regarding the admissibility of applying the analogy of the Law on Protection of Competition to relations in the field of political competition will allow not only to eradicate gaps in its understanding, but also to determine measures of legal regulation of political competition. In addition, the materials and basic conceptual approaches presented in the dissertation can be included in courses of such legal disciplines as “Constitutional Law of the Russian Federation”, “Election Law of the Russian Federation”, “Competition Law”, as well as other disciplines related to the legal foundations of competition in Russia.

Evaluation of the findings. This dissertation research has been prepared at the School of Public Law of the Faculty of Law of the Federal State Autonomous Educational Institution of Higher Education National Research University “Higher

School of Economics” (HSE University), where it was discussed and reviewed. The main provisions and results of the dissertation research are also presented in papers published in scientific journals included in the List of recommended journals of the National Research University Higher School of Economics (list D) and in the Additional list of journals, publications in which are taken into account by the Dissertation Council in Law of the National Research University Higher School of Economics for the dissertation defense.

Results of the research were also presented at the International Scientific Conference of Students, Postgraduate Students and Young Scientists “Lomonosov-2022” and published in the conference materials: Galstyan N.A. On the Question of the Place of the System of Checks and Balances in the Field of Political Competition // In the book: Materials of the International Youth Scientific Forum “LOMONOSOV-2022”. M.: MAKS Press, 2022.

The degree of reliability of the dissertation research results. The main conclusions of the research, presented as statements submitted for defense, are confirmed by a comprehensive analysis of normative and theoretical material, including Russian and foreign publications and scientific papers on the topic of the research, law enforcement practice (practice of government bodies and judicial practice) and legislation. The reliability of the research results is also confirmed by the correct application of the appropriate research methodology and the justification of its applicability, which allowed to solve the problems and achieve the goal of the research.

The dissertation structure. The structure of the dissertation research is determined by its goals and objectives. The dissertation consists of an introduction, two chapters combining seven paragraphs, a conclusion and a list of references.

THE MAIN CONTENT OF THE DISSERTATION RESEARCH

The Introduction substantiates the relevance of the research topic and its scientific novelty, characterizes the scientific elaboration and theoretical background

for the research, the object and subject of the research, goals and objectives, reveals the methodological basis of the research, the normative and empirical basis, formulates the research findings and provisions submitted for defense, reveals the theoretical and practical significance of the research, provides information on evaluation of the findings, the degree of reliability of the research results and reveals its structure.

Chapter 1 “Theoretical Foundations for Understanding Competition as a Legal Category” consists of three paragraphs and reveals the theoretical aspects of understanding a competition as a phenomenon that has its own definition, content and characteristics in the social, economic and political sense and as an independent legal category. The chapter examines doctrinal approaches to understanding such definitions as “competition”, “economic competition”, “political competition” based on doctrinal approaches of sociology, economics and political science. The concept and features of competition as a legal phenomenon are revealed. From the position of constitutional law political competition is revealed as a legal (constitutional) category, as a legal institution (institution of political competition) and as a constitutional relationship. The chapter reveals the grounds for applying the method of legal analogy (analogy of law and analogy of the law) to the study of political competition and the determination of possible means of legal regulation of political competition. The author also substantiates the need to formalize the competitive social relations.

Paragraph 1.1 “The Concept and Characteristics of Competition as a Socio-Economic and Political Institution” examines doctrinal approaches to understanding competition as a social phenomenon and reveals the general characteristics of competition. Attention is paid to the consideration of the object of competition and its characteristics, which allows to determine the object of competition in the field of economics and politics. From the mentioned approaches to the study of competition, general features of competition as a social phenomenon were identified, which were used as the basis for further research into the legal

features of competition. Based on the characteristics of competition as a social phenomenon highlighted in the paragraph, a definition of competition was provided.

The author examines doctrinal approaches to defining the economic competition, on the basis of which the features that characterize competition in the economic sphere are identified. The object of economic competition is considered and its characteristics are highlighted. The concept of the commodity market as an integral element of economic competition is also analyzed and its characteristics are highlighted.

