
КОНСТИТУЦИЈАЛЫҚ ЖӘНЕ ХАЛЫҚАРАЛЫҚ ҚҰҚЫҚ КОНСТИТУЦИОННОЕ И МЕЖДУНАРОДНОЕ ПРАВО CONSTITUTIONAL AND INTERNATIONAL LAW

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International legal regulation of elections

The article is devoted to the principles of international legal regulation of elections. An important feature of any democratic state is the participation of its citizens in the election of officials and public authorities, as well as local government. The author's right to vote is a set of legal norms governing public relations that arise during the election of public officials and bodies. At present, the electoral law in any country in the world is institutionalized on the basis of constitutions. The electoral process is the action of different participants, which are regulated by the right to vote for the preparation and conduct of elections. The status, competence and authority for the preparation and conduct of general elections, as well as the provision and protection of citizens' rights and freedoms, as well as control over their execution, are vested in the electoral bodies established by the constitution and by legislative acts. The rights of the national observer may be exercised by candidates and political parties (unions) in the manner and manner prescribed by law. Electoral bodies and other bodies and organizations may have the authority to monitor national observers and other interested parties in elections based on democratic election technologies, national election legislation, electoral standards, the basis of electoral rights and freedoms of a person and citizen. international conventions on human rights and political rights of citizens in the electoral process were widely covered and differentiated.

Keywords: suffrage, international suffrage, international observer, international institute of election observation, electoral process, international principles of elections.

International legal acts regulating procedures in the electoral process are the result of the normative activities of international organizations (their bodies) on questions of electoral law and the electoral process.

International legal regulation is the authoritative influence of states on interstate relations through the norms of international law. International legal regulation is carried out by defining standards, models of mandatory, possible and unacceptable behavior, as well as encouraging subjects to follow these standards. This type of regulation is aimed at developing international legal obligations of participants in interstate relations.

The features of international legal regulation are the consent of participants in the law-making process with regulatory requirements, formalization, certainty of content, relative stability in comparison with other types of social regulation, the ability to predict the results of law-making activities.

The main advantage of international legal regulation is that it ensures interaction of states in the law-making process and is based on their support. The source of international regulation is the sovereign power of the participating States of law-making.

The goals of international law and means can be defined very simply: in every state there must be a government whose authorities come from the will of the people, expressed by the principle of secret voting in genuine free and fair elections, which are held regularly on the basis of universal and equal suffrage.

The state-imperious moment in the international legal regulation has internal and international aspects.

The internal aspect is the subordination of the activities of state bodies, individuals, organizations to the state will, so that this activity does not contradict the tasks of state participation in the system of international legal regulation.

The international aspect of the state-imperious moment of this regulation is the use by every subject of its available state-power means for cooperation with other states in the creation and implementation of international legal norms, and, if necessary, for the application of coercive measures to the offender.

The subsystem of international legal regulation of the organization and conduct of elections is part of the system of international legal regulation.

The object of international legal regulation of the organization and conduct of elections are interstate relations in the field of electoral law and the electoral process.

The tasks of international activity in the development of norms and standards in the electoral sphere are: the creation of appropriate legal standards for the regulation of relations that develop in relation to the consolidation of the electoral rights of citizens and democratic electoral procedures, namely: the elimination of the irrational variety of types of regulation in the field of suffrage on the basis of universally recognized and other international standards; the creation of mechanisms that make it possible to have mutual control and «measure» the quality of such regulation; creation and improvement of methods for influencing the behavior of participants in relations in this sphere, i.e. harmonization of national legislation.

By the end of the twentieth century, the international community has developed a set of international legal norms in the field of human rights and freedoms — international standards, including human rights standards for free, fair, genuine and periodic elections (international electoral standards).

International electoral standards form the framework for the legal regulation of electoral relations and, in this capacity, are considered as the general normative minimum of the domestic legal regulation of citizens' electoral rights, that is international law, that is, they establish the border of universal guarantees related to the state's determination of their political rights and freedoms.

In addition, internationally-selective standards directly authorize and establish the content of legal regulation of political rights and freedoms of citizens, their implementation and application.

International electoral standards are the obligations of states not only to grant to persons under their jurisdiction rights and freedoms to participate in holding free, fair, genuine and periodic elections, but also not to encroach on such rights and freedoms and take appropriate measures to implement them.

International election standards are addressed both to the state, obliging it to provide citizens with the objective nature of a democratic political process with objective law and citizens, providing and guaranteeing them certain legal opportunities, that is, subjective political rights.

The study of an array of international documents shows that the international legal regulation of the electoral process in the interests of democracy and the protection of the constitutional system is represented by three main fragments.

The first fragment is made up of international standards that establish the basic requirements for legitimacy, justice, democracy, the genuine and free nature of elections.

