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Legal basics for ensuring the realization of electoral rights by citizens of the Republic of Kazakhstan

The electoral rights of citizens determine the scope of their political freedom, autonomy and self-determination. The most important indicator of the democracy of a particular society or state is the institution guaranteeing freedom of elections, which is ensured, first of all, by law. At the same time, special attention is paid to the fact that it is possible to ensure strict, accurate and complete observance of the guarantees of a person and citizen in various spheres of his interests only if the legal mechanism is constantly improved, the rule of law is strengthened, and discipline and organization are increased. The article is concerned with the organizational and legal system for ensuring the rights, freedoms and legitimate interests of citizens in the political sphere through the open election of representative and executive authorities and local self-government. The author pays special attention to the development of national electoral legislation, improvement of law enforcement practice and protection of the electoral rights and freedoms of Kazakhstani citizens, including in courts, which are now objectively enhanced in conditions of knowledge and application of principles and norms of international law, international obligations of the state to conduct democratic elections.

Keywords: electoral rights of citizens, international electoral standards, universal suffrage, democratic elections, principles of suffrage.

Freedom of choice is the most important factor in the intellectual improvement of man, the normal spiritual and moral development of each individual. As the English theoretician of political liberalism J. Mill correctly noted, whose ideas still determine the development of constitutional law, the ability of a person to understand, judge, distinguish between what is good and what is bad, mental activity and even moral evaluation of subjects are exercised only when a person makes a choice [1; 14].

A necessary condition for the functioning and development of forms of direct democracy is a high level of political and legal culture, social activity of citizens of the Republic of Kazakhstan. The system of state power is considered stable only if it is backed by the developed institutions of direct democracy. The true effectiveness of power is embodied in the unity of its representative and immediate forms of realization.

The transformation of democracy into a real political and legal mechanism ensures the legitimacy and continuity of power. Basically, such approaches are expressed in the idea of a democratic state and the primacy of the institution of human and citizen rights and freedoms in various spheres, including in the political sphere. The basic content of this sphere is the constitutional and legal definition of free elections, which act as an expression of the power of the people, which manifests itself in the system of organization and functioning of state power and local self-government. The electoral rights of citizens determine the scope of their political freedom, autonomy and self-determination. This ensures the content and behavior of various political forces in society. This means that political rights belong to the category of legal phenomena, since they are connected not only with political activity, but also are regulated by the right to vote, which in its content and political and legal meaning secures the process of public-legal assessment of representative and executive bodies of state power and local self-government [2; 146].

The electoral rights of citizens determine the scope of their political freedom, autonomy and self-determination. This ensures the content and behavior of various political forces in society. This means that political rights belong to the category of legal phenomena, since they are connected not only with political activity, but also are regulated by the law of public elections, which in its content and political and legal meaning secures the process of public-legal assessment of representative and executive bodies of state power and local self-government. In modern Kazakhstan, there is an organizational and legal system for ensuring the rights, freedoms and legitimate interests of citizens in the political sphere through the open election of representative and executive authorities and local self-government. Ideas of electoral democracy that are realized in most developed countries, as well as the actual experience of the Republic of Kazakhstan, are embodied in specific legal institutions, legal procedures and mechanisms of control by the people over the activities of power structures.

After gaining independence, the problem of transition of the Republic of Kazakhstan to world democratic values consisted, in particular, in achieving a harmonious combination of international electoral standards and political and legal experience.

The development of national electoral legislation, the improvement of law enforcement practices and the protection of the electoral rights and freedoms of Kazakhstani citizens, including in courts, is now objectively strengthened in the conditions of knowledge and application of the principles and norms of international law and international obligations of the state to hold democratic elections.

An important step in the development of international legal norms at electoral law and the right to govern the country was the Document of the Copenhagen Meeting of the Conference on the Human Dimension. In this document, a fundamentally new, distinguishing it from other international acts on human rights is that it gives the parameters of society, the characterization of the state, within which it is only possible to realize the freedoms and freedoms fixed in it, whereas earlier the definition of such a framework was considered to be exclusively internal a matter of states [3; 50].

Since the middle of the 20th century, international law has been developing a wide range of international legal norms that establish the basic electoral rights of citizens, the principles of their implementation, the obligations of states to ensure the protection of these rights, which became known as international election standards. Fixed in universal and regional international treaties, they take on the nature of mandatory requirements for the national legislator. The concept of international electoral standards «is understood as a set of international legal norms that fix the basic electoral rights of citizens and the principles for their implementation, the availability of which makes it possible to guarantee the conduct of democratic elections and, thus, exercise the right to take part in state governance through state power institutions, and other protection of electoral rights and freedoms of a person and citizen, public and international observation of elections.

