

Zh. Korpebayev\*

*L.N. Gumilev Eurasian National University, Nur-Sultan, Kazakhstan  
(E-mail: zhan.ur@mail.ru)*

## **Improvement of electoral legislation in the light of international standards and political reforms in the Republic of Kazakhstan**

Political reform is being actively carried out in the Republic of Kazakhstan, which affected the procedure for elections to the Mazhilis of the Parliament of the Republic of Kazakhstan. The purpose of the article is to analyze the current state of the electoral system of the Republic of Kazakhstan and its compliance with international standards in terms of attracting women and youth to the management of public affairs. The author of the article has analyzed the legislation of the Republic of Kazakhstan, as well as the availability of appropriate quotas for women, youth, and DIC disabilities in foreign countries legislation. In the study, in order to generalize and systematize the existing gaps in the regulation of quotas for women, youth and persons with disabilities, both general scientific methods and private scientific methods of cognition have been applied. International norms and standards in the field of electoral law have been studied, a comparative analysis of the legislation of the Republic of Kazakhstan and foreign countries have been conducted, relevant proposals have been offered for improving the electoral legislation. As a result, the author highlighted the need to make changes and additions to the legislation of the Republic of Kazakhstan, which would regulate the electoral process.

*Keywords:* electoral legislation, rights of women and youth, elections of deputies of the Mazhilis of the Parliament of the Republic of Kazakhstan, international standards of electoral law.

### *Introduction*

Since the proclamation of Independence, the Republic of Kazakhstan has gradually created a regulatory framework for election legislation that meets international standards and democratic requirements.

Over the past three decades, the Republic of Kazakhstan has assumed obligations under some international agreements, adopted a significant number of laws, and developed State measures for equal participation of citizens in political processes, including the full management of state and society affairs, which is one of the most important prerequisites for building a democratic rule of law and a free civil society.

Throughout the entire period of the formation of the independent statehood of the Republic of Kazakhstan, starting from the moment of building a new sovereign State and gaining independence, democratic transformations are actively taking place in all directions, including the institute of electoral law. These changes are connected with the formation and radical changes in the legislation on elections in Kazakhstan, which originate from 1995 and continue at present, caused, on the one hand, by bringing the electoral legislation in line with the requirements of the Constitution, and on the other — international standards. It should be noted that frequent changes in the legal field of election legislation are also caused by the fact that Kazakhstan is actively searching for its democratic model of elections, including elections to the Mazhilis of the Parliament of the Republic of Kazakhstan. In this regard, over the past period, a lot of practical experiences have been accumulated in creating and developing the legislative framework for free and fair elections. Thus, an important area of political and legal reform carried out in the Republic of Kazakhstan is the improvement of electoral legislation in the context of modern international standards. The experience gained as a result of the election campaigns, according to the assessment of the legal community, incorporating reputable international organizations and experts, public surveys regarding the elections of the President of the Republic of Kazakhstan, Parliament, local representative bodies, illustrates that, in general, the current Constitutional Law “On Elections in the Republic of Kazakhstan” clearly, consistently and comprehensively regulates the process of elections to state authorities. Nevertheless, the electoral legislation of the Republic of Kazakhstan needs a further improvement. This circumstance prompts the need for further search for optimal legal forms and bringing the current legislation and law enforcement practice in line with international standards in the field of electoral law.

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\* Corresponding author's e-mail: [zhan.ur@mail.ru](mailto:zhan.ur@mail.ru)

The purpose of the study, is a comprehensive analysis of election legislation and its further improvement following international obligations, identification of current problems, and substantiation of recommendations and proposals to improve the effectiveness of electoral legislation in law-enforcement practice. This goal is defined by tasks such as: analysis of the theoretical and legal foundations of ensuring the electoral rights of citizens; study of normative legal acts; development of organizational and legal measures to optimize electoral legislation and the practice of their application.

### *Experimental*

To comprehensively analyze the electoral processes in the highest representative authorities, we have studied the legislation of the Republic of Kazakhstan and foreign countries, as well as analyzed international acts in the studied issues. Thus, the methodological foundation of the research was general scientific methods of cognition, formal-legal, analytical system, comparative and logical analysis, and research methods. As a general scientific method, the dialectical method was used, which allowed us to approach the object of research comprehensively and conduct a systematic analysis. With the help of the comparative legal method, the author identified critical points of electoral legislation, a logical analysis of normative legal acts allowed to make certain recommendations for improving the legal regulation of the election procedure.

