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MODERN PROBLEMS OF THE CORRELATION OF INTERNATIONAL ELECTORAL STANDARDS AND ELECTORAL LAW OF THE REPUBLIC OF KAZAKHSTAN

R.A. Smagulova, lecturer of the Department of Constitutional and International Law of the KarSU named after academician E.A. Buketov

G.M. Muratova, lecturer of the Department of Constitutional and International Law of the KarSU named after academician E.A. Buketov

The electoral system and its standards are a set of legal norms establishing the principles on the basis of which elections are conducted, the rights of citizens to elect and to be elected are realized; the social responsibility of deputies and other elected persons for their actions. The electoral system determines the procedure for organizing and conducting elections, regulates relations arising in the process of forming government bodies and local government bodies. This procedure is determined by constitutional legal norms, which form electoral law.

The term “electoral system” has a truncated meaning when it is used in relation to the procedure of determining the voting results. Electoral system is a method of distribution of mandates among candidates, depending on the voting results. Depending on the procedure of determining the voting results, electoral systems are generally divided into two types: majority system and proportional representation. Any combination of them forms a mixed electoral system.

The majority system is a distribution of mandates in constituencies based on the majority of votes cast. A distinction is made between the absolute majority system and plurality system.

The proportional representation is a system, where in the process of parliamentary elections deputy mandates are distributed in proportion to the votes. The system of proportional representation of political parties presumes distribution of deputy’s seats in accordance with the number of votes cast for each party. We provide the advantages and disadvantages of electoral systems.

Majority electoral system.

Advantages: - simplicity; - the possibility of voters’ participation in the nomination procedure; - voters know names of all nominated candidates and elected deputies; - the ability to form an efficient and stable Parliament.

Disadvantages: - the possibility of distorting the balance of political forces in the Parliament in comparison with the one that actually exists in society; - the votes of those people who gave their votes for the candidates who lost at the elections will be lost.

The absolute majority system. According to this system, a candidate who gets the required number of votes is considered to be elected. Electoral systems that require an absolute majority — 50 per cent of votes + 1 vote of an elector (50% + 1) are widely spread. For example, in the district three candidates A, B, C are running for a representative body; 9,000 votes cast for all candidates were distributed as follows: A-4,600, B – 2,500, C – 1,900. Candidate A will be elected, who has gained an absolute majority of votes.

The plurality majority system. Under this system, a candidate who gets a relative majority of votes compared to other candidates is considered to be elected. For example, in the district 10,000 votes cast were distributed among the candidates as follows: Candidate A scored 3,400 votes, B - 3,900, C - 2,700. Candidate B will be elected, having collected 3,900 votes, although in fact the majority of electors voted against him (3,400 + 2,700).

The nature of their vote is not counted; - a significant part of the electorate remains outside the authorities (sometimes up to 50 percent); - The majority of deputy's seats in the parliament can be obtained by a party that has garnered fewer votes than its rivals. Proportional election system.

The electoral law, as well as a constitutional law of citizens of the Republic of Kazakhstan, is based on the following basic principles of an electoral order:

1. The principle of general election means that all citizens of the Republic of Kazakhstan who have reached the age of eighteen, regardless of their sex, nationality, race, religion, social status, etc., have the right to participate in elections as voters and candidates.

2. The principle of equality means that voters participate in elections on an equal basis, and each of the voters has one vote.

3. The principle of direct suffrage - means that the candidate for the Presidency, the deputies of the Republic of Kazakhstan are elected by citizens themselves.

4. The principle of secret election requires elections to be carried out under the conditions that exclude the possibility of control over the expression of the voter's will, as well as pressure on the voter's will.

The principles of subjective suffrage are the conditions for its recognition and implementation.

Elections in the Republic of Kazakhstan are based on the free exercise by a citizen of his right to elect and to be elected to elective bodies of the state and the local government.

Active suffrage is the right of citizens of the Republic to vote in elections after reaching the age of 18.

Passive suffrage is the right of citizens of the Republic to be elected as a President, deputy of the Majilis of the Parliament and Maslikhat with restrictions established in the Constitution. In passive suffrage, a citizen acts as a subject to be elected. Passivity lies in the fact that he does not choose (although he does not lose the right to vote), but the fact he is chosen.

The Constitutional Law of the Republic of Kazakhstan "On Elections in the Republic of Kazakhstan" contains a list of violations of electoral legislation which lead to criminal prosecution, administrative and other liabilities of an offender. In particular, criminal prosecution is provided for prevention a citizen from freely exercising his electoral rights, unlawfully interference with work of election commissions, obstruction the voting, fulfilling duties related to registering a candidate, party lists, counting votes, and determining election results. The offender may be punished with a fine in the amount of up to one hundred monthly calculation indices, either with correctional labor of the same amount, or community service for up to one hundred and twenty hours. If bribery, deception, use of violence or the threat of its use are involved in a crime, committed by a person, using his official position, a group of persons in a preliminary conspiracy or a criminal group, the sanctions increase. In particular, it is punishable by a fine of up to four thousand monthly calculation indices; correctional work or custodial restraint for up to four years, or imprisonment for the same period of time are also possible.

