
КОНСТИТУЦИОННОЕ И МЕЖДУНАРОДНОЕ ПРАВО CONSTITUTIONAL AND INTERNATIONAL LAW

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The role of political parties in the election of deputies Parliament of the Republic of Kazakhstan

The article is devoted to the participation of political parties in the elections of deputies of the Parliament of the Republic of Kazakhstan, including deputies of the Mazhilis of the Parliament of the Republic of Kazakhstan. The role of political parties as an institution of representative democracy, which is expressed in the representation of the opinion of the people in the legislative branch of power, is substantiated. In the process of research, the laws were studied: the constitutional law of the Republic of Kazakhstan «On Elections in the Republic of Kazakhstan», the laws of the Republic of Kazakhstan «On Political Parties». The analysis of the activities of political parties of the Republic of Kazakhstan and foreign countries through an in-depth study of laws and practice. A study of the practice of legal regulation and the participation of political parties in legislative elections in foreign countries shows the limited approaches used in Kazakhstani legislation to create favorable conditions for the establishment of a multi-party system, to involve the widest sections of the population in political activity and to participate in the elections of deputies of the Parliament of the Republic of Kazakhstan. Features of the proportional electoral system of the system that are used in the election of deputies of the Mazhilis of the Parliament of the Republic of Kazakhstan were identified. The article shows the processes of a gradual transition from a majoritarian electoral system to a proportional system, which allowed political parties in Kazakhstan and a number of foreign countries to actively participate in the process of election of deputies. When writing the article, the authors used general methods of scientific knowledge: synthesis and analysis, induction, deduction, modeling, which made it possible to comprehensively consider the studied constitutional and legal phenomena. The methods of comparative legal, systemic, logical and statistical were also applied.

Keywords: elections, deputy, candidate, political parties, suffrage, democracy, electoral system.

Introduction

The relevance of the study is expressed in the fact that the Republic of Kazakhstan, having proclaimed it a democratic state, has been developing its political and party system from the first days of independence. A political system is democratic if it allows you freely form political parties, and parties to fight for power, or not to share power. The defining characteristic of parties as political institutions is that they serve as a mechanism linking state institutions with civil society institutions by representing the interests of citizens in public authorities, as the Law of the Republic of Kazakhstan «On Political Parties» of June 15, 2002 defines «Political a party is a voluntary association of citizens of the Republic of Kazakhstan, expressing the political will of citizens, various social groups, in order to represent their interests in representative and executive bodies of state power, local self-government and participation in their formation» [1]. From the very beginning, in the process of forming the party system of the Republic of Kazakhstan, there were many political

parties and movements. They arose and disintegrated, which is quite natural for the stage of formation of a Democratic Party system. It should be added, of course, that all parties, movements and simply formations differed among themselves in the number of members and the scope of their activities. It should be noted the impact of numerous political reforms over the past decade in the Republic of Kazakhstan on the development of the democratic processes of Kazakhstani society, which involves the further strengthening and development of political parties and civil society institutions.

In his message of September 2, 2019 «Constructive public dialogue — the basis of stability and prosperity of Kazakhstan», the President of the Republic of Kazakhstan K.K. Tokaev emphasized the importance and important role of political parties in the prosperity and development of the state, he said: «As the Head of State, I see my task in promoting the development of a multi-party system, political competition and pluralism of opinions in the country. This is important for the stability of the political system in the long run. The upcoming elections to the Majilis of the Parliament and maslikhats should contribute to the further development of the multi-party system in the country» [2]. Thus, the special purpose of the parties is noted, which is the fulfillment of the role of a kind of connecting link between society and power and vice versa. Parties carry out the identification, justification and expression of the interests of various social groups and strata. Parties play an equally important role in uniting various interests, reducing them to a common denominator, which contribute to nationwide consolidation. Participating in the struggle for power, in its implementation, in the adoption of important political decisions and control over their implementation, the parties represent in the political power system those layers and groups of society whose interests they express.

The aim of this work is a theoretical analysis of the legal status of political parties as subjects of the electoral process as an institution of constitutional law of the Republic of Kazakhstan, the identification of its legal differences from a similar institution of constitutional law of foreign countries, as well as a comparative legal analysis of the peculiarities of legal regulation of the interaction of political parties with other subjects of the electoral process in Kazakhstan and in other states.