The second fragment includes international standards that fix the state mechanism of protection of universally recognized principles and norms of suffrage.

The third fragment contains international standards that establish general requirements for the legislative process and the quality of legislation in the field of elections.

The guidelines of the Venice Commission of the Council of Europe on the election record a number of requirements for the formation of electoral districts and districts. When cutting single-member districts, the permissible deviation from the norm should not exceed 10 % and in no case can exceed 15 %, except for special circumstances (for example, protecting the interests of a compactly inhabiting minority) [1].

Section IX of the Lund Recommendations on the OSCE Elections (Warsaw, June 1999) contains provisions on the formation and activities of electoral bodies: «No outsiders, representatives of the authorities or political parties should attempt to direct the activities of the electoral body; he should work without any political predilections or preferences».

Paragraph 7.5 of the 1990 Copenhagen Document of the CSCE guarantees the observance of the right of citizens to run for political or state posts individually or as representatives of political parties and organizations without discrimination. Candidates may be refused registration if: a) the program of a candidate or a party is based on ethnic hatred, political violence or propaganda of war, or in some other way does not correspond to the basic democratic values; b) the candidate's behavior demonstrates his unwillingness to respect the law and to limit himself to peaceful means to achieve his goals.

At the stage of financing the election campaign, legislation should prevent possible abuse of public resources allocated for the purposes of the election campaign and ensure that these resources are used in strict compliance with applicable legal provisions.

International election standards suggest that an election campaign is carried out in an atmosphere that ensures freedom of expression, assembly and association. During the campaign period, political parties and candidates should be given equal access to the media and guaranteed equal treatment by mass media owned or controlled by the state with the objective of impartial and impartial information to voters (paragraphs 7.6 and 7.8 of the 1990 Copenhagen Document of the CSCE, paragraphs «b» and «c» part 9.2 of the OSCE / ODIHR Election Observation Handbook).

Section XII B of the OSCE / ODIHR Recommendations on the Analysis of Electoral Legislation determines that voting procedures should ensure the correct identification of the voter's identity, as well as provide for other mechanisms to prevent falsifications or double voting. Voting procedures should ensure proper storage of ballots and election documents before, during and after voting.

The cornerstone of democratic elections is an accurate and honest vote count. Paragraph 7.4 of the 1990 Copenhagen Document of the CSCE requires that «the counting and reporting of the CSCE be fair, and the official results published».

The key problem of protecting the constitutional system is the problem of preserving the state's independence through aggressive external observation of elections. Therefore, international election standards allow restrictions on the interference of foreign states in the electoral process (Article 16 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Part 7 of Article 1 of the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the CIS Member States, the Declaration of Principles for International Monitoring elections).

The third fragment of the international legal regulation of the protection of the constitutional order in the electoral process is represented by international standards that establish general requirements for the legislative process and the quality of legislation in the field of elections.

The legislative basis for holding elections should be established either through an exhaustive code or through a package of legislative acts working in concert and not allowing ambiguity and gaps. In subparagraphs «a» and «b» of Part 2 of Section II of the Venice Commission's Guidelines on Elections, it is said that the stability of electoral legislation is of the utmost importance for strengthening the authority of the electoral process.

The international documents regulating the protection of democracy and the constitutional order in the electoral process are an element of national legal systems and are implemented in the legislation on elections and political parties. The implementation of international electoral standards in the practice of elections makes it possible to ensure the legitimacy of the formation of public authorities, the legality of the electoral process, the implementation of electoral rights and freedoms of citizens.

There are regional electoral standards operating in a group of countries, for example, within the framework of the Council of Europe or the CIS. These electoral standards are more specific, they contain a number of requirements for holding various stages of the electoral process.

I will give an analysis of OSCE and CIS standards, since the Republic of Kazakhstan is a member of these organizations, their delegations took an active part in monitoring the elections.

The Copenhagen Document of the OSCE has consolidated the general principles of the democratic electoral process.

In order for the will of the people to serve as the basis for the power of the government, the OSCE participating States:

- conduct free elections at reasonable intervals, as provided by law;
- guarantee universal suffrage to adult citizens;
- Ensure that voting is conducted secretly or an equivalent free voting procedure is used and that the counting and reporting of votes are fair and official results published;
- respect the right of citizens to seek political or public posts in their personal capacity or as representatives of political parties or organizations without discrimination;
- respect the right of individuals to create their political parties or other political organizations in complete freedom, and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on the basis of equality before the law and the authorities;

- Ensure that the law and state policy allow for political campaigns in an atmosphere of freedom and honesty in which no administrative action, violence or intimidation would deter the parties and candidates from freely articulating their views and assessments, and also prevent voters from acquainting them and discuss them or vote freely, without fear of punishment;
- Ensure that there are no legal or administrative barriers to unhindered access to the media on a non-discriminatory basis for all political groups and individuals who wish to participate in the electoral process;
- Ensure that candidates who have obtained the required number of votes determined by law properly take office and could remain in office until the expiration of their term of office or until their termination in any other way that is regulated by law in accordance with democratic parliamentary and constitutional procedures [2; 21].

