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On the issue of the legal status and formation of election commissions in the Republic of Kazakhstan

The subject of research of a scientific article is the election commissions in the Republic of Kazakhstan. The authors show the role and significance of this institution. In the present work, the issues of the constitutional and legal status of bodies carrying out the preparation and conduct of elections in the Republic of Kazakhstan are being investigated. The object of study are normative and legal acts regulating the formation and powers of election commissions in Kazakhstan. Based on a comparative legal analysis, the article deals with issues related to the organization and activities of election commissions in the Russian Federation and the Republic of Kazakhstan. Much attention is paid in the article to actual issues of functioning of election commissions, as well as to certain aspects of regulating the constitutional and legal status of these bodies. The modern problems of the domestic institute of election commissions indicate the need for further improvement of the constitutional and legal regulation of this institution in the context of the overall task of forming a civil society and a rule-of-law state in the Republic of Kazakhstan. The authors come to the conclusion that it is necessary to modernize election commissions in the direction of establishing a system of permanent election commissions. The article also proposes improvement of the procedure for forming the composition of election commissions in order to ensure equal representation of political parties participating in elections.

Keywords: The Constitution of the Republic of Kazakhstan, direct democracy, elections, electoral law, election commissions of the Republic of Kazakhstan, the formation of election commissions, the legal status of election commissions, the rule of law, civil society

The Constitution of the Republic of Kazakhstan in 1995 [1] enshrined the most important guarantees for the development of Kazakhstan as a democratic rule-of-law state, which recognizes, respects and protects the rights and freedoms of the people and the citizens. Ownership of all the power by its multinational population is the fundamental principle of state and public life as well as an inseparable part of the foundations of the Kazakhstan's constitutional system.

The highest direct expression of the power of the people are referendums and free elections.

The functioning of election commissions is, in our opinion, an important principle ensuring the freedom of elections, guaranteed by the Constitution of the Republic of Kazakhstan, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights.

At the same time, the legal regulation of the organization and activity of election commissions in the Republic of Kazakhstan is not without a number of significant shortcomings.

The legal properties of the election commissions, the principles of their formation and activity need to be determined, their rights to organize and conduct elections need to be clarified, the status of its members who have either a right for a decisive vote or a right of an advisory vote needs to be specified.

Let's consider the question of the election commissions formation procedure in the Republic of Kazakhstan.

Analysis of the current Kazakhstan electoral legislation shows that, in accordance with Article 10 of the Constitutional Law of the Republic of Kazakhstan of September 28, 1995, No. 2464 «On Elections in the Republic of Kazakhstan» [2], elections are carried out by a unified system of electoral bodies: the central, regional, territorial and precinct election commissions.

According to Article 10 of the Law «On elections in the Republic of Kazakhstan» [2], election commissions are the state electoral bodies that organize the preparation of and conduct the elections in the Republic.

A unified system of election commissions consists of:

- 1) Central Election Commission of the Republic;
- 2) territorial election commissions;
- 3) district election commissions;
- 4) precinct election commissions.

Important to note that from the above-mentioned electoral bodies, the Central Election Commission of the Republic of Kazakhstan has the status of a state body in accordance with Article 1 of the Regulation on the Central Election Commission, approved by the Decree of the President of the RK of November 11, 1996, No. 3205.

The Central Election Commission of the Republic of Kazakhstan is a permanent state body of the Republic of Kazakhstan, presiding over a unified system of election commissions of the Republic.

The Central Election Commission of the Republic of Kazakhstan is a permanent body responsible for the implementation and uniform application of the electoral legislation.

The President of the Republic of Kazakhstan appoints the Chairman and two members of the Central Election Commission of the RK; the Senate and Majilis appoint two members of the Central Election Commission each.

The term of office in an election commission is five years.

Territorial, district and precinct electoral commissions are elected by the appropriate maslikhats based on the proposals from the political parties.

Each political party has the right to submit one candidature to the relevant election commission. A political party has the right to submit a candidate who is not a member of this political party to the election commission candidates.

In the absence of proposals from the political parties by the deadline, which must be at least one month before the formation of election commissions and is set by the maslikhat, maslikhats elect an election commission based on the proposals of other public associations and superior election commissions.

