

Ізденушінің түсінігінде бұл балама көз, көп шығынды талап етпейтін және қауіпсіз қуат көзі болып табылады. Әрине, жақын болашақта біз энергияны өндірудің «қалдықсыз» және мүлдем қауіпсіз нұсқасын көретініміз екіталай. Әлі де қауіпті атом электр станциясынан бас тартуға мүмкіндік бар.

Қолданылған әдебиет:

1. Атомная энергетика: ключевые проблемы будущего // <http://www.sevin.ru>
2. Опасные объекты//<http://sch119.narod.ru/Project/Mesropyn/0501.htm>
3. Конвенции по ядерной безопасности // <https://www.iaea.org/ru/temy/konvencii-po-yadernoy-bezopasnosti>
4. Обеспечение безопасности АЭС//[https://www.rosenergoatom.ru/safety\\_environment/](https://www.rosenergoatom.ru/safety_environment/)
5. Атом электр станциясы қауіп пе - Ғалымдар не дейд//Атом электр станциясы қауіп пе - Ғалымдар не дейді: 06 апреля 2019, - [Tengrinews.kz](http://Tengrinews.kz)
6. Қазақстанда неге АЭС салуға болмайды?! //Қазақстан жаңалықтары [kznews.kz](http://kznews.kz)

## IMPROVEMENT OF THE LEGAL STATUS OF THE ELECTORAL BODIES

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The 1995 Constitution of the Republic of Kazakhstan [1] established the most important guarantees for the development of Kazakhstan as a democratic rule-of-law state, in which human and civil rights and freedoms are recognized, observed and protected. The ownership of all power in the country to its multinational people is the main principle of state and public life, an integral part of the foundations of the Kazakh constitutional system. The highest direct expression of the power of the people is the referendum and free elections.

The functioning of election commissions is, in our opinion, an important principle that ensures 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.

A confirmation of the general orientation towards democratization of political processes was the introduction of amendments and additions to the Constitutional Law of the Republic of Kazakhstan "On elections in the Republic of Kazakhstan" [2] by the Constitutional Law of the Republic of Kazakhstan dated June 29, 2018 No. 162-VI "On amendments and additions to some constitutional laws of the Republic Kazakhstan"[3]. The constitutional legislation on elections followed the path of liberalization and further democratization of the electoral process in Kazakhstan. In accordance with these amendments, the status of electoral bodies has been improved, the procedure for nominating candidates for deputies of maslikhats according to party lists has been fixed.

Important innovations in 2018 are the abolition of district election commissions, as well as the introduction of the exercise of powers on a professional basis by two members of territorial election commissions. Also, in accordance with the amendments made in June 2018 to the Constitutional Law of the Republic of Kazakhstan "On Elections in the Republic of Kazakhstan", the powers of the Central Election Commission of the Republic of Kazakhstan, territorial, precinct election commissions were supplemented with the function of "organizing and conducting training of participants in the electoral process, as well as conducting seminars with representatives of political parties and other participants in the electoral process on the organization and conduct of elections" [2]. In addition, amendments and additions were made to the Constitutional Law of the Republic of Kazakhstan "On Elections in the Republic of Kazakhstan" aimed at increasing the professionalization of members of election commissions, creating equal conditions for the representation of various political parties, introducing modern

information technologies into the electoral process in order to ensure its transparency and accountability. All this indicates that the electoral system of the Republic of Kazakhstan is built taking into account the democratic traditions of our people, as well as taking into account the world electoral practice, on the principles of international electoral standards and requirements for guarantees of human and civil rights and freedoms.

The system of election commissions that ensure the formation of government bodies and local self-government through a democratic electoral process serves as a guarantee of the implementation of the electoral rights of citizens and other subjects of electoral legal relations. Election commissions play an important role in the implementation, provision and protection of active and passive electoral rights of citizens. Election commissions carry out the main organizational work on holding elections of the President of the Republic of Kazakhstan, deputies of Parliament, maslikhats, members of local self-government bodies, ensuring publicity and transparency of the electoral process, creating equal conditions for all political parties and candidates.

The characteristic features of the legal status of election commissions as state bodies are as follows. First, election commissions are formed in the manner prescribed by the Constitution (Central Election Commission), as well as by the Constitutional Law on Elections (territorial, precinct election commissions); secondly, election commissions exercise their powers on a permanent basis, during the established five-year period; third, they have their own competence established by the Constitutional Law on Elections; fourthly, within the limits of their competence, election commissions are independent from other bodies of state power and bodies of local self-government. Election commissions are financed from the republican budget.