The paragraph examines doctrinal approaches to the definition of political competition. It is concluded that the substantive side of competition is a contest for power. The author analyzed the views presented in the literature on the consideration of political competition, taking into account the approaches developed in economic science, which is especially used in the analysis of electoral relations. It is concluded that economic and political competition have a number of common features since competition in these areas is a special type of social competition. Based on the research, characteristics of competition as a political phenomenon are identified.

Paragraph 1.2. “The Legal Content of Competition in Economics and Politics” is devoted to the analysis of the legal foundations of the current constitutional and special regulation of competition in the fields of economics and politics.

The author reveals the constitutional provisions that form the basis for the regulation and protection of economic competition in Russia and substantiates the need for legal regulation of economic competition. Current regulation of competition within the framework of antimonopoly legislation is examined, the legally established definition of economic competition and its characteristics are analyzed. The category of the object of competition is revealed taking into account its legal definition. The provisions of other regulations governing relations in the field of economic competition are analyzed. The author draws attention to the disadvantages of the legislative definition of economic competition since it is not consisted of the legal characteristics of competition identified in the framework of the research.

The paragraph examines the constitutional foundations of political competition in Russia. Since the definition of political competition has not been developed in science and legislation, as a way to eradicate gaps in the law, the author turns to legal theory, which offers a method of analogy consisting in applying the analogy of law or the analogy of the law to unregulated relations. The constitutional provisions that form the basis for regulating political competition in Russia are analyzed. The author turns to other legal acts that develop constitutional provisions related to political competition and the regulation of such relations as: the procedure for organizing and conducting elections and referendums, guarantees for the activities of the parliamentary minority, the organization and activities of political parties and the participation of citizens in political actions.

With regard to the relations in the field of political competition, the author reveals the legal content of the constitutional principles of separation of powers, the principle of independence of branches of government, as well as the principles of ideological and political diversity, multi-party system and the equality of public associations. The legal content of political rights and freedoms in the context of political competition is also revealed. The author concludes that it is necessary to consider political competition in a broad sense and narrow sense: in a broad sense, political competition includes entire relations associated with the implementation of mentioned constitutional principles, and in a narrow sense, political competition is limited to electoral relations.

The paragraph also substantiates the possibility of considering political competition as an independent category of constitutional law. The author substantiates the admissibility of applying the analogy of the Law on Protection of Competition to certain social relations in the field of political competition. Some theoretically legal and constitutional problems are also highlighted, indicating obstacles to the application of the analogy of the Law on Protection of Competition in order to eradicate the gaps in the legal regulation of political competition and to identify its definition and legal characteristics.

The institution of political competition is highlighted. Its definition depends on the specific type of relations that develop within the framework of political competition. A definition of the institution of political competition in the broad and narrow senses is provided.

In paragraph 1.3 “Political Competition as a Constitutional Relationship” a comprehensive legal study of political competition as a constitutional relationship is carried out. The doctrinal approaches to understanding of political competition presented in constitutional law are analyzed. The author turns to the concept of legal relations and their elements in legal science and to the understanding of constitutional relations in the constitutional science. The constitutional nature of social relations in the sphere of political competition is substantiated.

By considering the political competition as a constitutional relationship, it was concluded that in a broad sense political competition includes a set of constitutional relations that arise in connection with power. These include, in particular, relationships in the field of implementation of political rights and freedoms of citizens and associations, as well as relations regarding implementation of the constitutional principles of separation of powers, ideological and political diversity, multi-party system, etc. The existing constitutional problems of recognizing relations between the branches of government in the system of checks and balances as political competition are revealed.

In a narrow sense, constitutional relations in the field of political competition are determined through electoral relations. It is substantiated that in a narrow sense, political competition should be considered broader than the concepts of elections and pre-election campaigning, since competition in electoral relations does not end with elections and is not tied to events defined in legislation.

The author reveals political competition from the perspective of the elemental composition of the legal relationship: object, subject and content of the legal relationship.

The concept of power as a legal category is explored. It is concluded that power in the political competition is an object for which participants are compete.

