

# SOME QUESTIONS OF IMPROVEMENT OF ELECTORAL LEGISLATION IN THE REPUBLIC OF KAZAKHSTAN

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## ABSTRACT

*In this article, topical issues of improving the election legislation of the Republic of Kazakhstan are considered. The main attention is paid to the issues of improving the procedure of citizens' complaints in connection with the implementation of their electoral rights. The authors analyzed the norms of the electoral legislation regulating the procedure for considering citizens' complaints; the procedure for considering appeals of citizens under the current legislation; shortcomings in the legal regulation of the procedure for receiving and examining citizens' complaints to electoral bodies; developed and proposed measures to improve legislation and law enforcement practices regarding the procedure for considering citizens' complaints to electoral bodies.*

*The novelty of the article is that, by examining the current legislation, a comprehensive analysis of the procedure for examining citizens' complaints has been conducted and measures have been defined to improve the procedure for their adoption and consideration in electoral bodies. The practical significance of the article is that the recommendations proposed in it, provided they are consolidated in the legislation, will facilitate the implementation of the electoral rights of citizens. The contribution to the world science is that the analysis of the state and dynamics of the development of the electoral legislation of the Republic of Kazakhstan presented in the article contains scientific and practical material for improving the electoral law and the electoral process in terms of improving the procedure for examining and resolving citizens' appeals for violations of electoral rights.*

**Keywords:** The Republic of Kazakhstan, The OSCE, The Law on Elections, Complaints of Citizens, Electoral Bodies.

**JEL Classification:** K15, K16, K19.

## INTRODUCTION

The Constitution of the Republic of Kazakhstan in part 2 of Article 33 states that citizens of the Republic have the right to elect and be elected to state bodies and local self-government bodies, and also participate in a republican referendum (The Constitution of the Republic of Kazakhstan, 1995). The most important aspects of electoral law have been consolidated in international legal acts. Thus, Article 21 of the Universal Declaration of Human Rights, adopted

by the UN General Assembly in 1948, states: *"The will of the people must be the basis of government power, this will be expressed in periodic and unqualified elections that must be conducted under a comprehensive and equal suffrage, by secret ballot or by other equivalent forms ensuring the freedom of voting"* (Universal Declaration of Human Rights, 1948). The International Covenant on Civil and Political Rights, adopted by the UN General Assembly in 1966, states in Article 25 that every citizen has the right to *"vote and be elected in genuine periodic elections, on the basis of universal and equal suffrage by secret ballot and free expression of will voters"* (International Covenant on Civil and Political Rights, 1966). The Convention on the Elimination of All Forms of Discrimination against Women of 1979 states that *"women have the right to vote in all elections on an equal footing with men, without any discrimination"* (Convention on Elimination, 1979). The modern electoral law of the Republic of Kazakhstan as a whole is in line with international legal standards that consolidate the basic political and civil rights and freedoms of man.

The purpose of the study is to analyze the legislation and law enforcement practice of the Republic of Kazakhstan on the examination of citizens' complaints in connection with the implementation of their electoral rights and the development of proposals and recommendations aimed at improving the electoral legislation regarding the consideration of citizens' complaints.

## **THEORY/CALCULATION**

One of the topical problems of electoral law and practice of public administration is the legal regulation of the consideration and resolution of electoral disputes. This is due to the fact that an effective system for resolving electoral disputes allows resolving the existing disagreements between the participants of the election company when appointing, preparing, conducting, determining the results of elections, eliminating the violations committed, and ensuring the implementation of electoral rights of citizens.

It should be noted that this problem has been given considerable attention in the scientific literature. In the works of well-known Kazakh authors: Sapargaliev, (2002) Mukhamedzhanov, (2001), Sarsembaev (2016) the organizational and legal bases and features of the electoral system of the Republic of Kazakhstan are examined, the theory and practice of the suffrage and electoral process in the light of improving the legislation of the Republic of Kazakhstan. At the same time, in our opinion, in these studies, insufficient attention is paid to the problematic aspects that arise in practice in connection with the consideration and resolution of appeals, and in particular the complaints of voters to election commissions and judicial bodies.