The Constitutional Law "On Elections in the Republic of Kazakhstan" classifies all election commissions as state bodies. However, in fact, territorial and precinct election commissions operate on a voluntary basis and are elected by the relevant maslikhats on the basis of proposals from political parties, that is, they are not state bodies.

The independence of election commissions does not exclude, but presupposes, their interaction with state authorities and local self-government bodies in resolving issues of organizing and conducting the electoral process. In addition, state bodies, local self-government bodies, institutions, organizations, and their officials are obliged to provide electoral commissions with assistance in the implementation of their powers, in particular, to provide the necessary premises, transport, communications, technical equipment.

International legal acts affecting the organization of elections orient the participating states towards the creation of a system of separate electoral bodies that meet the requirements of professionalism and impartiality, which can be achieved through their formation from specially trained professional personnel; providing in their composition the representation of the acting political forces; rigorously ensuring the principles of transparency and accountability in the activities of election commissions.

In foreign countries, usually the leadership or the entire composition of the electoral bodies is replaced *ex officio* by certain officials of the state apparatus. For example, in Belgium, the chairman of the lower territorial electoral commission at parliamentary elections is the chairman of the court of first instance or the magistrate. In Germany, electoral bodies at each level include a respective electoral director (usually an official from the Ministry of the Interior) and an electoral commission, which operates under his direction and is often appointed by him from among the voters.

The electoral bodies of foreign countries can be formed by courts, the government, higher election commissions. The members of these commissions are regarded as officials, although in some countries, like in Germany, some of them work on a voluntary basis. According to paragraph 10 of the Federal Law "On Elections to the Bundestag" 1975, election commissions discuss and resolve issues in open sessions. Decisions are made by a majority vote, and according to paragraph 11 of this law, "all members of election commissions work free of charge. Community service is the responsibility of everyone with the right to vote. You can

refuse it only for a particularly important reason. " In many countries, such as Spain, election commission membership is viewed as a paid public office.

The Central Election Commission is created by presidential decrees, decisions of parliament, government, and less often by the Supreme Court. In Mexico, Germany, it is formed from representatives of parties nominating candidates for elections, but it is headed by a government official who takes the place of the chairman of the commission *ex officio* - the Minister of Internal Affairs, the head of the statistical office, etc. In India, Pakistan, the central election commission consists entirely of permanent civil servants.

In Mexico, the Federal Election Commission is headed by the Secretary of State (Minister) for Internal Affairs and includes one deputy and one senator appointed by the respective chambers of Parliament or its Standing Commission, one delegate from each national political party (if the party is conditionally registered, then the commissioner has an advisory vote) and a public notary appointed by the commission, who is the secretary of the commission. Each representative of the Mexican Parliament and political party has a deputy. The Federal Election Commission of Mexico appoints to the electoral commission for each state four commissioners (one of them is the chairman of the commission) and a secretary (one of the local notaries).

In many countries, the central electoral commission is not created as a special body; its role is played by the Ministry of the Interior (Great Britain, Italy, France). There is no such commission in the United States and it is not replaced by any body. The states are in charge of elections, including those to federal bodies, although there are federal laws governing some aspects of an election campaign, including the 1972 federal election law.

Election territorial commissions of administrative-territorial units in a number of countries consist of officials acting on a permanent basis.

Precinct election commissions are also formed in different ways. In many countries of Anglo-Saxon law, there are no precinct election commissions. Their role is played by "registrar officials", district inspectors who may hire temporary employees for technical work. However, representatives of candidates from political parties and the press are present at all levels when issuing ballots, counting votes, and determining the voting results.

In the Czech Republic, political parties, political movements and their coalitions that have submitted lists for elections to the Chamber of Deputies or have nominated their representatives for registration in elections to the Senate, nominate their members to election commissions, of which any voter can be a member.

The Federal Law of the Russian Federation "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation" [4] (hereinafter - the Law of the Russian Federation "On Basic Guarantees of Electoral Rights"), Article 22, clause 4 establishes a rule stating that an election commission no more than one voting member of the commission may be appointed at the suggestion of each political party, each electoral association, or other public association.

The Law of the Russian Federation "On Basic Guarantees of Electoral Rights" establishes the possibility of disbanding election commissions of the constituent entities of the Federation, district, territorial, precinct commissions in the event of such violation of the electoral rights of citizens by them, which led to the invalidation of the voting results in the relevant territory or the election results in general (Article 31) [4]. A decision to dissolve an election commission can only be made by a court at the request of the deputies of the legislative (representative) body of the corresponding level, as well as the Central Election Commission (in relation to the commission of a constituent entity of the Federation).

