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THEORETICAL ASPECTS OF ELECTION LAW SOURCES IN FOREIGN COUNTRIES

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The term “suffrage” in the law has a dual meaning. First, in an objective sense (positive suffrage) - as a system of legal norms regulating the procedure for the preparation and conduct of elections; secondly, in the subjective sense (subjective electoral right) - as the right of a citizen to elect and be elected to state and local government bodies.

Elections are the most important form of ensuring a democratic goal-setting of public administration, they form the link between the people (territorial collective) and the apparatus of public authority that is necessary for resolving issues of arranging state and public life. State-legal goals expressed through elections are the immediate imperatives of all power activities. Neglect of them by the subjects of state-building and politics should be considered as an actual rejection of the principle of democracy by the people. At the same time, the volume of elective principles of public authority must be reasonable, corresponding to the specific socio-historical conditions of development of the state and society.

H. Mayer rightly believes that the right to vote as an order determining the competitive conditions for winning, holding and losing political power, embodied in national legislation, inevitably presupposes the actual dominance of the leading socio-political forces. However, the legislator sees this problem and tries to fix the conditions for fair competition. The question of whether law or politics will prevail (political interest) is related to the level of development of legal culture. To a large extent, the outcome of the elections depends on the independent and independent position of the constitutional and other courts, designed to be a guarantor of fair and fair elections [1].

The following sources of suffrage are traditionally distinguished:

1) national constitutions. Usually, the provisions on elections and referendum are enshrined in the basic act. This is due to the socio-political significance of suffrage, the specifics of electoral relations. Elections are one of the most important mechanisms for the formation and organization of public authority in a democracy that is inextricably linked with political activities. The basic rules are fixed electoral rights of citizens. Due to the strictness of the regulatory material, the basic law serves as an effective legal and technical means of establishing clear rules for electing the president, deputies of parliament, representative (legislative) bodies of state power of the regions (in a federal state - federal subjects), governors), local governments. The possibility of a referendum is also reflected in the basic (basic) norms.

So, in the Constitution of Italy of 1947, the conditions and grounds for granting the right to vote, its principles (part 1 and 2 of article 48), the procedure for holding a referendum (article 75); a ban has been placed on the use of a shortened parliamentary procedure for the consideration of draft laws on elections (part 4 of article 72). Similar provisions are contained in the Bulgarian Constitution of 1991 (Art. 10, 42, 64, 93). However, as American political analyst A. Leiphart correctly notes, the norms of electoral law are often not included in the constitution [2];

2) national laws of different legal force. For example, in Austria, Bulgaria, Germany, Denmark, and Russia, laws adopted on the basis of the traditional parliamentary procedure are in force. At the same time, in a number of countries (Spain, Moldova) the electoral system, the procedure for holding elections and referendums are regulated by acts of increased legal force — organic laws (part 1 of article 82, part 3 of article 92 of the Constitution of Spain 1978, part 2 Article 61, Part 3 Article 72 of the Constitution of Moldova 1994) [3].

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In order to streamline and systematize this branch of legislation, large complex legislative acts may be issued, characterized by an increased generality of regulatory prescriptions and governing similar, homogeneous social relations - codes. Election codes operate in Argentina, Belgium, Brazil, Belarus, Georgia, Moldova and some other states [4]. It is interesting that in ancient Rome, wooden planks called wax for writing and decorated in the form of a book were called a code. Later this name was transferred to the cash books of the Romans and vaults (collections) of lawsIt is interesting that in ancient Rome, wooden planks called wax for writing and decorated in the form of a book were called a code. Later this name was transferred to the cash books of the Romans and vaults (collections) of laws.

3) International election standards. Their intrinsic political and legal value became especially evident in the 21st century, when many states harmonize the principles on which their legal systems are built, recognizing the right of citizens to equal access to information, to participate in public administration, elected as fundamental human rights.

V.A. Kartashkin and Ye.A. Lukasheva rightly believe that a universal norm of international law has been established, according to which states are obliged to respect and respect human rights and fundamental freedoms for all, without any discrimination. Standards of conduct contained in these acts serve as a model for the development and adoption by States of national legislation in the field of human rights [5].

The literature has developed various approaches to the definition of international electoral standards. In general, they are understood to mean all international norms in the field of individual rights and freedoms. On this basis, electoral standards are identified with international human rights standards concerning free and fair elections. Such imperatives, being essentially international norms, are universal and particular (regional).