The commissions of all levels consist of seven members.

In accordance with paragraph 6 of Article 20 of the Constitutional Law of the Republic of Kazakhstan «On Elections in the Republic of Kazakhstan» [2], political parties that do not have a representative in the election commissions have the right to delegate their representative to the relevant election commission with a right of a consultative vote for the period of preparation and conduction of the election campaign.

Thus, the Constitutional Law «On Elections in the Republic of Kazakhstan» considers all election commissions as state bodies. However, in fact, territorial, district and precinct election commissions operate on a voluntary basis and are elected by the respective maslikhats based on proposals from political parties, therefore, they are not state bodies.

In the Kazakh legal literature, the issues of forming and functioning of election commissions are the subject of attention of scientists who believe that democratic changes in society will go much faster when the mechanism for holding elections will work smoothly in the country. The problem is composed not only of the procedure for the formation of election commissions, but of all of their activity in general as well. E.B. Mukhamedzhanov notes that, «analyzing the provisions related to the status and procedure for the formation of election commissions, you ask yourself a question: is an election commission a state body or a public team? If the first, then, probably, clear requirements should be set for candidates for the membership in the election commissions, a section «Responsibility of commissions» should be introduced into the Constitutional law on elections, and their activities should be put on a professional basis» [3].

As for the procedure for the formation of the election commissions, to ensure the most important principle of the electoral process - the neutrality of the state apparatus - the most acceptable and democratic approach is the collective formation of the electoral bodies, which is very common in the practice of developed countries. In our opinion, only the «collective» principle of the formation of electoral bodies will ensure the expansion of the electoral democracy, and, most importantly, real public control over the course of the election campaign.

While the electoral commission will not be truly independent of the government, there will always remain a danger of falsification of the election results in favor of the current authorities. Therefore, the election commissions should be equally composed of representatives of all political parties, including the opposition ones [4; 7].

It is necessary to amend the Election Law to ensure a broader representation of parties in the election commissions to ensure the independence of the commissions. However, as noted by M.A. Sarsembaev, it should be borne in mind that it is simply impossible to ensure equal representation in the election commissions for parties, simply because there are seven seats in an election commission, while there are ten political parties in Kazakhstan. Whatever we do, it is inevitable that three parties will not be represented in the election commission [5; 108]. In the opinion of M.A. Sarsembaev, the solution is in ensuring equal representation of parties in election commissions at the level of chairmen and commission secretaries [5; 108].

E.B. Mukhamedzhanov suggests to use the experience of the electoral legislation of the Russian Federation, and to include in the members of election commissions one representative from the candidate who is running for election [6; 158].

Paragraph 4 of Article 22 of the Federal Law «About basic guarantees of electoral rights and the right to participate in a referendum of citizens of the Russian Federation» [7] states that no more than one commission member with the right of decisive vote may be appointed to the commission from each political party, each electoral association or other public association based on their proposals. A political party, an electoral association, or another public association cannot simultaneously offer several candidates for appointment to a single commission.

In order to prevent abuses by the members of the election commissions of the Republic of Kazakhstan, it seems appropriate to change the procedure of their formation. It is necessary to include representatives from political parties as members of the election commissions, with the right to a decisive vote.

In Kazakhstan's legislation, in our opinion, the legal status of a member of an election commission with an advisory vote is not fully regulated. For example, in accordance with paragraph 6 of Article 20 of the Constitutional Law of the Republic of Kazakhstan «On Elections in the RK» [2], a representative of a political party with the right to advisory vote, has the right to speak at a meeting of the election commission, make proposals on matters within the competence of the election commission, have the right to appeal against the actions (inaction) of the election commission to a higher election commission or court.

Thus, it is necessary to reform Kazakhstan's electoral legislation. In particular, it is necessary to change the procedure for the formation of election commissions in order to ensure membership in their composition of all participating political parties. For these purposes, the quantitative composition of election commissions should be legislatively expanded, with indication of the number of members of election commissions in the Election law, or without specifying such.

The number of commission members should be proportional to the number of voters at the polling stations, and should be no less than the number of registered political parties.