The characteristics of power as an object of constitutional relations in the sphere of political competition are revealed. Features of power are identified in understanding political competition in the broad and narrow senses. It has been determined that since in elections competitors directly compete for votes, in electoral relations power as the final object of competition is derived from the will of voters. The range of subjects of constitutional and legal relations in the field of political competition in the broad and narrow understanding of political competition is considered.

The author analyzes the decisions of the Constitutional Court of the Russian Federation, which has repeatedly mentioned political competition in its practice. It is concluded that the Constitutional Court of the Russian Federation considers political competition primarily in the context of electoral relations.

Based on the analysis of the structural elements of constitutional relations, the concept of political competition in a narrow sense was formulated, which can be used in regulating electoral relations.

Chapter 2 “Legal Basis for the Regulation and Protection of Economic and Political Competition in the Russian Federation” consists of four paragraphs and devoted to the study of the current legal regulation of the protection of economic and political competition in the Russian Federation, including the legal basis for preventing and suppressing monopolistic activities and unfair competition in economic and political spheres. Antimonopoly regulation is considered as an independent direction of legal regulation of the economy. Based on an analysis of the provisions of the Constitution of the Russian Federation and the application of an analogy to the Law on Protection of Competition, the author examines the areas of protection of political competition. The dissertation is put forward that the legal protection of political competition can be carried out, first of all, within the framework of special regulation, since the norms of constitutional law do not fully form the basis for the legal protection of political competition. Problems of legal regulation of political competition are considered taking into account the specifics of social relations in the sphere of relevant social relations. The author has proposed legislative changes. The chapter pays special attention to the application of the

analogy of the law in determining the forms of monopolistic activity and unfair competition in the political sphere, as well as in determining the directions for their prevention and suppression.

Paragraph 2.1. “Regulation of Economic and Political Competition” is devoted to the legal (primarily constitutional) foundations of regulating competition in the political and economic spheres. The author turns to the origins of the regulation of social relations in the economic sphere and concludes that antimonopoly regulation is an integral element of the regulation of economic activity. The legal positions of the Constitutional Court of the Russian Federation on issues of antimonopoly regulation are analyzed. It is concluded that the need for antimonopoly regulation of the economy follows from the provisions of the Constitution of the Russian Federation and involves limitations of the economic and entrepreneurial activities in order to support and protect competition, as well as protect the rights and interests of participants of economic relations.

To determine the definitions of support of competition (used in Article 8 of the Constitution of the Russian Federation) and protection of competition (used in antimonopoly regulation), their legal nature is examined. It is substantiated that within the framework of support, measures are applied that stimulate and promote the development of competition, while protection is aimed at preventing and suppressing violations of competition rules (including the establishment and application of legal liability measures), as well as at protecting the rights and lawful interests of its subjects. At the same time, the protection of economic competition is directly carried out by administrative and criminal measures. In particular, through the formation of offenses (crimes) that encroach on relations to ensure the activities of election commissions, protect the electoral rights of citizens and candidates for elective positions, and conduct election campaigning.

The problem of determining the limits of state regulation of economic and political competition is explored. The author notes that excessive government intervention can lead to negative consequences for both economic and political competition. The need to maintain a balance within the regulation of competition in

economics and politics is related with the fact that such regulation is carried out through limitation of the rights of participants of these social relations. Analyzing the consequences of excessive government regulation of relations in the field of political competition, the author draws attention to the regulation of the activities of political parties and the provision of financing to them, which can negatively affect their independence and equality.

It is concluded that the legal protection of political competition in the narrow sense can be implemented through special regulation, and the provisions of the Constitution of the Russian Federation do not sufficiently form the basis for the protection of political competition. The admissibility of partial application of the analogy of the Law on Protection of Competition to social relations in the field of political competition is determined. It is noted that within a broad understanding of political competition, measures for protection of competition cannot be sufficiently implemented. Therefore, special attention is paid to the institution of constitutional responsibility and its applicability to social relations in the field of political competition. In addition, the author associates the limitation on the application of the analogy of the Law on Protection of Competition to relations in the field of political competition with the fact that some subjects of social relations are able to independently determine the conditions and rules of political competition, while at the same time being its subjects.