Methods and materials

When writing this article, the methodological foundation was the general scientific methods of cognition, as well as specific sociological methods based on the knowledge, analysis and classification of facts, phenomena and processes, including the documentary method. In addition, analytical-systemic, formal-legal, logical, and other research methods were applied that allow a comprehensive analysis of the system of legal regulation of interaction between political parties and state bodies of the Republic of Kazakhstan.

Results

With the introduction of a proportional electoral system and a new procedure for compiling party lists and distributing mandates, other problems are also emerging. Firstly, the Constitutional Law on Elections does not guarantee regional representation in the Majilis, since this factor is not taken into account when determining (choosing) candidates to be included in party lists. Secondly, the connection of voters with the deputy corps is lost, because when distributing deputy mandates within a party by the decision of its governing body, deputies of the Majilis do not need to maintain any relations with voters, since a different kind of task is being urged — to seek a favorable attitude towards the party leadership. The way out in this situation is seen by us in the inclusion in the Constitutional Law «On Elections in the Republic of Kazakhstan» of a norm on the mandatory registration of regional representation in the distribution of deputy mandates and the corresponding consideration of this factor in compiling party lists [3].

Parliamentary elections are primarily governed by the Constitution of the Republic of Kazakhstan, the Constitutional Law «On Elections in the Republic of Kazakhstan» (Law on Elections), the Law «On Political Parties» and resolutions of the Central Election Commission of the Republic of Kazakhstan (CEC).

Article 87, paragraph 3 of the Constitutional Law of the Republic of Kazakhstan dated September 28, 1995 No. 2464 «On Elections in the Republic of Kazakhstan» (as amended on March 13, 2017) states: «Political parties compile party lists in the alphabetical order of the state language... «In addition, article 97–1, paragraph 5. «The sequence of distribution of deputy mandates is determined by the governing body of a political party from among the candidates included in the party list...» [3].

Discussion

The Constitution of the Republic of Kazakhstan in 1995 proclaimed parliament the highest representative body of the Republic, carrying out legislative functions. The parliament became bicameral, consisting of the Senate (upper house) and the Majilis (lower house), operating on an ongoing basis.

Ninety-eight deputies of the Majilis are elected by party lists based on universal, equal and direct suffrage by secret ballot; nine deputies of the Majilis are elected by the Assembly of the People of Kazakhstan. Party lists are divided into two types: open and closed.

In some countries, voters are given the choice: vote for the entire party list or for a particular candidate or candidates. Such party lists are called open lists or free lists.

The rule of «free lists» allows the voter, who voted for the entire list, to express their attitude to the candidates by putting preferences against their names in numbers or otherwise, that is, indicate whom he wants to see elected first, whom in the second, etc. The rule is valid in Sweden, Austria, Switzerland, Denmark, Japan and some other countries [4; 56].

With closed lists, the voter has no influence on the composition of the party's representation. With closed lists, the party initially arranges candidates in priority order: candidates at the top of the list are the first to receive mandates. At the same time, the voter is deprived of the opportunity to determine his attitude to the candidates, since he votes for the party, and not for the particular candidate. A voter may not cast his ballot to an unacceptable candidate who is at the head of the list, only by voting against the whole party, if such a choice is provided for in the state's electoral system.

When holding elections in the lower house of the Parliament of the Republic of Kazakhstan, the voter is given a ballot in which he puts any mark in the empty square to the right of the name of the political party for which he votes (clause 2 of article 42 of the Law on Elections). Thus, the voter votes for the party as a whole and does not have the right to cast a vote for a particular candidate. Further, according to the results of voting on party lists, as follows from clause 5 of article 97–1, deputy mandates are distributed in the order determined by the governing body of a political party from the number of candidates included in the party list [3]. If the party's governing body does not make the distribution on time, the CEC distributes the mandates according to the list of candidates provided to it, i.e. alphabetically listing the names of candidates.

This distribution procedure is contrary to common foreign practice. Foreign countries are characterized by such a system of distribution of mandates, when the party initially draws up lists of candidates in a preferential manner. In other words, upon reaching the percentage barrier, those candidates who are at the top of the list are the first to receive mandates. Such an algorithm allows the voter to better understand the consequences of winning the party, and also increases the transparency of the process of distribution of mandates, which helps to increase public confidence in the party and the electoral system as a whole.