The Constitution of the Republic of Kazakhstan, the Constitutional Law of the Republic of Kazakhstan “On Elections in the Republic of Kazakhstan”, the Laws of the Republic of Kazakhstan, as well as international conventions to which the Republic of Kazakhstan has acceded, were studied. The monographic literature and materials of the periodical literature on the research topic were analyzed.

### *Results and Discussion*

The norms of the Constitution of the Republic of Kazakhstan enshrine the recognition of international treaty and other obligations of the state, an integral part of national legislation. Moreover, international treaties ratified by the Republic, according to Article 4 of the Constitution, have priority over its laws [1]. Based on the provisions of the basic law, when forming the national electoral system, Kazakhstan was guided by the basic requirements of international electoral standards.

There are a number of the paramount international acts in the field of elections and political human rights. These consist of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Political Rights of Women, the UN Declaration on Principles of International Election Observation (the Code of Conduct for International Election Observers is also attached to it), the European Convention of the Council of Europe on the Protection of Human Rights and Fundamental Freedoms, the Charter of Paris for a New Europe, The document of the Copenhagen Meeting of the CSCE Conference on the Human Dimension, the Declaration of the Interparliamentary Assembly of the CIS Member States “On the principles of international observation of elections and Referendums in the member states of the Commonwealth of Independent States” and others.

The Republic of Kazakhstan has joined many of the above-mentioned international treaties.

One of the most important sources of international human rights standards concerning free and fair elections is the Universal Declaration of Human Rights, Article 21 of which states: “Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. The will of the people shall be the basis of the authority of government. This will shall be expressed in periodic and genuine elections, which shall be by universal and equal suffrage and shall be held by secret vote or equivalent free voting procedures” [2]. It should be noted that the International Covenant on Civil and Political Rights, adopted in 1966 and entered into force in 1976, further specified and clarified the norms enshrined in the Universal Declaration of Human Rights.

The Basic Law of Kazakhstan grants citizens of the republic “the right to participate in the management of state affairs directly and through their representatives” [1]. This constitutional norm corresponds to the international legal norm laid down in Article 25 of the ICCPR. Further, the same article establishes that every person and citizen has the right “to vote and be elected in genuine periodic elections conducted based on universal and equal suffrage by secret ballot and ensuring the free expression of the will of voters” [3]. Paragraph 3 of Art. 33 of the Constitution of Kazakhstan implements this provision of the Covenant throughout the country with the designation of some of its features: “Citizens of the Republic of Kazakhstan have the right to elect and be elected to state and local self-government bodies, as well as to participate in the republi-

can referendum” [1]. Article 3 of the Constitutional Law of the Republic of Kazakhstan “On Elections in the Republic of Kazakhstan” [4] secures universal, equal and direct suffrage by secret ballot, thereby developing the content of Paragraph 2 of Article 33 of the Constitution and Art. 25. Based on the above norms of legislation, we highlight one of the important principles of electoral law, the principle of universality, which is put forward in the first place among all principles of electoral law and means that the State grants the majority of its citizens the right to participate in the formation of public authorities. Russian scientist O.V. Kuznetsova believes that “in passive suffrage as in active, universality means that all adult citizens of the state have the right to vote, regardless of gender, race, nationality, attitude to religion and beliefs, as well as, as a rule, regardless of property and official status” [5; 112]. According to Kazakh constitutional scholar S.K. Amandykova, the principle of universality in active suffrage means “the possibility of participation in elections of all citizens upon reaching the age of 18, regardless of other restrictions of property and other nature. In addition, the principle of universal suffrage also presupposes the possibility of electing those who have expressed a desire to run for the relevant elected bodies...” [6; 13]. Thus, summarizing the opinions of scientists, Art. 4 of. The Constitutional Law “On Elections” does not allow any restrictions on the right to vote depending on origin, gender, race, language, nationality, attitude to religion and beliefs in the exercise of active and passive suffrage [4]. The content of this principle should be taken into consideration in terms of preventing restrictions on the participation of citizens by gender in the electoral process as an elected person.

In this regard, it should be noted that our state strives to bring the norms of national legislation to high international standards, especially in the field of gender equality, which is undoubtedly a distinctive feature of Kazakhstan's policy. Most often, the initiator of gender projects is, first of all, the state, which takes preventive and proactive measures in the field of the formation of the principle of gender equality. Thus, the main legislative act in the field of gender policy of the Republic of Kazakhstan is adopted on December 8, 2009. The Law of the Republic of Kazakhstan “On State Guarantees of Equal Rights and Equal Opportunities of Men and Women”, which in Article 9 “Guarantees of equal access of men and women to the state service” regulates that “the state shall enforce equal partnership relations of men and women in legal, executive and judiciary branches of the state authority, bodies of local self-government” [7].