Paragraph 2.2. “The Powers of Authorities to Protect Economic and Political Competition” is devoted to the analysis of the activities of authorities in protection of competition in the field of economics and politics.

Antimonopoly regulation is considered as a direction of activity of the government authorities. The legal status, functions and powers of the Federal Antimonopoly Service of the Russian Federation and its place in the system of bodies carrying out antimonopoly regulation of the economy in Russia are analyzed. It is concluded that the activity of the antimonopoly authority in the commodity market is one of the main conditions for the protection of economic competition.

The issue of subjects capable of regulating political competition is revealed. The legal status and powers of the President of the Russian Federation, the Federal Assembly of the Russian Federation (in particular, the State Duma of the Russian Federation), the Constitutional Court of the Russian Federation and the Central Election Commission of the Russian Federation are analyzed.

It is concluded that the analogy of the Law on Protection of Competition in terms of determining measures of antimonopoly control cannot be fully applied to these subjects. The President of the Russian Federation, possessing a wide scope of constitutional powers, can unilaterally influence political competition and its individual participants, being at the same time a participant in the competition, which predetermines difficulties in recognizing him as a full-fledged regulator of political competition. Taking into account the constitutional instruments of influence of the President of the Russian Federation on the State Duma of the Russian Federation, as well as the possibility of the dominant political party using legislative process to create formal obstacles for other subjects of political competition, the State Duma of the Russian Federation also cannot be recognized as a sufficient regulator of the political competition. It has been established that the control function of the Constitutional Court of the Russian Federation allows it to protect political competition, since it formally remains a politically neutral body (not involved in political competition and does not participate in political activities) and has the appropriate powers to protect the rights of subjects of these social relations. The Central Election Commission of the Russian Federation can also partially protect political competition in the field of electoral relations (in the narrow sense).

It is concluded that the strengthening of party involvement in the formation of the Central Election Commission of the Russian Federation is important in ensuring its political neutrality and implementing the principle of independence from authorities. The author refers to the experience of France, where the powers to implement electoral procedures are distributed among a significant number of bodies and officials of the executive branch of government. It is concluded that such approach avoids the concentration of the entire scope of powers for organizing

electoral procedures by one body, which contributes to their disinterest in the results of political competition and at the same time complicates the opportunities for individual subjects of social relations to influence the electoral system. To strengthen the independence and increase the role of the Central Election Commission of the Russian Federation in the field of political competition, the author proposes changes to the electoral legislation. In particular, it is proposed to transfer the functions of appointing members of the Central Election Commission of the Russian Federation from the Federation Council of the Russian Federation to the State Duma of the Russian Federation which is formed on a party basis.

Paragraph 2.3. “Preventing and Suppressing of Monopolistic Activities” is devoted to the legal analysis of monopolistic activities in economics and politics, as well as measures to prevent and suppress monopolistic activities in these areas.

The author turns to the origins of monopolies and monopolistic relations. It is concluded that, by its nature, monopoly is directly related to the concept of power and lack of alternatives. The legal basis for preventing and suppressing monopolistic activity in economics is considered. The legal characteristics of monopolistic activity are highlighted. As a consequence of monopolistic activity, the violation of equality of subjects of competitive relations and, accordingly, unequal distribution of benefits is highlighted. An analysis of the concept and characteristics of a dominant position and abuse of a dominant position as a form of monopolistic activity is carried out. Quantitative and qualitative characteristics of a dominant position have been identified.

The concept and characteristics of a dominant position and abuse of a dominant position in the field of politics are defined through the use of an analogy of the Law on Protection of Competition. The author's approach to determining the dominant position in politics has been developed. The legal characteristics of abuse of a dominant position in politics are highlighted and a definition of abuse of a dominant position is provided. Examples of abuse of a dominant position by subjects of social relations in the sphere of politics are considered. It is substantiated that the identified legal characteristics of a dominant position exist both with a narrow

understanding of political competition and within the understanding of political competition in a broad sense. As a form of monopolistic activity, agreements between economic subjects and concerted actions are also analyzed. Examples of monopolistic activity in politics are also considered.