Falsification of electoral documents, making fictitious entries in bulletins or signature sheets, knowingly incorrect counting of votes or knowingly incorrect calculation of election results, or violation of voting secrets, if these actions were committed by an agent of a deputy candidate or a member of an electoral commission are also grounds for criminal prosecution and shall be punished with a fine of up to four thousand monthly calculation indices or with correctional labor of the same amount or custodial restraint of up to four years, or imprisonment for the same period, with disqualification to hold certain positions or engage in certain activities for up to three years or without it.

Chapter 11 of the Code of Administrative Offenses contains 26 articles defining offenses connected with electoral rights, for their violation the punishment is provided in the form of fines. Administrative liability may occur for a person if he does not submit or publish information provided by the Constitutional Act on Elections. This information includes information on the presence or absence of outstanding or expunged conviction of a candidate; on the guilt in committing a corruption offense and offense of a candidate, recognized by the court in the manner prescribed by law; on the candidate's citizenship; on credibility of information, declared by the candidate or his (her) spouse; on the voter lists for each polling station; on the amount of receipts (donations) to electoral funds; on the sources of election funds; on the use of election funds; on the voting results.

The election law directly establishes that decisions and actions of local government bodies, enterprises and organizations, and their officials that violate election legislation, along with appeals to election commissions, are also appealed in court.

Courts and prosecution bodies are obliged to accept statements on violation from members of election commissions, citizens, and representatives of public associations, concerning voting, including violations of electoral law, which were received during the preparation and conduct of elections. The timing of the consideration of such statements is clearly specified. Thus, the statement received during the preparation and

conduct of the elections, as well as within one month from the voting day, must be considered within five days. The statement, received less than five days before the election, on the voting day and before the announcement of the election results –must be considered immediately. An application to appeal the decision of the election commission on the need for correction in the voter lists (electors) must be considered on the day of receipt.

To this end, the courts, prosecutors and election commissions organize their work during the electoral process, including weekends and elections day, in such a way as to ensure that complaints are received and considered within the time limits established by law. During the preparation and conduct of elections, shifts are organized in all local courts.

It should be noted that the norms of the new Civil Procedure Code, enacted on January 1, 2016, and the amendments to the Law “On Elections in the Republic of Kazakhstan”, significantly changed the division of jurisdiction of cases, the establishment of the procedure and deadlines for appealing decisions on electoral cases.

By and large, the proceedings in the court regarding applications for the protection of the electoral rights of citizens and public associations participating in elections are governed by chapter 27 of Code of Civil Procedure (special action proceedings). Thus, in accordance with Art. 286 CCP, citizen, public association, member of the election commission, agents of candidates and political parties, representatives of political parties with an advisory vote, observers of political parties, other public associations, non-profit organizations, which consider that a decision, action (inaction) of a state body, body of local government, election commission, enterprise, organization or their officials violate the right to elect or to be elected, to participate in elections, a referendum, have the right to make a written application to the court of competent jurisdiction.

The application is considered by the court with the participation of an applicant, a representative of the relevant election commission or a state body, a body of local government, an enterprise, an organization, a prosecutor, but their non-appearance with proper notification is not an obstacle to the resolution of the case.

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ПРАВО НА ИНФОРМАЦИЮ В КОНТЕКСТЕ ИНФОРМАЦИОННОЙ БЕЗОПАСНОСТИ

*Старожилова Н.П., старший преподаватель КарГУ имени Е.А. Букетова
Аманбекова А., студент 1 курса юридического факультета*

В середине XX в. возникла проблема конкурентной борьбы за владение и способы передачи информации, на первый план вышла необходимость защиты и охраны информации, предотвращение несанкционированного ее использования. Постепенное осознание самой информации как объекта обработки и потребления способствовало постановке вопроса о праве на информацию, введении права на информацию в состав прав человека и гражданина в международных правовых актах и в национальном законодательстве государств.

Право на информацию в современном обществе является одним из важных гражданских прав человека. Оно нашло закрепление в статье 19 Всеобщей декларации прав человека, в статье 19 Международного Пакта о гражданских и политических правах человека. В Конституции Республики Казахстан право на информацию закреплено и выражено в двух статьях: в статье 20 и в пункте 3 статьи 18[1]. Анализ указанных статей в названных документах позволяет выделить в содержании данного права следующие элементы: 1) свободно искать, получать и распространять информацию; 2) использовать любые формы и способы выражения по своему выбору; 3) это право не зависит от