The participating States consider that the presence of observers, both foreign and national, can enhance the credibility of the electoral process for the states in which elections are held. Therefore, they invite observers from any CSCE participating States and any relevant private institutions and organizations that wish to do so to monitor the progress of their national elections to the extent permitted by law. They will also seek to promote the same access to electoral processes conducted at a lower level than at the national level. Such observers are obliged not to interfere in the electoral process.

The Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States, as a whole, repeating the provisions of the OSCE Copenhagen Document, defines many of its provisions.

The Convention is based on the recognition that powers for power should be based on the will of the people expressed in real and periodic elections and set the following standards for democratic elections:

- the right of a citizen to elect and be elected to public authorities, local self-government bodies to other bodies of people's (national) representation;
- principles of periodicity and compulsion, fairness, authenticity and freedom of elections on the basis of universal and equal suffrage by secret ballot, ensuring freedom of expression of the will of voters; open and transparent nature of elections;
- implementation of judicial and other protection of the electoral rights and freedoms of a person and citizen, public and international observation of elections; guarantee the exercise of electoral rights and freedoms of participants in the electoral process.

The Convention explains in detail the content of these principles, as well as the interpretation of the concepts of «genuine» and «fair» elections.

In the course of real elections, the freely expressed will of the people and its direct implementation are revealed.

True elections give voters the opportunity to choose candidates on the basis of the constitution and laws. In real elections, there is real political pluralism, ideological diversity and multi-party system, implemented through the functioning of political parties, whose legitimate activities are under the legal protection of the state.

In real elections, voters are given free access to information about candidates, lists of candidates, political parties (coalitions) and the electoral process, as well as candidates, political parties (coalitions) — the media and telecommunications.

The appointment of elections and the conduct of electoral actions and procedures should be carried out in order and in time, allowing candidates, political parties (coalitions) and other participants in the electoral process to deploy a full electoral campaign.

Observance of the principle of fair elections should ensure the creation of equal legal conditions for all participants in the electoral process.

In the conduct of fair elections:

- a) universal and equal suffrage;
- b) equal opportunities for each candidate or each political party (coalition) to participate in the election campaign, including for access to the media and telecommunications;
- c) fair and transparent financing of elections, election campaigns of candidates, political parties (coalitions);
- d) honesty in the voting and counting of votes, full and prompt information on the results of voting with the official publication of all election results;

e) the organization of the election process by impartial electoral bodies, working openly and publicly under effective public and international supervision;

f) the prompt and effective consideration by courts and other authorized bodies of complaints of violations of electoral rights and freedoms of citizens, candidates, political parties (coalitions) within the time frames of the relevant stages of the electoral process, as well as ensuring the citizen's right to appeal to international judicial bodies for protection and the restoration of their electoral rights and freedoms in accordance with the rules provided for by international law [3].

The Convention also provides that a citizen may be given the opportunity to exercise his right to vote by organizing early voting, voting outside the voting premises or other voting procedures ensuring the creation of maximum convenience for voters. It is also envisaged that candidates can create their own monetary electoral fund to finance their election campaign and use their own funds for this purpose, voluntary monetary donations of individuals and (or) national legal entities in the amounts and according to the procedure provided for by laws.

The obligation of States to ensure the freedom to search, collect, disseminate information about elections, candidates, provide impartial information coverage of elections in the media and telecommunications, as well as freedom to conduct agitation in the conditions of pluralism of opinions and the absence of censorship.

The Convention pays much attention to ensuring transparency of elections. National observers should be granted the following rights:

- a) get acquainted with the election documents specified in the election laws, receive information on the number of voters included in the voting lists and the number of voters who participated in the voting, including in early voting and in voting outside the voting premises;
- b) stay in the voting premises;
- c) monitor the issuance of ballots to voters;
- d) be present during early voting, when voters vote outside the voting premises;
- e) observe the counting of the votes of the voters in conditions that ensure the foresight of the procedure for counting ballots;
- f) observe the preparation by the electoral body of the protocol on the results of voting, election results and other documents, get acquainted with the protocol of the electoral body on the results of voting, including with the protocol drawn up repeatedly, in the cases and in accordance with the procedure provided for by national legislation from the relevant electoral body certified copies of these protocols;
- g) apply to the electoral body with suggestions and comments on the organization of voting;
- h) appeal against decisions and actions (inaction) of the electoral body, members of the electoral body to the directly superior election body or to the court [4; 75].