Along with the general conditions that led to the formation of a new electoral system, the development of this institution in the post-Soviet period was influenced by international principles and norms of law, in the context of which the Kazakhstani legislation on elections was reformed. At the same time, international election standards were of decisive positive significance for the democratization of the state-political regime, ensuring the rights of citizens to participate in the governance of the state. At the same time, it is necessary to focus on improving procedures and tools, which essentially determine the nature of the electoral process and significantly affect the outcome of the vote.

Based on the analysis of sources of international law, international electoral standards are the obligations of states not only to grant to persons under their jurisdiction any specific rights and freedoms to participate in free, fair, genuine periodic elections, but also not to encroach on these rights and freedom and take appropriate measures to implement them. In short, the essence of the analyzed phenomenon is expressed in the fact that international electoral standards contain the principles of international law relating to the electoral rights of citizens, to the organization and election results.

In our opinion, international standards can not be perceived as something worth immeasurably higher than any rules operating in each individual state, but such standards serve as guidelines for determining the direction of development in the sphere of ensuring the electoral rights of citizens, for organizing and holding elections.

It should be recognized that the Republic of Kazakhstan has gradually incorporated international electoral standards into its legal system. A feature of the legal nature of international electoral standards is their direct use and application by all participants of the electoral process (for example, by courts of general jurisdiction).

In addition to universal, universal international election standards, there are also regional international electoral standards, primarily documents adopted in the framework of regional organizations in which the Republic of Kazakhstan participates. A variety of such regional international election standards is the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the CIS Member States, which is an attempt to codify and enrich the international legal norms in the field of organizing the electoral process.

The principles of international election standards formed the basis of all laws and by-laws of the Republic of Kazakhstan. Consistent implementation of these fundamental principles implies their harmonization with generally accepted principles and norms of international law. Neglect of these principles does not leave the state any chance of integration into the international community, deprives it of the opportunity to build a democratic legal state.

Ideas of electoral democracy, which are realized in the majority of developed countries, as well as the experience of the Republic of Kazakhstan itself, were embodied in specific legal institutions, legal procedures and control mechanisms. In modern Kazakhstan, there is an organizational and legal system for ensuring the rights, freedoms and legitimate interests of citizens in the political sphere through the open election of representative and executive authorities and local self-government.

Universal suffrage as a subjective opportunity for citizens to elect and be elected to public authorities is one of the main political rights of a democratic state, since it is a legal prerequisite for the direct participation of a citizen in the management of public affairs. Confirmation of what has been said is the norms of Art. 21 of the Universal Declaration of Human Rights, where the universal suffrage of citizens is declared as «the right of every person to take part in the government of his country directly or through freely elected representatives» [4], and art. 25 of the International Covenant on Civil and Political Rights, where it is proclaimed as the right of every citizen «to take part in the conduct of public affairs directly, and through freely chosen representatives; to vote and be elected in genuine periodic elections, on the basis of universal and equal suffrage by secret ballot and ensuring the free expression of the will of the electorate» [5].

The electoral right of citizens is realized through participation in elections. Democratic elections are competitive, periodic and representative elections, in which citizens who enjoy broad freedom on an alternative basis elect their representatives to power structures. Elections as one of the mechanisms for the distribution of power are widely disseminated in the sphere of politics. In today's world, elections are widespread and diverse. Various bodies of public authority - parliaments, heads of state, sometimes governments, judicial bodies, local representative and executive bodies, local self-government bodies are formed electively. Through elections, the people determine their representatives and empower them with a mandate to exercise their sovereign rights, i.e. elections sell power legitimate. They show the mood of voters. In the process of holding them, the interests of various political forces, different views and ideas, expressed by various political associations, are encountered. Competitive elections guarantee that various political parties and candidates participate in them. All of them enjoy freedom of speech, assembly, movement, everything necessary to ensure that their political views are heard, and that they can present alternative candidates to voters.

Universal suffrage establishes the possibility of a citizen to elect, participate in other electoral actions provided for by law and carried out by lawful methods, and upon reaching the age established by law, be elected to state authorities and local self-government bodies. At the same time, the implementation of electoral rights does not depend on gender, race, nationality, language, origin, property and official status, place of residence, attitude to religion, beliefs, membership in public associations, and other circumstances. The electoral right of citizens is realized through participation in elections. Democratic elections are competitive, periodic and representative elections, in which citizens who enjoy broad freedom on an alternative basis elect their representatives to power structures. Elections as one of the mechanisms for the distribution of power are widely disseminated in the sphere of politics. In today's world, elections are widespread and diverse. Various bodies of public authority - parliaments, heads of state, sometimes governments, judicial bodies, local representative and executive bodies, local self-government bodies are formed electively. Through elections, the people determine their representatives and empower them with a mandate to exercise their sovereign rights, i.e. elections sell power legitimate. They show the mood of voters. In the process of holding them, the interests of various political forces, different views and ideas, expressed by various political associations, are encountered. Competitive elections guarantee that various political parties and candidates participate in them. All of them enjoy freedom of speech, assembly, movement, everything necessary to ensure that their political views are heard, and that they can present alternative candidates to voters.