The election commissions of the constituent entities of the Russian Federation and district election commissions for elections to federal bodies of state power are created by the legislative (representative) and executive bodies of state power of the constituent entities of the Federation on a parity basis: half of the composition of the commission is appointed by a legislative body, and the other half — by the executive body.

The appointment is based on the proposals of the electoral associations, electoral blocks, public associations, elected bodies of local self-government, election commissions of the previous composition.

As an additional guarantee of the independence of election commissions, the Federal law «About basic guarantees of electoral rights and the right to participate in the referendum of citizens of the Russian Federation» [7] establishes in clause 5 of article 22 that state and municipal employees can not constitute more than one half of the total number of members of the election commission of a constituent entity of the Russian Federation, election commission of a municipal formation, a district election commission, a territorial commission or a precinct commission.

In the Russian legal literature, the object of increased attention of the scientists is the problem of ensuring equal participation of the political parties in the organization and activities of election commissions. For example, N.Yu. Turishcheva believes that the requirement established by the Federal law «About basic guarantees of electoral rights and the right to participate in the referendum of citizens of the Russian Federation», on mandatory appointment of at least half of the election commission members on the basis of the proposals of the political parties whose lists of candidates are admitted to the distribution of deputy mandates in the State Duma, the legislative body of the constituent entity of the Federation, the representative body of local self-government, «was easily executed in the period when only 7 political parties were registered and participated in the elections in the country. Significant increase in the number of the political parties that occurred in 2012-2014, highlighted the problem of ensuring equal representation of parties in the composition of electoral commissions with even more acuteness» [8; 37].

The federal law of the Russian Federation on basic guarantees [7] for the first time establishes the possibility of dissolution of the electoral commissions of the subjects of the Federation, district, territorial, precinct election commissions in the event of such violation of the citizens' electoral rights, which resulted in the invalidation of the results of voting in the relevant territory or the results of the election as a whole. The decision to disband the election commission can be made only by the court upon the application of the depu-

ties of the legislative (representative) body of the appropriate level, or the Central Election Commission (in respect of the commission of the constituent entity of the Federation).

In order to ensure a democratic procedure for the formation of election commissions with objective criteria, not influenced by politics, as well as to guarantee the independence of election commissions, it is necessary to modernize the system of election commissions in the direction of establishing a system of permanent election commissions.

In this regard, one option is to establish a single term of office for all election commissions in Kazakhstan, equivalent, for example, to the term of office of the deputies of the Majilis, and that of the President. Another option is establishing a unified term of office, but with the gradual formation of various parts of election commissions (first, the Central Election Commission is formed, next year - the territorial election commission, then a year later - the district election commission, in two years - the precinct election commission).

In the Russian Federation, since 2012, there has been a transition to the work of precinct election commissions was established on a regular basis, that is, their formation is carried out by territorial election commissions for a period of 5 years at permanent polling stations. According to the amendments, the transition to the work of precinct election commissions was established on a regular basis, that is, their formation is carried out by territorial election commissions for a period of 5 years at permanent polling stations.

In order to ensure the continued representation of a party with the replacement of the relevant commission members, it is possible to refer to the experience of the foreign countries. For example, Russian legislation provides for a formation of a reserve from the candidates proposed but not appointed to the precinct election commission. The appointment of a new member of the precinct election commission instead of the retired will be made from this reserve. Such a mechanism also makes it possible to ensure the training of the reserve candidates of election commissions in a broader sense.

In order to give greater organizational transparency and validity, the mechanism for forming the composition of election commissions requires further improvement. Currently, in some foreign countries there is an institute of deputy member of election commission that makes the work of the commissions uninterrupted and allows carrying out targeted work on training and improving the professional qualifications of commission members. For example, in Mexico, the election commission includes commissioners from national political parties and deputies of all the commissioners.

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In order to ensure a democratic procedure for the formation of election commissions with objective criteria, not influenced by politics, as well as to guarantee the independence of election commissions, it is necessary to modernize the system of election commissions in the direction of establishing a system of permanent election commissions.