International election standards are also understood as the principles of international law relating to the electoral rights of citizens to the organization and conduct of elections. The principles of this branch of law as the most general rules of conduct for participants in international communication have a definite influence on the establishment of international legal norms as more specific rules of conduct. This or that basic principle can not only predetermine the appearance of well-defined rules of behavior, but also subordinates them to itself. This is reflected in the fact that specific rules of behavior interact and at the same time are consistent with the principle as a more general regulator of behavior.

As S.A. Golubok rightly concludes. The dove, the analyzed standards should be considered as international legal norms that establish the framework guidelines for the grounds, conditions and order of organizing and holding elections in terms of ensuring the electoral powers protected by international law (the right to free elections) specified by each state in its legislation features of its political and legal system and other differences [6].

At the same time, modern electoral challenges, from the point of view of international standards, imply the following. First, the creation of a truly reliable and real system of guarantees for the implementation of these rights and freedoms. Secondly, holding free elections is possible only in a democratic political space, with transparency and integrity of the entire electoral process, impartiality and professional qualifications of electoral bodies, equal access of candidates to the media, the effectiveness of judicial and other guarantees for the protection of the rights and freedoms of election participants. Thirdly, the deepening of the humanitarian aspect of elections, i.e., an increase in electoral activity, the creation of equal conditions and opportunities for participation in elections, including as candidates for men and women, representatives of national minorities and ethnic groups, for people with physical deficiencies. The use of modern technologies and technical devices at many stages of the electoral process, in particular in determining the election results, is also of significant importance.

It should agree with M.V. Baglay, who argues that three international legal acts are particularly important: the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950). city) [7]. At the same time, the last document contains regional standards of electoral rights.

A major universal act is the Universal Declaration of Human Rights, adopted and proclaimed by resolution 217 A (III) by the UN General Assembly on December 10, 1948. The standards directly mentioned are devoted to Art. 21 of the Universal Declaration, part 1 of which establishes that “everyone has the right to take part in the government of his country, directly or through freely chosen representatives”.

In Part 3 of Art. 21 of the Universal Declaration contains a norm providing that the will of the people should be the basis of the authority of government; This will must be expressed in periodic and un falsified elections, which must be held with universal and equal suffrage, by secret ballot, or by other equivalent forms ensuring freedom of voting. Along with the traditional standards of universal, equal suffrage and

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secret ballot, the Universal Declaration also contains some important electoral standards: the requirement for periodic and unfamiliar elections, the possibility of a variety of legal forms ensuring freedom of voting.

If in the 40s. Twentieth century. Since the Declaration was considered by many as a statement of the intentions of politicians, in the present conditions of law and freedom proclaimed therein, many states perceive it as a generally accepted standard, embodied in domestic legislation.

Another source of international election standards is the International Covenant on Civil and Political Rights, adopted in 1966 and entered into force in 1976. Currently, 127 states are taking part in it. Directly related to the elections is Art. 25 of this agreement, which states that every citizen must have, without any discrimination whatsoever and without unreasonable restrictions, the right and the opportunity to:

a) to take part in the conduct of public affairs, both directly and through freely chosen representatives;

b) to vote and be elected in genuine periodic elections held on the basis of universal and equal suffrage by secret ballot and ensure the free will of voters [8].

In the International Covenant on Civil and Political Rights, elections were characterized as a way to participate in the conduct of public affairs; standards for the periodicity and non-falsification of elections are presented in the form of "genuine periodic elections". The Soviet Union signed this act with reservations, which were subsequently withdrawn due to a change in attitude towards international law.

Standards of equal electoral rights, non-discrimination of election procedures are also contained in the Convention on the Political Rights of Women of December 20, 1952, the Convention on the Elimination of All Forms of Discrimination against Women of December 18, 1979, the International Convention on the Elimination of All Forms of Racial Discrimination of December 25, 1965.

In accordance with Part 1 of Art. 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, racial discrimination means "any difference, exclusion, restriction or preference based on race, color, descent, national or ethnic origin, with the aim or effect of the destruction or impairment of recognition, use "the establishment or implementation on an equal basis of human rights and fundamental freedoms in political, economic, social, cultural or other areas of public life" [9]. This provision is fully applicable to non-discrimination in the field of electoral law.

In Art. 1 and 2 of the Convention on the Political Rights of Women, it is established that "women can be elected on equal terms with men, without any discrimination, in all institutions established by national law requiring public elections".

An important obligation is the International Convention on the Elimination of All Forms of Racial Discrimination. It states that participating States pledge to prohibit and eliminate racial discrimination in all its forms and to ensure equal rights of every person before the law without distinction of race, color, national or ethnic origin, in particular with regard to the exercise of political rights, in particular, the right to participate in elections - to vote and stand as a candidate - on the basis of universal and equal suffrage, the right to take part in governing the country (Article 5).