In addition, the Decree of the President of the Republic of Kazakhstan dated December 6, 2016 No. 384 approved the “Concept of family and gender policy in the Republic of Kazakhstan until 2030”, which provides for the achievement of the following goals and objectives: 1) improving legislation in the field of gender policy, as well as bringing it into line with international standards, UN recommendations, SDGs and OECD; 2) creating mechanisms and conditions for effective planning and coordination of actions of central and local authorities to implement gender policy; 3) ensuring 30 % representation of women in executive, representative and judicial authorities, public, quasi-public and corporate sectors at the decision-making level [8].

In his address to the people of Kazakhstan on October 21, 2020, the President of the Republic of Kazakhstan K.-J.K. Tokayev stressed: “Before the start of the new election campaign, measures have been taken for political modernization, the development of multiparty system and the expansion of civic participation in the socio-political life of our country. The Constitutional Law “On Elections in the Republic of Kazakhstan” and the Law “On Political Parties” provide for provisions that, for the first time in our parliamentary practice, introduced a 30 % quota in party lists for women and youth. This norm will become an effective mechanism for involving women and youth in Parliament and local representative bodies, which will promote their more active participation in the socio-political processes of the country” [9].

To date, out of 193 UN member states, gender quotas work in more than 120 countries. A study of the experience of foreign countries concerning gender quotas has illustrated that gender quotas are legally fixed, for example: in Central Asian countries, 30 % quotas for women are fixed in Kyrgyzstan and Uzbekistan. In European countries (Sweden, Norway, the Netherlands, Iceland, Germany), party quotas are also applied, so that the percentage of women participating in the political life of the country reaches a high percentage. In addition, the consequences of non-compliance with quota requirements in foreign countries are also an important level of influence on political parties. Sanctions for non-compliance with the percentage ratio may be expressed in a decrease in public funding, limiting the number of candidates, or even preventing the party list from the electoral process [10].

Quotas for women are prescribed by the Constitutions of such countries as: Burkina Faso, Nepal, Philippines, Uganda and in some states are regulated by the law on elections, for example, in Latin America, Belgium, Bosnia and Herzegovina, Slovenia, France.

Thus, we believe that legislative quotas orient parties to attract as many women as possible to participate in elections and should orient parties to independent voluntary internal regulation regarding gender quotas.

Achieving gender equality is one of the significant trends in global development. In the Global Gender Gap Index compiled by the World Economic Forum, Kazakhstan ranked 53rd in terms of women's participation in national parliaments in 2019. At the same time, over the past 25 years, the proportion of women in the Parliament of the Republic of Kazakhstan has gradually increased. Thus, in 1995, the share of women in Parliament was 13 %, and in 1999 and 2004, it decreased to 10 %. The current composition of the Mazhilis of the sixth convocation consisted of women by 27 % and due to recent changes in the electoral legislation, it was expected that the proportion of women in the Mazhilis of the seventh convocation would increase.

According to the results of the last elections to the Mazhilis of the Parliament on January 10, 2021, by the novelties introduced into the electoral legislation, the share of women and youth was about 30 %. The Head of State in his annual Address to the People of Kazakhstan dated September 1, 2021 "Unity of the people and systemic reforms are a solid foundation for the prosperity of the country" noted that "the introduction of the norm on a 30 % quota for women and youth in the electoral lists pushed the parties to work more actively, rejuvenate their ranks, as well as search for new faces.

At the same time, the quota was not properly reflected in the final compositions of people's deputies. Therefore, to obtain a full-fledged effect, it is necessary to legislate the norm on mandatory accounting of this quota when distributing deputy mandates" [11].

First of all, to ensure a 30 % quota, as well as to ensure a wider representation of various social groups, it is necessary to improve legislation, with the introduction of norms obliging political parties to comply with quota norms not only when compiling voter lists, but also to take them into account when allocating mandates.

Concerning the involvement of young people in political processes until now, in our opinion, the state has made a lot of efforts to attract young people to the executive authorities. Today, the introduction of a youth quota during the formation of the Mazhilis of the Parliament will significantly rejuvenate the composition of the Kazakh representative government. Analyzing the experience of foreign countries regarding youth quotas, it can be noted that in foreign practice, besides the wording "youth quota", the wording "quota for beginners" is common. Frankly these quotas are a relatively new phenomenon in the world community and are not as widespread as gender quotas.