The legal problems of protecting the rights of citizens are reflected in the works of Russian scientists. Thus, Koval & Tsvetkov (2015) noted the features of guarantees of citizens' electoral rights; Akchurin (2009) analyzes the causes and conditions that are the cause of abuse of the rights of participants in the electoral process; the need to protect the rights of citizens is indicated in the work of Andreeva et al. (2016). However, these works do not disclose the role and importance of procedures for the consideration of electoral disputes. The legal nature of electoral disputes was considered in the works of Ishchenko & Ishchenko (2002), Kazantsev (2005), Okhotnikov (2007) & Bobrova (2015). It seems to us that considering the legal nature of electoral disputes, researchers do not give a clear delineation of citizens' complaints from other types of appeals to electoral bodies.

Theoretical studies point out the problematic aspects of protecting the rights of citizens in the electoral process and the need for its optimization. For example, Babanian notes the role of the bodies of constitutional justice in the system of guarantees for the protection of electoral

rights of citizens of the Russian Federation in the system of guarantees for the protection of electoral rights of citizens of the Russian Federation (Babarian, 2015). In the Republic of Kazakhstan, the constitutional review body is the Constitutional Council of the Republic of Kazakhstan. However, citizens, according to the current legislation, can not apply to the Constitutional Council. The authorities of the election commissions are mentioned in the article by Shmygaleva & Podkopaeva (2015); the main role of the court in the field of protection from violations of electoral rights of citizens is emphasized in the article by Karagodina (2015). In our studies, in our opinion, the specifics of public-law disputes related to violation of electoral legislation are not sufficiently disclosed. Bikinin (2015) analyzes current issues of legal protection of citizens' electoral rights, but does not pay due attention to the role of procedural guarantees for the protection of citizens' rights in the electoral process.

The issues of holding elections in the Republic of Kazakhstan are in the sphere of constant attention of the OSCE. Based on the results of the elections, the OSCE mission publishes reports. Thus, in the final report of the OSCE/ODIHR Election Observation Mission to the extraordinary parliamentary elections in the Republic of Kazakhstan of March 20, 2016, along with positive trends in the development of the electoral legislation of the Republic of Kazakhstan, it was noted that it needs to be improved in order to ensure effective means of legal protection for all participants in the electoral process. We believe that these remarks are constructive and deserve the development and implementation of additions to the current legislation of the Republic of Kazakhstan on elections.

Summarizing the above, it can be stated that many issues related to the legal regulation of the electoral process are reflected in the legislation, but there are certain unresolved problems, one of which is the need for a more complete regulation of the procedure for examining appeals, in particular, citizens' complaints to electoral bodies.

Researchers highlight the problems associated primarily with corruption and violation of the rights of voters, therefore, they are invited to involve more independent observers as liquidators of these difficulties (Elmendorf, 2006; Barnes, 2018; Gierzynski, 2018), as well as make preparation for the election process more open (Jacobson & Carson, 2015; Bowler et al., 2015). Nevertheless, the above-mentioned researchers do not take into account the socio-political features of the post-Soviet states, which are particularly emphasized in this article.

Thus, the analysis of scientific literature, legislation and law enforcement practice points to the need for a further and deeper scientific study of the theoretical aspects of the problem of protecting the rights of citizens in the electoral process, as well as the development of proposals for introducing changes and additions to the current legislation of the Republic of Kazakhstan on elections under the complaint procedure citizens during the electoral process.

It should be noted that the legal regulation of the electoral rights of citizens is an object of close attention of international organizations and international law. Thus, in paragraph 11.3.3.3.f of the Code of Good Practice for Elections, adopted by the Venice Commission of the Council of Europe in 2002, states that "*all candidates and voters registered in the relevant constituency must have the right to appeal*" (The Code of Good Practice in Electoral Matters, 2002). In paragraph 5.11 of the 1990 OSCE Copenhagen Document, it states that "*administrative decisions against a person should be justified and usually contain an indication of the available ordinary remedies*" (Document of the Copenhagen, 1990). The final report of the OSCE/ODIHR Election Observation Mission to the Republic of Kazakhstan on March 20, 2016 noted that "*in order to ensure access to effective remedies for all participants in the process, the Election Law should require that all disputes be considered in as complaints, and clearly establish procedures for*

*handling complaints, provide for collegial review of all disputes and provide written, informed and publicized responses"* (Final report of the OSCE, 2016).