The right to nominate candidates for deputies of the Majilis elected by party lists belongs to political parties registered in the established manner, while parties have the right to include only party members in party lists.

In Kazakhstan, the election of 98 deputies of the Majilis of the Parliament is carried out according to the system of closed party lists. Political parties compile lists in the territory of a single nationwide constituency in alphabetical order. The inclusion in the party list of persons for election to the Majilis shall be by a majority of the total number of members of the highest body of a political party, and they shall not be entitled to include persons who are not members of this political party.

Only one list from one political party with the number of candidates not exceeding the established number of deputy mandates, distributed among political parties by thirty percent, is allowed to register. Thus, voters vote for political parties, not specific candidates, because the principle of closed lists applies. Voters choose this or that party, having no idea who will enter the Parliament specifically. The mechanism of inclusion in party lists remains unclear for the majority of voters.

If the voter is not allowed to make any changes to the list of candidates drawn up by the party, then these are rigid, closed lists. If changes can be made, then such lists are open. Free lists apply in conjunction with preferential voting. The preferential voting institute (Belgium, Holland, Sweden, etc.) enables voters to vote not only for the list of candidates for a particular party, but also to give preference to certain candidates within this list. We consider it possible to use the system of free party lists with preferential voting; in this case, the voter can contribute to the election of a candidate placed in the middle or at the end of the list.

Special laws of many states (Portugal, Mexico, Italy, Austria, Denmark, Sweden, France, Bulgaria, Lithuania, etc.) guarantee officially registered political party's certain rights to participate in the electoral

process, in legislative activity, in the formation of state authorities and local self. During the election period, they are provided with benefits in obtaining financial assistance from the state, in disseminating their information both through their own channels, and through state-owned media and mass media.

In the Federal Republic of Germany, it is expressly provided for in this regard that if a party does not nominate its candidates for elections within 6 years, it loses the party's legal status. In other countries, certain financial and other sanctions are also imposed on such parties.

At the same time, an analysis of constitutional and legal documents shows that the process of political self-realization of parties in foreign countries is far from being carried out under equal conditions, much less spontaneously. In almost all cases, the legislator prefers large and traditional parties. For example, the laws of some states significantly limit or explicitly prohibit the activities of small parties. Therefore, according to the Canadian Election Law, in order to be registered for participation in the federal election campaign, a party must have at least 12 deputies in the previous composition of the House of Representatives, or nominate at least 50 candidates for elections to the new composition of the House. A similar restrictive approach is also characteristic of the laws of the Federal Republic of Germany and Sweden, where parties with less than 5 % and 4 % of the vote, respectively, are excluded from participation in the distribution of parliamentary mandates [5; 248].

The desire to provide certain advantages in the elections, first of all, to influential parties is also seen when the right to use free airtime only extends to parties represented in the previous parliament (Italy, Sweden, Austria), or when candidates are required to participate in elections in a very high minimum of constituencies (England, France, Canada, the Netherlands, Mexico).

Certain aspects of the parliamentary activity of political parties are specially regulated in foreign legislation. In particular, in Mexico, the law provides for the replacement of vacant seats of members of the Chamber of Deputies, who were elected in multi-member districts, with candidates of the same party who remained in first place in the respective regional lists.

The Portuguese Constitution provides for the possibility of factional activity, including opposition. This is facilitated by the constitutional right to create a parliamentary group by members of any political party represented in the Assembly of the Republic. The legislation does not stipulate the quantitative composition of the group, so almost any party or party bloc can create it. Each such group is provided with a working room in the Assembly building, material and financial resources, and opportunities to attract administrative and technical personnel [6; 45].

Parliamentary groups have the right to participate in the work of parliamentary commissions created based on proportional representation of groups, as well as to participate in determining the agenda of plenary meetings, and to open two general political discussions during each parliamentary session by submitting requests to the government. They can make a proposal to convene an extraordinary session of the Assembly, demand the creation of a parliamentary commission of inquiry.

Of considerable interest is the experience of legal regulation of the parliamentary activities of political parties in the Scandinavian countries (Sweden, Denmark, and Norway).