It is concluded that without specifying the forms of prohibited behavior as a monopolistic activity, the legal regulation of the prevention and suppression of a monopolistic activities will not comply with the basic principles of legality, justice and the rule of law.

The role of election commissions is considered as subjects capable of implementing measures to protect the rights and legitimate interests of subjects of political competition, including by preventing and suppressing monopolistic activities in the field of politics.

Paragraph 2.4 “Preventing and Suppressing of Unfair Competition” examines the legal basis for preventing and suppressing of unfair competition. Also, the prospect of applying the analogy of the Law on Protection of Competition to relations in the field of politics in terms of preventing and suppressing unfair competition is analyzed.

The legal basis for preventing and suppressing of unfair economic competition, as well as the characteristics and legally established forms of unfair competition in the economics are analyzed. To define the concept and features of unfair competition, the author actively refers to the practice of the Constitutional Court of the Russian Federation, which has repeatedly considered cases on issues related to the control activities of the state regarding the prevention and suppression of unfair competition.

Doctrinal approaches to the definition of unfair competition in politics are explored. It is concluded that the use of the analogy of the Law on Protection of Competition in the context of unfair competition is acceptable, but it requires consideration of the characteristics of the political competition as a legal category. Unfair political competition can occur in a narrow understanding of political competition (in the context of electoral relations). To determine the legal

characteristics of unfair political competition, the author also refers to the category of unfairness in constitutional law. Based on the application of the analogy of the law and considering the characteristics of unfair competition, the author provides the definition of unfair competition in politics and legislative proposals.

The use of political advertising is considered as a form of unfair competition in politics. The author refers to doctrinal approaches to understanding political advertising, to the current legislation in the field of advertising on the commodity market (by applying the analogy of the law), electoral legislation and the practice of law enforcement agencies: the Federal Antimonopoly Service of the Russian Federation, the Central Election Commission of the Russian Federation and the Constitutional Court of the Russian Federation. Also, the activities of “spoiler parties” are defined as a form of unfair competition in politics.

It is indicated that in the context of preventing and suppressing of unfair political competition, the implementation of measures of legal liability for violation of election legislation cannot be carried out without defining the relevant forms of prohibited behavior in the legislation. Author proposes to supplement the Code of the Russian Federation on Administrative Offenses with the article “Unfair Political Competition”. It is proposed to supplement the Law on Basic Guarantees of Electoral Rights with Article 5.1. “Ban on Unfair Political Competition”, which will establish the competitive nature of elections and the prohibition on unfair political competition. It is also proposed to amend the election legislation and grant election commissions authority to inform about a court decision that has entered into force imposing an administrative penalty for violating election legislation.

At **the Conclusion** summarizes the results of the research and formulated the conceptual and theoretical conclusions of the study.

**LIST OF AUTHOR'S PUBLICATIONS ON THE TOPIC OF THE
DISSERTATION RESEARCH**

Publications in journals included in the List of recommended journals of the HSE University (list D):

1. Galstyan N.A. Constitutional Judicial Control in the Mechanism of Legal Protection of the Political Competition in Russia // Proceedings of Voronezh State University. Series: Law. 2022. T. 51. No. 4. P. 68-81.
2. Galstyan N.A. On the “Antimonopoly” Regulation of the Political Competition: Constitutional Legal Aspects // Antinomies. 2022. T. 22. No. 2. P. 40-61.
3. Galstyan N.A. The Constitutional Model of Power in the Russian Federation as a Factor of Limitation of the Political Competition // Russian Juridical Journal. 2022. T. 1. No. 142. P. 53-62.

Publication in journal included in the Additional list of journals, publications in which are taken into account by the Dissertation Council in Law of the HSE University for the dissertation defense:

4. Galstyan N.A. Election Commissions in the Mechanism of Protection of Political Competition in the Russian Federation // Actual Problems of Russian Law. 2023. T. 18. No. 1. P. 43-59.