## METHODOLOGY

When formulating the problematic aspects of protecting the rights of citizens in the electoral process and the need for its optimization the methods of conceptual analysis are first used, which allow identifying the main factors, constraints and variables, and then conceptual synthesis, allow to formulate the problem and fix the criterion.

Methodological research basis includes scientific papers on sociology, economics, and general theory of law. Methods applied in the research are logic analysis, system analysis, comparative legal analysis, and fundamental provisions of electoral law.

Sources of information were customs laws and other associated regulations governing the performance of customs agencies and their employees.

## RESULTS

The current legislation of the Republic of Kazakhstan provides for a number of guarantees and a sufficiently detailed legal regulation of the procedure for challenging acts and actions of election commissions (officials) that violate the rights of citizens and public associations during the electoral process.

The analysis of the legislation makes it possible to single out two ways of appealing violations of electoral rights of citizens: extrajudicial and judicial.

In the framework of extrajudicial procedure, the bodies that consider complaints of citizens and public associations are:

1. The prosecutor's office;
2. Election commissions;
3. Higher election commissions-in case of receipt of a complaint about decisions and actions (inaction) of the election commission and its members (Law of "*On Elections in the Republic of Kazakhstan*", 1995).

Courts conduct proceedings on applications for the protection of electoral rights of citizens and public associations participating in elections, a republican referendum according to the rules of special suitability provided for by Chapter 27 of the Civil Procedure Code of the Republic of Kazakhstan (2015).

According to Article 49 of the Constitutional Law of the Republic of Kazakhstan "*On Elections in the Republic of Kazakhstan*," courts and prosecutors are required to accept applications from members of election commissions, citizens, representatives of public associations registered in accordance with the law, concerning matters of voting, including violations of election legislation, in the period of preparation and conduct of elections, and received less than five days before the voting and on the voting day-immediately, unless otherwise provided by this Constitutional Law. Decisions and actions of local government and self-government bodies, enterprises and organizations, their officials, violating the legislation on elections, are appealed in court (The Constitution of the Republic of Kazakhstan, 1995).

With a view to prompt and timely consideration of applications from citizens and organizations, the above-mentioned bodies organize their work during the electoral process, including on weekends and on election day.

In addition, the law provides for time limits allowing prompt and prompt response to violations of electoral rights: applications for violation of electoral rights are considered by election commissions within five days from the date of appeal by a citizen or association, unless otherwise provided by the Constitutional Law of the Republic of Kazakhstan "*On Elections in the Republic of Kazakhstan*"; complaints about decisions and actions (inaction) of the election commission and its members are considered by the higher election commission within three days from the date of receipt of such, unless otherwise provided by the Constitutional Law of the Republic of Kazakhstan "*On Elections in the Republic of Kazakhstan*". Pursuant to Part 9 of Article 20 of the Constitutional Law of the Republic of Kazakhstan "*On Elections in the Republic of Kazakhstan*", decisions and actions (inaction) of the election commission may be appealed to a higher election commission and/or to the court within ten days from the date of the decision or action (inaction), if other terms of appeal are not established by the Constitutional Law of the Republic of Kazakhstan "*On Elections in the Republic of Kazakhstan*" (1995). It is important to emphasize the need to comply with these deadlines, since upon their expiry the application for decision and actions (inaction) of the election commission can't be considered. The above provisions testify that the terms established by the legislation of the Republic of Kazakhstan for appeal allow citizens to restore possible violations.

An important guarantee for the observance of citizens' electoral rights is the rule established in the Constitutional Law of the Republic of Kazakhstan "*On Elections in the Republic of Kazakhstan*" that when an application is considered at the same time, the election commission suspends the examination of the application pending the entry into force of a court decision.