The question of supplementing the Constitution of the Republic of Kazakhstan with a new chapter on the electoral law and the electoral system in Kazakhstan is now pertinent. This would make it possible to include the most important relations concerning to elections to the bodies of state power and local self-government to the subject of constitutional regulation, as well as to consolidate more weighty guarantees of citizens' electoral rights, in particular, the basis of the legal status of election commissions.

The list of functions, the scope of powers and the nature of the activity of the election commissions should be carefully analyzed in order to make the electoral process as accessible as possible for the voters, increase confidence in elections, and create new contacts with civil society institutions.

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Қазақстан Республикасындағы сайлау комиссияларының құқықтық мәртебесі мен қалыптастыру мәселесі туралы

Мақаланың зерттеу пәні болып Қазақстан Республикасының сайлау комиссиялары табылады. Авторлар осы институттың рөлі мен мәнін ашып көрсетті. Қазақстан Республикасындағы сайлауды дайындауды және өткізуді жүзеге асыратын органдардың конституциялық және құқықтық мәртебесін зерттеді. Зерттеу нысаны ретінде Қазақстандағы сайлау комиссияларының қалыптасуы мен өкілеттіктерін реттейтін нормативтік-құқықтық актілер болып табылады. Сондай-ақ Ресей Федерациясында және Қазақстан Республикасындағы сайлау комиссияларының қызметін ұйымдастыру мен қызметіне қатысты мәселелерді салыстырмалы құқықтық талдау негізінде қарастырылған. Авторлар сайлау комиссияларының жұмыс істеуінің өзекті мәселесіне, сондай-ақ осы органдардың конституциялық және құқықтық мәртебесін реттеудің белгілі бір аспектілеріне көп көңіл бөлді. Отандық сайлау комиссияларының қазіргі заманғы проблемалары Қазақстан Республикасында азаматтық қоғам мен заңдылықты қалыптастырудың жалпы міндеті тұрғысынан осы мекеменің конституциялық және құқықтық реттеуін одан әрі жетілдіру қажеттігін қуәландырды. Авторлар тұрақты әрекет етуші сайлау комиссияларының қызметін құру бағытында сайлау комиссияларының жүйесін жаңғырту қажет деген тұжырымға келеді. Мақалада сайлауға қатысатын саяси партиялардың тең өкілдік етуін қамтамасыз ету мақсатында сайлау комиссияларының құрамын қалыптастыру тәртібін жетілдіру ұсынылды.

Кілт сөздер: Қазақстан Республикасының Конституциясы, тікелей демократия, сайлау құқығы, Қазақстан Республикасының сайлау комиссиясы, сайлау комиссияларын құру, сайлау комиссиясының құқықтық мәртебесі, құқықтық мемлекет, азаматтық қауымдастық.

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К вопросу о правовом статусе и формировании избирательных комиссий в Республике Казахстан

Предметом исследования научной статьи являются избирательные комиссии в Республике Казахстан. Авторы показывают роль и значение данного института. В настоящей работе исследуются вопросы конституционно-правового статуса органов, осуществляющих подготовку и проведение выборов в Республике Казахстан. Объектом изучения являются нормативно-правовые акты, регламентирующие формирование и полномочия избирательных комиссий в Казахстане. На основе сравнительно-правового анализа в статье рассматриваются вопросы, касающиеся организации и деятельности избирательных комиссий в Российской Федерации и Республике Казахстан. Большое внимание уделяется актуальным вопросам функционирования избирательных комиссий, а также отдельным аспектам регулирования конституционно-правового статуса данных органов. Современные проблемы отечественного института избирательных комиссий свидетельствуют о необходимости дальнейшего совершенствования конституционно-правового регулирования данного института в контексте общей задачи формирования гражданского общества и правового государства в Республике Казахстан. Авторы приходят к выводу о необходимости модернизации системы избирательных комиссий в направлении создания системы постоянно действующих избирательных комиссий. В статье предлагается также совершенствование порядка формирования состава избирательных комиссий в целях обеспечения равного представительства политических партий, участвующих в выборах.

Ключевые слова: Конституция Республики Казахстан, непосредственная демократия, выборы, избирательное право, избирательные комиссии Республики Казахстан, формирование избирательных комиссий, правовой статус избирательных комиссий, правовое государство, гражданское общество.

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