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The electoral rights of citizens of the Republic of Kazakhstan and the Russian Federation, along with the right to participate in a referendum, are central to the system of constitutional political rights of citizens, since they are one of the manifestations of people's sovereignty and provide the highest direct expression of the people's power. However, the social value of these rights lies not so much in their proclamation as in the guaranteed possibility of their free implementation and protection in cases of violations. Electoral rights have a complex legal nature, they have a certain internal contradiction, caused by an immanent combination of public and private interests, individual and collective principles. Only because of this combination is it possible to satisfy public interest - the formation of public authorities - through private interest - the possibility and guarantee of participation of everyone in this process on an individual basis. This feature of electoral rights leads to the need to identify and comply with law enforcement agencies in resolving disputes the balance of the relevant constitutional values, public and private interests. In our opinion, it is important to understand the electoral rights of citizens as an integral element of the political life of the citizen and the people as a whole.

The modern law of public elections of the Republic of Kazakhstan is formed on the basis of principles recognized by the international community and reflected in international legal instruments (the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966, the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE 1990). The Constitution of the Republic of Kazakhstan in the third article proclaims and fixes the multinational people of Kazakhstan as the only source of power, determines the mechanism of its where the leading position is taken by the direct will of the people, and its highest manifestation is the referendum and elections [6]. The foregoing allows one to judge the change in the priority of the forms of exercising by the people of the state power belonging to him in favor of immediate democracy. In detail, the right to elect and be elected is regulated in the Constitutional Law «On Elections in the Republic of Kazakhstan», adopted in September 1995. According to Art. 3 of the said law, citizen participation in elections is realized on the basis of universal, equal and direct suffrage by secret ballot [7]. This norm is universal, applies to all types and levels of elections, and finds its concretization in various by-laws that regulate certain aspects of elections.

As a result of profound transformations of the political system of our country in the 1990s, the results of free competitive elections became the main factor determining the direction of its development. From the procedure that performs decorative functions, elections have become a real mechanism for the exercise of democracy and the renewal of the political elite. Simultaneously with the cardinal change in the significance of elections at all levels of government, the temptations to use imperfection of the system of rules that are being held by elections are sharply increased, by unscrupulous participants in the political process to change the election results in their favor. Anyway, any attempts to distort the popular will affect the constitutional principle of equality of electoral rights of citizens. Genuinely free, competitive and democratic elections are impossible without observing this fundamental principle of suffrage. At the same time, the principle of equality is most often violated in the practice of the Kazakhstani elections. The situation is aggravated by the relativity of the category of equality, and therefore there are no clear criteria for compliance or, conversely, violations of the principle of equality of citizens' electoral rights. The considered principle is thus not only the most frequently violated, but also the least unambiguously interpreted among all principles of Kazakhstan's suffrage.

As the foreign experience testifies, the principles serve as the foundation of the electoral right, since they are not only the legal basis for the mechanisms of legal regulation of electoral relations, but also have a significant impact on the content of regulatory prescriptions and the practice of their implementation. The constitutional consolidation of principles, the strict observance of which can not only prevent the emergence of various kinds of problems, but also ensure truly fair and free elections, contributes to the fullest implementation of both passive and active electoral rights of citizens.

In the special literature, one can find mention of the principles of electoral law, the principles of subjective suffrage, the principles of the electoral system, the principles of elections. In this regard, there is a need to clarify these concepts and their relationship. Analyzing various approaches to the concept of electoral law in an objective sense and its relation to the electoral system, the author comes to the conclusion that the elec-

toral system (in a broad sense) is the subject of the electoral right, and the electoral right itself is a system of legal norms regulating the actual relations that arise in connection with the election of public authorities (bodies of state power and local self-government) that are subject to election directly or indirectly by citizens of the state and equated to them persons.