The current legislation on elections in the Republic of Kazakhstan obliges state bodies, organizations, local governments, as well as their officials, to assist election commissions in the exercise of their powers, to provide them with the necessary information and materials, to respond to appeals of election commissions within three days, and on the day of elections and the day preceding it-immediately.

As can be seen from the above, regarding the issues of the procedure for handling complaints, the Constitutional Law of the Republic of Kazakhstan "*On Elections in the Republic of Kazakhstan*" establishes a number of provisions relating to the competence of state bodies, as well as election commissions, procedural terms, the consequences of appeals. Summarizing the above, it is possible to state with full justification that an effective system of methods for protecting the rights of citizens and public associations participating in elections and a republican referendum has been formed in the Republic of Kazakhstan.

## DISCUSSION

The final report of the OSCE mission notes that the Constitutional Law of the Republic of Kazakhstan "*On Elections in the Republic of Kazakhstan*" stipulates that "*all disputes should be considered as complaints and a clear procedure for handling complaints*" (Final report of the OSCE, 2016).

In our opinion, this recommendation is not entirely justified. First, as noted above, the current legislation of the Republic of Kazakhstan (the Constitutional Law of the Republic of Kazakhstan "*On Elections in the Republic of Kazakhstan*", the Civil Procedure Code of the Republic of Kazakhstan, and the Law of the Republic of Kazakhstan "*On the Prosecutor's Office*") contains a number of rules on appealing violations of electoral rights citizens. Moreover, the terms of consideration of complaints (immediately 5-3 days) are more concise and differ

from those stipulated by the Law of the Republic of Kazakhstan "*On the Procedure for Consideration of Appeals from Individuals and Legal Entities*," which is understandable and logical, since the electoral process is carried out within certain periods.

Secondly, it is incorrect to regard any appeal of a citizen or public organization to election commissions as a complaint. A citizen's appeal may be, by its content, a proposal, statement, complaint, request or response. Such classification of appeals of individuals and legal entities is established in Article 1 of the Law of the Republic of Kazakhstan "*On the Procedure for Consideration of Appeals from Individuals and Legal Entities*". However, its scope does not cover the activities of all electoral bodies. We appeal to the Law of the Republic of Kazakhstan "*On the procedure for considering appeals from individuals and legal entities*", since it is the basic law regarding the consideration of appeals from individuals and legal entities providing for a procedure (for which the OSCE mission insists) to consider appeals, including, and complaints of individuals and legal entities. The Law of the Republic of Kazakhstan "*On the Procedure for Consideration of Appeals from Individuals and Legal Entities*" regulates such procedural aspects of consideration of appeals of individuals and legal entities, such as: reception, registration and recording of applications of individuals and legal entities, rights and obligations of individuals and legal entities, rights and obligations of entities authorized to consider appeals, personal reception of individuals and representatives of legal entities, consideration of applications, termination of consideration of applications, requests for applications, refusal to consider appeals, obligation of subjects to inform individuals and legal entities on decisions taken in writing or in the form electronic document, etc.

Article 3 of the Law of the Republic of Kazakhstan "*On the Procedure for Considering Appeals from Individuals and Legal Entities*" defines the scope of its action, which includes individuals and legal entities that have submitted appeals, as well as subjects and officials of state bodies and organizations considering them.

According to paragraph 5 of Article 1 of the Law of the Republic of Kazakhstan "*On the Procedure for Consideration of Appeals from Individuals and Legal Entities*", entities considering appeals are state bodies, local self-government bodies, legal entities with 100% state participation or providing goods (works, services) in accordance with conditions state order and (or) state procurement, which are entitled to consider and take decisions on appeals of individuals and legal entities in accordance with their competence, as well as the entity's large business on the appeals of individuals and legal entities with whom a contract was concluded for the supply (performance, rendering) of goods (works, services) to them (Law of the Republic of Kazakhstan, 2018).