In order to guarantee the independence of election commissions, to ensure a democratic procedure for the formation of election commissions with objective criteria not related to political considerations, it is necessary to modernize the system of election commissions in the direction of creating a system of permanent election commissions. For these purposes, it is possible either to establish a single term of office for all election commissions in Kazakhstan, equal, for example, to the term of office of the deputies of the Mazhilis, the President, or to

establish a single term of office, but with the gradual formation of various parts of election commissions: first, the Central Election Commission is formed, on next year - the territorial election commission, then a year later - the precinct election commission.

In 2012, amendments were made to the Law of the Russian Federation "On Basic Guarantees of Electoral Rights", according to which the transition to the work of precinct election commissions was established on a permanent basis, that is, their formation is currently carried out by territorial election commissions for a period of 5 years on a permanent basis. polling stations (Article 27 of the Law on Basic Guarantees of Electoral Rights) [4].

In the Russian electoral legislation, the novelties of 2012 were also aimed at the possibility of ensuring the re-representation of the party when the corresponding members of the commissions were replaced. Thus, it is envisaged to form a reserve from the number of candidates proposed to the composition of the precinct election commission, but not appointed by the members of the commission. The appointment of a new member of a precinct election commission instead of a retired one may be made from this reserve. Such a mechanism also makes it possible to ensure the training of the personnel reserve of election commissions in a broad sense.

The mechanism for forming the composition of election commissions requires further improvement in order to provide greater organizational transparency and justification. In some foreign countries, the institute of a deputy member of the election commission (electoral body) operates, which makes it possible to impart a continuous nature of the work of commissions, but also to carry out purposeful work to train and improve the professional qualifications of commission members. For example, in Mexico, the electoral commission includes representatives from national political parties and deputy representatives of all commissioners.

The Basic Law of the Republic of Kazakhstan could be supplemented with a new chapter dedicated to the electoral law and the electoral system in Kazakhstan. This would make it possible to include in the subject of constitutional regulation the most important relations concerning elections to state and local government bodies, as well as to consolidate more significant guarantees of citizens' electoral rights, in particular, the foundations of the legal status of election commissions. This would also contribute to bringing the electoral process as close as possible to voters, increasing confidence in the elections, and forming new contacts with civil society institutions.

The Law of the Russian Federation "On the Basic Guarantees of Electoral Rights" (Article 22) establishes a unified procedure for the formation of election commissions of the constituent entities of the Russian Federation, election commissions of municipalities, district election commissions, territorial, precinct commissions, ensuring the democracy of this procedure, parity participation in it of state legislative bodies and executive power, active participation of public associations, local governments, meetings of voters [4].

The electoral legislation of a number of CIS countries contains norms that ensure objectivity in the organization and conduct of elections. For example, as guarantees that ensure objectivity in the organization and conduct of elections, one can consider the legislative restriction on the membership of certain categories of persons in election commissions: proxies of candidates, candidates for deputies, deputies (Republic of Belarus). In terms of guaranteeing the impartiality of the activities of members of election commissions, there is a requirement to suspend the membership of a political party or other public association pursuing political goals of a person who is a member of one or another election commission (Republic of Belarus). In order to ensure an objective process of holding elections, candidates for members of election commissions may be submitted by subjects whose activities are not of a political nature. Thus, in the Republic of Armenia, members of the Central Election Commission are proposed by the Human Rights Defender and the Chairman of the Chamber of Advocates of the Republic of Armenia, as well as the Chairman of the Republican Court of Cassation.

Problems related to the legal status of election commissions and their members are considered by Kazakhstani and foreign legal scholars.

The legal literature deals with the problematic issues of the formation and activities of election commissions, their legal status. For example, it is noted that "although in the Constitutional Law the election commissions are called state bodies, they still look like a group of volunteers approved by a certain state body and acting absolutely irresponsibly" [5; 54]. Therefore, according to the author, the legislation on elections should contain clear requirements for candidates for members of election commissions, introduced a section "Responsibility of commissions", and all their activities should be put on a professional basis [5; 53-55].

In order to ensure the neutrality of the state apparatus in the electoral process, the most democratic is the collective formation of the composition of electoral bodies. Such a "collective" principle of the formation of electoral bodies will ensure the expansion of public control over the course of elections.