In this scientific article, suffrage is regarded as the most important subjective political right of every citizen. Subjective electoral right is usually understood as the right to elect and the right (opportunity) to be elected. But, it should be noted that the circle of subjects of individual electoral rights does not coincide. So not all citizens with active electoral right have passive electoral right. The suffrage and subjective electoral right are related in a certain way. In our opinion, subjective electoral rights are an integral part of the subject of regulation of the electoral law. At the same time, the suffrage is not limited to the system of legal norms regulating the right of citizens to elect and be elected to the bodies of state power and local self-government and the procedure for exercising this right. Elections are an expression of the common will of the whole people, and not of the aggregate of individual wills of citizens. Therefore, the reduction of the electoral law to the system of norms regulating the electoral rights of individual citizens distorts the essence of the elections.

When considering the principle of equality of electoral rights of citizens in the system of principles of the subsector of electoral law, the author notes that if other principles characterize only the procedural aspect of elections, then the principle of equality of electoral rights of citizens applies equally to material and procedural suffrage.

If the principles are correlated with the electoral rights to which they are applicable, three groups can be distinguished among them: the principles of active suffrage, the principles of active and passive electoral rights, the universal principle of exercising electoral rights. The first group includes principles of personal voting, secret voting, freedom of expression of one's will. Their common feature is that they are applicable only to active electoral rights. The second group includes the principles of periodicity of elections, direct elections, freedom of participation in elections and alternative (adversarial) elections. These principles are applicable to both active and passive electoral rights. At the same time, the last of the above principles applies to active electoral morality as a principle of elections' alternatives, and as applied to passive electoral law as a principle of adversarial elections. Finally, the only universal principle is the principle of equality of citizens' electoral rights. This principle is equally applicable to all three components of subjective suffrage: active electoral right, passive electoral right and the right to participate in the implementation of individual electoral actions [8; 112].

Legislation of the Republic of Kazakhstan provides for the frequency of elections, representation of various social groups in the government, openness and transparency of the activities of electoral bodies. At the same time, the existing experience of law enforcement activity indicates that the current elective legislation of the Republic of Kazakhstan does not fully regulate a number of issues that are of sufficiently important and fundamental importance. In particular, the existing electoral law allows for certain gaps and ambiguous interpretations of various aspects of electoral activities, including those relating directly to the constitutional right of citizens to elect and be elected (ie subjective suffrage), which, of course, directly affects and violates the conceptual a provision on democracy and democratic representation of the population in state bodies. This fact, neither theoretically nor in practice, can not be considered satisfactory, especially considering that the task of ensuring the electoral rights of citizens is the general line in the development of electoral legislation at the present stage, and Kazakhstan's electoral law itself is conceived as a set of legal norms that regulate first of all the procedure for exercising the right of citizens to elect and be elected to public authorities and local self-government bodies [9]. Accordingly, an exhaustively clear and consistent definition and consolidation in the legislation of the initial principles concerning the participation of citizens in elections are in modern conditions one of the priority areas of legal support, the formation and development of representative bases of democracy. According to A.A. Belkin, «it is precisely the principles of subjective suffrage that should undoubtedly form the basis of the concept of legal regulation of elections, since without them the content of methods and methods of legal influence on participants in public relations mediating the organization and conduct of elections will be deprived of socially significant landmarks and coordinates» [10; 53].

The most important indicator of the democracy of a particular society or state is the institution guaranteeing freedom of elections, which is ensured, first of all, by law. At the same time, special attention is paid to the fact that it is possible to ensure strict, accurate and complete observance of the guarantees of a person and citizen in various spheres of his interests only if the legal mechanism is constantly improved, the rule of law is strengthened, and discipline and organization are increased. Guarantees can be implemented only through a mechanism of organizational and legal nature. At the same time, the guarantees themselves act as

an element of the legal mechanism for ensuring the rights and legitimate interests of the individual and the citizen, although they are an independent category, having its own features, the object of influence, the structure and methods of implementation. However, without the normative consolidation of guarantees it is impossible to ensure their implementation. Of particular importance are political guarantees that are manifested in the impact of the entire political system on the electoral process by providing voters with conscious and real participation in elections, creating stable political structures that ensure the democratic nomination of candidates for elected office, advocacy in the election process, which ultimately excludes the destabilization processes in society and the state.

The electoral system of the country thus created allowed the creation of an electoral system that corresponds to the basic principles of the suffrage, formulated in the 1990 OSCE Copenhagen Document, which are based on the Constitution of the Republic of Kazakhstan and are included in the general part of the Constitutional Law on Elections and are detailed in its chapters and articles.