An important element of the electoral process is the possibility of appealing against violations. In case of violation of the standards of democratic elections proclaimed in the Convention, electoral rights and freedoms of citizens, as well as election laws, a person or persons whose rights have been violated must have the right and the opportunity to appeal and restore violated rights in courts, and in the cases and in the order established laws, also in electoral bodies. Persons guilty of committing illegal acts (omissions) must be held accountable in accordance with the laws.

The importance of international legal codification of election standards can not be overestimated. Such an approach would promote the implementation of the principles of electoral democracy, guarantees of electoral rights and freedoms of the rule of law to the entire Eurasian continent, and hence to the strengthening of stability in Europe and Asia. At the same time, the establishment of standards at such a high level would also provide protection against unreasonable interference in the internal affairs of the state in resolving issues left to the discretion of the state by an international legal act, a guarantee against arbitrary modeling of such standards in relation to short-term geopolitical interests.

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Сайлау өткізуді халықаралық құқықтық реттеу

Мақалада сайлау өткізуді халықаралық құқықтық реттеу қағидалары қарастырылған. Кез келген демократиялық мемлекеттің маңызды белгісі — оның азаматтарының лауазымды адамдар мен мемлекеттік билік органдарын, сондай-ақ жергілікті өзін-өзі басқару органдарын сайлауға еркін дауыс беру арқылы қатысуы. Автор дауыс беру құқығы бұл мемлекеттік билік тұлғалары мен органдарының сайлауын жүргізу үрдісінде пайда болатын қоғамдық қатынастарды реттейтін құқықтық нормалардың жиынтығы деген қорытындыға келді. Қазіргі кезде әлемнің кез келген мемлекеттерінің барлығында да сайлау құқығы конституция бойынша негізделген, құқықтық институт ретінде танылады. Сайлау үрдісі — сайлауды дайындау және жүргізу бойынша дауыс беру құқығының нормаларымен реттелген түрлі субъектілердің іс-әрекеті. Жалпы сайлауға дайындық және оны өткізу, азаматтардың сайлау құқықтары мен бостандықтарын қамтамасыз ету және қорғау, сондай-ақ олардың орындалуына бақылау жасау мәртебесі, құзыреті мен өкілеттігі конституциямен, заң актілерімен белгіленген сайлау органдарына жүктеледі. Ұлттық бақылаушының құқықтарын заңдармен көзделген жағдайларда және тәртіпте кандидаттардың, саяси партиялардың (одақтардың) сенімді өкілдері де пайдалана алады. Сайлау органдары және өзге де органдар мен ұйымдар ұлттық бақылаушыларды және сайлаудың өзге де қатысушыларын демократиялық сайлау технологиясының, сайлау туралы ұлттық заңнаманың, халықаралық сайлау стандарттарының, адамның және азаматтың сайлау құқықтары мен бостандықтарын қамтамасыз етудің негіздеріне үйретуді ұйымдастыру жөніндегі өкілеттікке ие бола алады. Сондай-ақ автор адам және азаматтардың саяси құқықтары бойынша сайлау үрдісі кезінде халықаралық конвенцияларға кеңінен тоқталып, саралау жасаған.

Кілт сөздер: сайлау құқығы, халықаралық сайлау құқығы, халықаралық бақылаушы, халықаралық сайлау құқығындағы бақылау институты, сайлау үрдісі, халықаралық сайлау қағидалары.

К.С. Мусин

Международное правовое регулирование проведения выборов

В статье рассматриваются принципы международного правового регулирования выборов. Важной особенностью любого демократического государства является участие его граждан в выборах должностных лиц и органов государственной власти, а также органов местного самоуправления. Автор приходит к выводу, что право голоса — это набор правовых норм, регулирующих общественные отношения, возникающие в ходе выборов государственных должностных лиц и органов. В настоящее время избирательный закон в любой стране мира институционализирован на основе конституции. Избирательный процесс — это действие разных участников, которые регулируются правом голоса для подготовки и проведения выборов. Отмечено, что статус, компетенция и полномочия по подготовке и проведению всеобщих выборов, предоставление и защита прав и свобод граждан, а также контроль за их исполнением возлагаются на избирательные органы, установленные конституцией и законодательными актами. Подчеркнуто, что права национального наблюдателя могут осуществляться кандидатами и политическими партиями (союзами) в порядке, установленном законом. Избирательные органы и другие органы и организации могут иметь полномочия контролировать национальных наблюдателей и другие заинтересованные стороны на выборах на основе демократических технологий выборов, национального законодательства о выборах, избирательных стандартов, основ избирательных прав и свобод человека и гражданина. Подчеркнуто, что международные конвенции по правам человека и политические права граждан в избирательном процессе широко освещались в средствах массовой информации.

Ключевые слова: избирательное право, международное избирательное право, международный наблюдатель, международный институт наблюдения за выборами, избирательный процесс, международные принципы проведения выборов.

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