In world practice, when allocating quotas for young people, there are several options. One of them is "reserved seats", i. e. the representation of the younger generation in parliament is guaranteed, but as a percentage of the total number of deputy mandates, the participation rate of young people is low. In the second case, the imposition of obligations for all parties within the framework of the law, the so-called legislative quotas are also applicable for our state.

Returning to the President's expressed position on political modernization and expansion of civic participation in the socio-political life of our country, it is necessary to highlight the importance of the amendments proposed by the Head of State to the electoral legislation on expanding the list of quota categories of citizens, women and youth, to establish a quota for persons with special needs, who, as the practice of the past elections shows, are still poorly represented in the socio-political life of the state.

Norms for the protection and guarantees of the rights of persons with disabilities are reflected in many international acts, so the UN Convention on the Rights of Persons with Disabilities of December 13, 2006 enshrines in Article 29: "State Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to: (a) Ensure that persons with disabilities can effectively and fully participate on an equal basis with others, directly or through freely chosen representatives to vote and be elected...; b) Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on equal basis with others, and encourage their participation in public affairs...". In addition, according to Article 5 "Equality and non-discrimination" of this Convention, the participating States prohibit any discrimination based on disability and guarantee persons with disabilities equal and effective legal protection against discrimination on any ground. To promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure reasonable accommodation. Thus, according to Article 12 "Equality before the law" of the Convention on the Rights of Persons with Disabilities, the participating States recognize that persons with disabilities have legal capacity on an equal basis with others in all aspects of life. States Parties

shall take appropriate measures to provide persons with disabilities with access to the support they may need in the exercise of their legal capacity [12].

The Republic of Kazakhstan, having ratified the UN Convention on the Rights of Persons with Disabilities in 2015, assumed obligations to ensure equal rights for persons with disabilities, their full and effective involvement and inclusion in society. The UN Convention on the Rights of Persons with Disabilities has given a serious impetus to the reform of state policy in the field of social protection of persons with disabilities, the main postulate of which should be the principle of non-discrimination based on disability.

The Convention interprets this principle as follows: “Discrimination based on disability” means “any distinction, exclusion or restriction based on disability, the purpose or result of which is to diminish or deny the recognition, realization or exercise on an equal basis with others of all human rights and fundamental freedoms” and applies to “all forms of discrimination, including denial of reasonable accommodation” [12].

The adoption of any policy decisions in the field of social protection of persons with disabilities should be based on the priority satisfaction of their disability-related needs. It is by involving this category of citizens in the political processes of society and their representation in the country's Parliament that will allow society and the state to approach the problems facing them more effectively.

Thus, by creating a priority policy for the disabled, the State guarantees the disabled the right to independent life and full integration into society, recognizes the need for public participation at all stages of the development and implementation of policies for people with disabilities, since the issue of improving the effectiveness of disability policies is relevant and paramount not only for people with disabilities, but also for the whole society.

### *Conclusions*

The experience of many foreign countries with a developed party system based on a competitive political system and freedom of association demonstrates that parties play an important role in the process of building a democratic, legal statehood, guarantee the continuity of the constitutional process, ensure the implementation of civil initiatives through participation in elections, referendums and party membership.

The norm in force in the legislation on compliance with the 30 % quota for women and youth, and in the near future for persons with disabilities when forming party lists and not obliging parties to comply with it when distributing party mandates, actualizes the problem of the effectiveness of legislation. In this connection, we consider it necessary to legislate the norm on mandatory accounting of the relevant quotas in the distribution of deputy mandates in case of victory by political parties.

Considering the above, it should be emphasized that the availability of appropriate quotas for citizens contributes to the active integration of women, youth and persons with disabilities into political life in the future, first of all, strengthens democracy itself and expands its capabilities. Equal political participation of all citizens is one of the necessary components of a system that ensures that members and leaders of political parties and parliaments reflect the society they serve as best as possible. In addition, increasing diversity in the political sphere will lead to a deeper understanding of the impact of laws and decisions on people with disabilities and is guaranteed to attract attention to one of the largest groups that are underrepresented in political life.

The novelties applied at the last parliamentary elections in Kazakhstan made it possible to involve women in socio-political processes and provide an additional opportunity for young people and people with disabilities to participate in political life, which contributes to the further solution of socially significant problems.

The changes in the mechanisms and procedures for the formation of the Mazhilis, from our perspective, contribute not only to improving the efficiency of the legislative power, but also mark a new stage in the development of Kazakh parliamentarism.