Universal international electoral standards are being developed within the framework of the Inter-Parliamentary Union. At the 154th session of the Council of this authoritative and oldest international organization (1994), in which representatives of 112 states participated, a Declaration on the Criteria for Free and Fair Elections was adopted, fixing a number of new electoral standards. In accordance with this act, the duties of the state include the following:

- adoption of legislative and other measures to guarantee the rights and institutional framework for holding regular, genuine, free and fair elections;
- the establishment of a neutral, impartial and balanced mechanism for organizing and conducting elections;
- respect for and observance of human rights for all citizens living in their territory and in the territories under their jurisdiction;
- prompt and effective consideration of relevant complaints by electoral authorities, some courts, etc.

At the 161st session of the Council of the Inter-Parliamentary Union in 1997, the Universal Declaration on Democracy was adopted. It, in particular, establishes (p. 12) that "the key element in the implementation of democracy is the holding of free and fair elections at regular intervals, which would provide an opportunity for the expression of the will of the people".

In all the above-mentioned international legal acts, clear rules have been formulated, according to which elections must be alternative, fair, and non-fraudulent. Only under these conditions can the free will of the people be revealed and ensure its implementation.

Summarizing what has been said, we note the following. The institution of elections under a democratic regime has a developed and stable legislative basis. The most important provisions of the electoral law are reflected in the Constitution of the state. In a number of foreign countries, the urgent problem is the

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codification of multi-level and uncoordinated sources of law governing elections and the electoral process. In organizing and conducting elections, determining their results, unique norms become increasingly important - international election standards.

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ҚОЛАЙЛЫ ҚОРШАҒАН ОРТАҒА КОНСТИТУЦИЯЛЫҚ ҚҰҚЫҚТЫ ЖҮЗЕГЕ АСЫРУ МЕХАНИЗМІНДЕГІ ҚОҒАМДЫҚ БІРЛЕСТІКТЕРДІҢ РӨЛІ

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Қоршаған қолайлы ортаға деген конституциялық құқық азаматтардың жекелеген немесе ұжымдасқан түрінде қоғамдық бірлестіктер арқылы жүзеге асырылуы мүмкін. Ұжымдық құқықты құру Қазақстан Республикасы Конституциясының 23-бабында бекітілген: «Қазақстан Республикасы азаматтарының бірлесу бостандығына құқығы бар. Қоғамдық бірлестіктердің қызметі заңмен реттеледі»[1].

Бұрынғы Қазақстан Республикасының «Қоршаған табиғи ортаны қорғау туралы» Заңының 2-бөлімінің 12-бабында да азаматтардың қоршаған табиғи ортаны қорғау жұмыстары бойынша қоғамдық бірлестіктер, қорлар және басқа да қоғамдық қалыптасулар құруына құқылы екендігі айтылған.

Азаматтардың бірлестікке деген құқығының жүзеге асырылуы азаматтардың екі түрлі мүмкіндігінің кепілі бола алады. Бір жағынан жалпы мақсаттарға жету үшін мүдде ортақтығы негізінде басқа адамдармен бірлестікке деген құқық, екінші жағынан басқа адамдармен бірігіп бірлестік құру жолында құқығы, бостандықтары мен заңды мүдделері бұзылған жағдайда, оны қорғау (қалыптастыру) ісі бойынша азаматтың құқығы. Бірлестікке деген құқық мазмұнының екінші аспектісі азамат құқығының негізгі кепілдігі болып табылады және оны жүзеге асыру механизміне кіргізіледі.

Азаматтарға ерікті түрде өзінің рухани немесе басқа материалдық емес қажеттіліктерін қанағаттандыру үшін қоғамдық ұйымдар құру мүмкіндігі 1994 жылғы 21 қазандағы Қазақстан Республикасы Азаматтық Кодексінің 117-бабында қарастырылған және 1995 жылы 14 сәуірдегі «Қоғамдық бірлестіктер туралы» Қазақстан Республикасының Заңында, 1995 жылғы 7 маусымдағы «Қайырымдылық іс-әрекеттер және қайырымдылық ұйымдар туралы» Қазақстан Республикасының Заңында егжей-тегжейлі нақтыланған.

Қоғамдық бірлестіктер дегеніміз - жоғарыда аталған заңнамаларға сәйкес ортақ мақсаттарға жету үшін мүдде ортақтығы негізінде біріккен, азаматтардың инициативасы бойынша құрылған ерікті, өзін-өзі басқаратын, коммерциялық емес құрылым [2].

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