Here the principle of proportional representation in the governing and working bodies of the parliament, depending on the number of seats won by parties in the elections, is enshrined in law. Moreover, in order to equalize the chances of large and small parties, the normative documents provide for a system of measures to ensure minority rights. In accordance with it, parties that are not represented in a particular committee, but which has become of interest to them, can at any time appoint their representatives to it with an advisory vote. Broad powers were given to party factions that ended up in the minority with an important vote. They have the opportunity to slow down the passage of the bill in the future and, in extreme cases, initiate its popular discussion by referendum.

A specificity of the Scandinavian countries is such a parliamentary institution as deputy deputies. According to the current legislation, they are elected simultaneously with deputies. Since elections in the Scandinavian countries are held according to a proportional system, the deputy candidate must belong to the same party as the main candidate. The deputy is called upon to discharge deputy duties in the event of the transfer of the deputy to the civil service, his vacation, illness, and in other urgent circumstances. In all cases, a deputy shall inherit the status and position of a deputy to be replaced by him, including seats in the governing bodies and committees of the parliament. While the deputy is in office, the legislation on the status of a deputy is fully applicable to him.

The distribution of deputy mandates after elections in the Republic of Kazakhstan is carried out not in accordance with the arrangement of data on the candidate in the party list (as was the case with the mixed

election system), but in accordance with the decision of the party's governing body. In particular, it was established that the party's governing bodies should carry out this procedure no later than ten days from the date of publication of the election results, otherwise the CEC will carry out this procedure.

Given the existence of a mixed majority-proportional election system, the order of distribution of deputy mandates was decided at the party congress (conference), and by the arrangement of candidates in the list it was possible to determine who is the main applicant for the mandates received by the party, i.e., the idea of the main candidates for deputy seats there was a population. In terms of ensuring the awareness of the electorate about the elected deputies, the previously existing procedure for compiling party lists was optimal.

Conclusion

Thus, in the Republic of Kazakhstan, voters vote for the party list, and not for an individual candidate. Each party receives the number of seats in proportion to the votes received. The sequence of distribution of deputy mandates is determined by the governing body of a political party from among the candidates included in the party list. This does not fully reflect the opinion of voters. Sometimes voters vote seeing on the lists of their idols, but in reality other less well-known candidates pass. In order to fully reveal the opinion of voters, it would be advisable to compile a list of candidates for deputies, not in alphabetical order as provided by our law, but to draw up a party list depending on the rating and qualitative characteristics of candidates, in order of priority. Generally speaking about a proportional electoral system, it is necessary to note the fact that in ten of the twelve EU countries (with the exception of Great Britain and France), this system is used. It largely defines modern Western European democracy as party democracy. The proportional system is the most democratic, allowing to take into account the political sympathies of the population. It stimulates a multi-party system, creates favorable conditions for the activities of small political parties [7; 122].

The process of establishing a multi-party system in Kazakhstan continues. The political parties of the republic are faced not only with traditional tasks (organizational design, formulation of program provisions, attracting supporters), but also new ones, determined both by the general tendency of the development of parties and by the peculiarity of Kazakhstan, as a transitional society.

In the future, further strengthening the party system and expanding party representation in parliament will activate the democratization of political processes in Kazakhstan.

The recognition of ideological and political pluralism in the Constitution should become the basis for the further consolidation of political parties, which, in turn, will lead to the formation of the party system as a totality of relations between legally operating political parties. Parties will offer a choice between different alternatives, they will be able to guarantee a certain organization in government; will act as intermediaries between society and political power. In any case, the formation of a multi-party system is an indicator of the actual movement of society towards democracy and the rule of law.