Based on the study of monographic literature, materials of periodical literature, analysis of regulatory legal acts of the Republic of Kazakhstan and foreign legislation, by studying the experience of foreign countries to further improve the institute of electoral law, we believe it is possible:

1. To comply with the electoral legislation with international standards and norms. We consider it necessary to allocate a norm with a provision of a 30 % quota specifically for women, as it is provided for and is available in practice in OECD countries.

2. To make appropriate amendments to the electoral legislation and the law on political parties, where it is necessary to make mandatory provisions on a 30 % quota for women and youth, when allocating mandates by political parties in case of their victory.

3. To consider the need for an appropriate quota for persons with disabilities in elections to representative bodies of state power, including the Mazhilis of the Parliament of the Republic of Kazakhstan.

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Ж. Көрпебаев

### Қазақстан Республикасындағы халықаралық стандарттар мен саяси реформалар тұрғысынан сайлау заңнамасын жетілдіру

Қазақстан Республикасында Қазақстан Республикасы Парламенті Мәжілісінің сайлау тәртібіне әсер еткен саяси реформа белсенді жүргізілуде. Қазақстан Республикасының Президенті Қ.-Ж.К. Тоқаев Қазақстан халқына соңғы Жолдауында осы бағыттағы алдағы реформалардың жолын белгілеп берді. Мақаланың мақсаты — Қазақстан Республикасының сайлау жүйесінің қазіргі жағдайын және оның әйелдер мен жастарды мемлекеттік істерді басқаруға тарту тұрғысынан халықаралық стандарттарға сәйкестігін талдау. Автор Қазақстан Республикасының, сондай-ақ шетелдердің заңнамасындағы әйелдерге, жастарға және мүгедектер үшін тиісті квотаның болуына талдау жасаған. Сонымен қатар, әйелдердің, жастардың және мүмкіндіктері шектеулі адамдардың құқықтарын регламенттейтін неғұрлым маңызды халықаралық конвенциялар талданған. Зерттеуде әйелдерге, жастарға және мүгедектерге арналған орындарға арнайы квоталарды реттеудегі бар олқылықтарды жалпылау және жүйелеу мақсатында жалпы ғылыми әдістер де, танымның жеке ғылыми әдістері де қолданылды. Сайлау құқығы саласындағы халықаралық нормалармен стандарттар зерделенді, Қазақстан Республикасымен шет мемлекеттердің заңнамасына салыстырмалы талдау жүргізілді, Қазақстан Республикасының сайлау заңнамасын жетілдіру бойынша тиісті ұсыныстар енгізілді. Автор Қазақстан Республикасының сайлау процесін реттейтін заңнамасына өзгерістер мен толықтырулар енгізу қажеттілігі туралы қорытынды жасайды.

*Кілт сөздер:* сайлау заңнамасы, әйелдермен жастардың құқықтары, Қазақстан Республикасы Парламенті Мәжілісінің депутаттарын сайлау, сайлау құқығы саласындағы халықаралық стандарттар.

Ж. Корпебаев

## Совершенствование избирательного законодательства в свете международных стандартов и политических реформ в Республике Казахстан

В Республике Казахстан активно проводится политическая реформа, которая затронула процедуру выборов в Мажилис Парламента Республики Казахстан. В последнем Послании народу Казахстана Президент РК К.-Ж.К. Токаев обозначил путь дальнейших реформ в этом направлении. Целью статьи является анализ современного состояния избирательной системы Республики Казахстан и ее соответствия международным стандартам в части привлечения женщин и молодежи к управлению государственными делами. Автор рассмотрел законодательства Республики Казахстан, а также зарубежных стран на предмет наличия соответствующих квот для женщин, молодежи и лиц с ограниченными возможностями. В исследовании для обобщения и систематизации имеющихся пробелов в регулировании квотирования мест для женщин, молодежи и лиц с ограниченными возможностями были применены как общенаучные методы, так и научно-исследовательские методы познания. Были исследованы международные нормы и стандарты в области избирательного права, проведен сравнительный анализ законодательства Республики Казахстан и зарубежных стран, внесены соответствующие предложения по совершенствованию избирательного законодательства Республики Казахстан. Автором особо отмечена необходимость внесения изменений и дополнений в законодательство Республики Казахстан, регламентирующее выборный процесс.

*Ключевые слова:* избирательное законодательство, права женщин и молодежи, выборы депутатов Мажилиса Парламента Республики Казахстан, международные стандарты в области избирательного права.

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Букетов университет