To ensure a wider representation of parties in the composition of election commissions, as well as their independence, the composition of election commissions should include equally representatives of all political parties. However, in this case, a problem arises due to the fact that, as indicated in the literature, not all parties will be able to be represented in the composition of election commissions, since the number of parties exceeds the number of commissions. "The number of vacancies in the election commission is 7, and the number of political parties in Kazakhstan is 10. Whatever we do, it will inevitably be that three parties cannot be represented in the election commission." [6; 108] Prof. M.A. Sarsembayev believes that ensuring equal representation of parties in election commissions is possible at the level of chairmen and secretaries of commissions. [6; 108] According to another scientist, it is possible to use the experience of the Russian electoral legislation by including one representative from a running candidate in the members of electoral commissions. [7; 158].

The problems of ensuring equal participation of political parties in the organization and activities of election commissions are also considered by Russian legal scholars. It is emphasized that the increase in the number of political parties has even more acutely highlighted the problem of ensuring equal representation of parties in the composition of the formed election commissions [8; 37]. It is also indicated that the requirement established by the Law of the Russian Federation "On Basic Guarantees of Electoral Rights" requires the mandatory appointment of at least half of its members to the election commission on the basis of proposals from political parties whose lists of candidates are admitted to the distribution of deputy mandates in the State Duma, the legislative body of a constituent entity of the Federation, representative body of local self-government, "it was easy to do at a time when only 7 political parties were registered and participated in elections in the country" [8; 37].

One of the main trends in improving the legal status of members of election commissions should be to increase their professionalism, which will make it possible to organize the election process more efficiently, eliminate violations during the election campaign, and thereby ensure the implementation of citizens' electoral rights. It would be necessary to include in the Basic Law provisions concerning the legal properties of election commissions, the principles of their formation and activities, clarify the powers to organize and conduct elections, specify the status of their members who have the right to vote and the right to consult. In terms of modernization of election commissions in Kazakhstan, it is possible to envisage the creation of a system of permanent precinct election commissions. In order to prevent abuse by their members, representatives from political parties with the right to vote should be included in the election commissions as their members. In our opinion, the legal status of an electoral commission member with an advisory vote needs to be improved. In order to ensure re-representation of the party when replacing the relevant members of the commissions, it is possible to envisage the formation of a reserve from the number of candidates proposed to the composition of the precinct election commission, but not appointed by the members of the commission. The appointment of a new member of a precinct election commission instead of a retired one may be made from this reserve.

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### **ҮКІМЕТТІҢ ЗАҢ ШЫҒАРУҒА ҚАТЫСУЫН КОНСТИТУЦИЯЛЫҚ-ҚҰҚЫҚТЫҚ РЕТТЕУДІ ЖЕТІЛДІРУ ЖОЛДАРЫ**

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Қазіргі уақытта Қазақстан Республикасындағы әлеуметтік қатынастардың негізгі түрлері заңнамалық актілермен толық реттелген, сондықтан бүгінгі міндет оны дамыту, бір тәртіпке келтіру және оның тиімділігін арттыру болып табылады.

Заңнамалық актілерді дайындаудың, қабылдаудың және тәжірибе енгізудің тиімді механизмін теориялық тұрғыдан тереңдетіп әзірлеу және онларды әрекетке енгізу елімізде демократиялық, құқықтық мемлекет құру үшін қажетті алғышарттар болып табылады. Соңғы жылдары осы бағытта бірқатар жетістіктерге қол жеткізілді. Бірақ еліміздегі заң шығару үрдісі әлі күнге дейін толық жетілмеген.

Тағы бір ұзақ уақытқа созылған мәселе, ол біз қабылдаған көптеген заңдар қажетті заңға тәуелді актілердің болмауына байланысты толықтай жұмыс істемейді.

Үкімет пен депутаттардың жекелеген заңдарды лоббилауының жиі кездесуі назар аударуды талап етеді, мұнда мемлекет мүдделеріне зиян келтіретін мемлекеттік органның немесе кәсіпкерлік-құрылымдардың тар ведомстволық мүдделері анық көрінеді.

Сондықтан заң шығару саласында қазіргі заманғы жағдайларда құқықтық зерттеулердің маңызды бағыттарының бірі қабылданған заңдардың төмен тиімділігінің себептерін зерттеу болып табылады.

Заң шығарудың тиімділігі объективті және субъективті жағдайлардың жиынтығына байланысты болғандықтан, біз тек заң шығару үрдісін жетілдірудің кейбір аспектілеріне ғана тоқталды.

Құқықтық ғылым қазірдің өзінде де, өткен кезеңде де «тиімділік» ұғымы арқылы заңды, құқықты іске асыруды бағалауға, талдауға үлкен көңіл бөлген. Құқықтық реттеудің