However, the perfect electoral system has not yet been created in the world. Even the oldest states, which have age-old democratic traditions, reveal shortcomings in the organization and conduct of new election campaigns. Therefore, it is no accident that the Constitutional Law «On Elections in the Republic of Kazakhstan» is constantly being improved and adjusted in accordance with the realities of the modern world. Since the initial adoption of the Constitutional Law «On Elections in the Republic of Kazakhstan» in September 1995, it was amended and supplemented fourteen times. In total, such amendments were introduced more than 792. It is obvious that the legislation will develop, and for the selection of the right vector it is important to thoroughly study the internal practice and international experience in the form of international standards. Along with the electoral legislation, the electoral process improves, the legal culture of voters and other participants in the electoral process is increased.

The generalization of the practice of organizing and holding elections has shown that at present in Kazakhstan, on the whole, there is a model of the electoral system, the preservation of which guarantees the possibility of realizing one of the basic human rights - the right to elect and be elected to public authorities. At the same time, the procedures and means for implementing electoral legislation need to be continuously improved in order to bring them in line with international standards. Increasing the «transparency» of the Kazakhstani electoral process is one of the forms of combating falsification of election results.

In general, the current stage in the development of electoral legislation in the Republic of Kazakhstan is characterized by considerable dynamism. More and more attention is paid to the normative regulation of the protection of electoral rights of citizens, which allows the participants in the electoral process to more effectively defend their interests in the political life of the state.

Along with this, it is necessary to develop mechanisms for the international protection of individual rights and freedoms, in particular, to intensify the work of the United Nations High Commissioner for Human Rights, the work of the Human Rights Commission of the Commonwealth of Independent States. The work of such bodies and officials significantly increases the degree of protection of individual rights and freedoms, including electoral rights, which the Republic of Kazakhstan should be directly interested in as a democratic legal state.

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М.И. Біләлова

Қазақстан Республикасының азаматтарымен сайлау құқығын жүзеге асыруды қамтамасыз етудің құқықтық негіздері

Азаматтардың сайлау құқықтары олардың саяси еркіндігін, автономиялық және өзін-өзі анықтауын белгілейді. Белгілі бір қоғамның немесе мемлекеттің демократиясының маңызды көрсеткіші — бұл сайлаудың еркіндігін қамтамасыз ететін институт, ең алдымен, заңмен қамтамасыз етіледі. Сонымен қатар адамның және азаматтың әртүрлі салалардағы кепілдіктерін құқықтық тетігі үнемі жетілдірілсе, заңдылық, тәртіп пен ұйымдастыру күшейтілсе ғана, оның мүдделерінің әртүрлі салаларында қатаң, дәл және толық сақталуын қамтамасыз етуге ерекше назар аударылады. Мақалада азаматтардың саяси құқықтарын, бостандықтарын мен заңды мүдделерін өкілді және атқарушы билік органдары мен жергілікті өзін-өзі басқару органдарына тең сайлану арқылы саяси салада ұйымдастырушылық-құқықтық қамтамасыз ету құқықтары қарастырылған. Автор ұлттық сайлау заңнамасының дамуына, қазақстандық азаматтардың сайлау құқықтарын қорғау және бостандықтарын жетілдіру жөнінде және де құқық қолдану тәжірибесінде, атап айтқанда, соттар мен халықаралық құқық нормаларында, мемлекеттердің демократиялық сайлау өткізудің халықаралық міндеттеріне ерекше назар аударған.

Кілт сөздер: азаматтардың сайлау құқығы, халықаралық сайлау стандарттары, жалпы сайлау құқығы, демократиялық сайлау, сайлау құқығының қағидалары.

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Правовые основы обеспечения реализации избирательных прав гражданами Республики Казахстан

Избирательные права граждан определяют сферу их политической свободы, автономии и самоопределения. Важнейшим показателем демократизма того или иного общества или государства является институт гарантий свободы выборов, который обеспечивается, прежде всего, правом. При этом особо обращается внимание на то, что обеспечить строгое, точное и полное соблюдение гарантий человека и гражданина в различных сферах его интересов возможно лишь при условии постоянного совершенствования юридического механизма, укрепления правопорядка, повышения дисциплины и организованности. В данной статье рассматривается организационно-правовая система обеспечения прав, свобод и законных интересов граждан в политической сфере посредством открытого избрания представительных и исполнительных органов власти и местного самоуправления. Особое внимание автор уделяет развитию национального избирательного законодательства, совершенствованию правоприменительной практики и защите избирательных прав и свобод казахстанских граждан, в том числе в судах, которые в настоящее время объективно усиливаются в условиях знания и применения принципов и норм международного права, международных обязательств государства по проведению демократических выборов.

Ключевые слова: избирательные права граждан, международные избирательные стандарты, всеобщее избирательное право, демократические выборы, принципы избирательного права.

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