References

- 1 Закон Республики Казахстан «О политических партиях» от 15 июля 2002 г. / Казахстанская правда. — 2002. — 19 июля (с изм. и доп. от 01.01.2019 г.).
- 2 Послание Главы государства народу Казахстана от 02.09.2019 г. «Конструктивный общественный диалог — основа стабильности и процветания Казахстана» // Казахстанская правда. — 2019. — 3 сент. — № 169.
- 3 Конституционный закон Республики Казахстан «О выборах» [Электронный ресурс] // Ведомости Верховного Совета Республики Казахстан. — 1995 г. (с изм. и доп. от 01.01.2019 г.). — Режим доступа: https://online.zakon.kz/document/?doc_id=1004029&show_di=1
- 4 Берлявский Л.Г. Источники избирательного права в зарубежных странах: некоторые вопросы теории / Л.Г. Берлявский, Е.В. Колесников // Вестн. Саратов. гос. юрид. акад. — 2013. — № 1 (90). — С. 228–229.
- 5 Сборник нормативных правовых актов зарубежного избирательного законодательства / Центр. избир. ком. РФ. Рос. центр обучения избир. технологиям; авт. введ.: Ю.А. Веденеев, В.В. Маклаков; сост.: И.А. Алебастрова [и др.]; отв. ред. А.А. Вешняков. — М.: Весь мир, 2004. — 462 с.
- 6 Джагарян А. Выборы в механизме государственного целеполагания: конституционно-правовые аспекты / А.Джагарян // Сравнительное конституционное обозрение. — 2007. — № 2. — С. 45–46.
- 7 Постников А. Мажоритарная и пропорциональная избирательная системы: плюсы и минусы / А. Постников // Народный депутат. — 2011. — № 12. — С. 124–125.

С.К. Амандықова, Л. Букалерова, Ж. Көрпебаев

Қазақстан Республикасы Парламенті депутаттарын сайлаудағы саяси партиялардың рөлі

Мақала саяси партиялардың Қазақстан Республикасының Парламент депутаттарын, оның ішінде Қазақстан Республикасы Парламенті Мәжілісінің депутаттарын сайлауға қатысуына арналған. Биліктің заңнамалық тармағында халықтың пікірін білдіруде өкілдік демократия институты ретінде саяси партиялардың рөлі негізделген. Тақырыпты зерттеу барысында: Қазақстан Республикасының «Қазақстан Республикасындағы сайлау туралы» Конституциялық заңы, Қазақстан Республикасының «Саяси партиялар туралы» заңдары зерделенген. Заңдар мен практиканы терең зерттеу арқылы Қазақстан Республикасының және шет елдердің саяси партияларының қызметі талданған. Шет елдердің заңнамалық билік органдарына сайлауға саяси партиялардың қатысуы мен құқықтық реттеу тәжірибесін зерттеу көп партиялықтың қалыптасуына қолайлы жағдай жасау, халықтың неғұрлым кең бөлігін саяси қызметке тарту және Қазақстан Республикасы Парламенті депутаттарының сайлауына қатысу үшін Қазақстан заңнамасында пайдаланылған тәсілдердің шектеулілігін көрсетеді. Қазақстан Республикасы Парламенті Мәжілісінің депутаттарын сайлау кезінде қолданылатын пропорционалды сайлау жүйесінің ерекшеліктері анықталған. Мақалада мажоритарлы сайлау жүйесінен пропорционалды жүйеге біртіндеп көшу үдерістері көрсетілген, ол Қазақстандағы және бірқатар шет елдердегі саяси партияларға депутаттарды сайлау процесіне белсенді қатысуға мүмкіндік береді. Мақаланы жазу барысында авторлар ғылыми танымның жалпы әдістерін пайдаланған: синтез және талдау, индукция, дедукция, модельдеу, зерттелетін конституциялық-құқықтық құбылыстарды жан-жақты қарастырған. Сонымен қатар салыстырмалы-құқықтық, жүйелі, логикалық және статистикалық әдістер қолданылған.

Кілт сөздер: саяси партиялар, сайлау, депутат, мәжіліс, кандидат, сайлау құқығы, демократия, сайлау жүйесі.

С.К. Амандықова, Л. Букалерова, Ж. Корпебаев

Роль политических партий при выборах депутатов Парламента Республики Казахстан

Статья посвящена участию политических партий в выборах депутатов Парламента Республики Казахстан, в том числе и депутатов Мажилиса Парламента РК. Обоснована роль политических партий как института представительной демократии, выражающей в представлении мнения народа в законодательной ветви власти. В процессе анализа темы были изучены следующие документы: Конституционный закон Республики Казахстан «О выборах в Республике Казахстан», Закон Республики Казахстан «О политических партиях». Изучена деятельность политических партий Республики Казахстан и зарубежных стран посредством глубокого исследования законов и практической деятельности. Исследование практики правового регулирования и участия политических партий в выборах в законодательные органы власти зарубежных стран показывает ограниченность подходов, использованных в казахстанском законодательстве для формирования благоприятных условий в становлении многопартийности, вовлечения наиболее широких слоев населения в политическую деятельность и участия в выборах депутатов Парламента Республики Казахстан. Были выявлены особенности пропорциональной избирательной системы, которая применяется при выборах депутатов Мажилиса Парламента Республики Казахстан. В статье показаны процессы постепенного перехода от мажоритарной избирательной системы к пропорциональной системе, позволившей политическим партиям в Казахстане и ряде зарубежных стран активно включиться в процесс выборов депутатов. При написании статьи авторами использовались общие методы научного познания: синтез, анализ, индукция, дедукция и моделирование, которые позволили всесторонне рассмотреть изучаемые конституционно-правовые явления. Кроме того, были применены сравнительно-правовой, системный, логический и статистический методы.

Ключевые слова: политические партии, выборы, депутат, Мажилис, кандидат, избирательное право, демократия, избирательная система.

References

1. Закон Respubliki Kazakhstan «O politicheskikh partiiax» ot 15 iulia 2002 h. (2019). [The Law of the Republic of Kazakhstan dated July 15, 2002 «On Political Parties»]. Kazakhstanskaia Pravda — «Kazakhstan Pravda» dated July 19, 2002 as amended and add. January 1 [in Russian].

2 Poslanie Hlavy hosudarstva narodu Kazakhstana ot 02.09. 2019 h. «Konstruktivnyi obshchestvennyi dialoh — osnova stabilnosti i protsvetaniia Kazakhstana» [Message from the Head of State to the people of Kazakhstan dated 2.09. 2019 «Constructive public dialogue — the basis of stability and prosperity of Kazakhstan»]. *Kazakhstanskaia Pravda — «Kazakhstan Pravda»*. dated 09/03/2019, No. 169 [in Russian].

3 Konstitutsionnyi zakon Respubliki Kazakhstan «O vyborakh» / Vedomosti Verkhovnoho Soveta Respubliki Kazakhstan, 1995 h. (s izm.i dop. 01.01.2019 h.) [The Constitutional Law of the Republic of Kazakhstan «On Elections» / Gazette of the Supreme Council of the Republic of Kazakhstan, 1995, as amended. and add. January 1, 2019]. *online.zakon.kz*. Retrieved from: https://online.zakon.kz/document/?doc_id=1004029&show_di=1

4 Berliavskii, L.G. & Kolesnikov, E.V. (2013). Istochniki izbiratelnoho prava v zarubezhnykh stranakh: nekotorye voprosy teorii [Sources of suffrage in foreign countries: some theoretical issues]. *Vestnik Saratovskoi hosudarstvennoi yuridicheskoi akademii — Bulletin of the Saratov State Law Academy*, 1 (90), 228–229 [in Russian].

5 Vedeneev, Yu.A. & Maklakov, V.V. (2004). Sbornik normativnykh pravovykh aktov zarubezhnoho izbiratelnoho zakonodatelstva [Collection of regulatory legal acts of foreign election legislation]. *Tsentri izbiratelnoi komissii Rossiiskoi Federatsii. Rossiiskii tsentr obuchenii izbiratelnykh tekhnologiyam — Central Election Commission of the Russian Federation. Russian Center for Training in Electoral Technologies* / I.A. Alebastrova, A.A. Veshniakov (Eds.). Moscow: Ves mir [in Russian].

6 Dzhagarian, A. (2007). Vybory v mekhanizmy hosudarstvennoho tsepolohaniia: konstitutsionno-pravovye aspekty [Elections in the mechanism of state goal-setting: constitutional and legal aspects]. *Spavnitelnoe konstitutsionnoe obozrenie — Comparative constitutional review*, 2, 45–46 [in Russian].

7 Postnikov, A. (2011). Mazhoritarnaia i proporsionalnaia izbiratelnaia sistema: pliusy i minusy [Majority and proportional electoral systems: pros and cons]. *Narodnyi deputat — People's deputy*, 12, 124–125 [in Russian].