According to Article 10 of the Constitutional Law of the Republic of Kazakhstan "On Elections in the Republic of Kazakhstan", the state electoral bodies involved in the process of preparing and holding elections in the Republic of Kazakhstan are election commissions of various levels.

Taking into account the territorial scope and nature of the competence, a single system of election commissions is formed:

1. Central Election Commission of the Republic of Kazakhstan;
2. Territorial election commissions;
3. District election commissions;
4. Precinct election commissions.

In accordance with article 1 of the Regulation on the Central Election Commission, approved by the Decree of the President of the Republic of Kazakhstan 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, and heads a unified system of election commissions of the Republic (Regulation, 2018).

It follows from the foregoing that the Constitutional Law of the Republic of Kazakhstan "*On Elections in the Republic of Kazakhstan*" refers all election commissions to the number of state bodies. However, in fact, territorial, district and precinct electoral commissions carry out their activities on a voluntary basis and are elected by the respective maslikhats on the basis of proposals from political parties, i.e., state bodies are not.

The fact that election commissions, except for the Central Election Commission, are not government bodies is also testified by the fact that they do not submit information about appeals, including complaints of citizens, to the bodies of legal statistics and special accounts that keep records of appeals. According to paragraph 2 of Article 7 of the Law of the Republic of Kazakhstan "*On the Procedure for Considering Appeals from Individuals and Legal Entities*," records of appeals from individuals and legal entities entering state bodies, local governments, legal entities with 100% state participation are exercised in accordance with the procedure established by the state body exercising within its competence, statistical activities in the field of legal statistics and special accounts (Law of the Republic of Kazakhstan, 2018). Thus, the records of physical and legal persons, including complaints, are kept by the bodies of legal statistics and special accounts only in relation to applications submitted to the Central Election Commission of the Republic of Kazakhstan.

As for appeals, including complaints coming to lower-level (territorial, district, precinct election commissions), they do not belong to the number of entities obliged to report on appeals, since they are not state bodies.

From this it follows that, with the exception of the Central Election Commission of the Republic of Kazakhstan, the provisions on the procedure for considering appeals from individuals and legal entities, the requests for registration of appeals are not applicable to activities when examining appeals by territorial, district, precinct election commissions.

Responding to critical remarks in the OSCE mission report, it would be advisable, in our opinion, in the Constitutional Law of the Republic of Kazakhstan "*On Elections in the Republic of Kazakhstan*" to regulate in more detail the procedure for the consideration by election authorities of appeals of individuals and legal entities, including complaints, legislation. As an initial option for amending the Constitutional Law of the Republic of Kazakhstan "*On Elections in the Republic of Kazakhstan*," it would be possible to recommend the basic procedures for examining appeals of individuals and legal entities laid down in the Law of the Republic of Kazakhstan "*On the Procedure for Considering Appeals from Individuals and Legal Entities*", established in the Constitutional Law of the Republic of Kazakhstan "*On Elections in the Republic of Kazakhstan*".

Concerning the observation in the final report of the OSCE mission that the Constitutional Law of the Republic of Kazakhstan "*On Elections in the Republic of Kazakhstan*" should provide for collegial consideration of all disputes and provision of written, substantiated and publicized answers, let us turn to Article 20 of the Constitutional Law of the Republic of Kazakhstan "*On Elections in the Republic of Kazakhstan*" Republic of Kazakhstan "(Organization of the activities of election commissions and appealing against their actions. Publicity in the activities of election commissions).

Part 1 of Article 20 of the Constitutional Law of the Republic of Kazakhstan "*On Elections in the Republic of Kazakhstan*" establishes that the activities of election commissions are carried out on the basis of collegiality, openness and openness (The Constitutional Law of the Republic of Kazakhstan, 1995). These principles, in general, found their development in the law and in law enforcement practice. During the preparation and conduct of the election campaign, election committee meetings are held, as a rule, at least once every two weeks. The chairman or at least one-third of the members of the commission has the right to initiate extraordinary meetings.

The principle of collegiality is expressed in the fact that meetings of election commissions are eligible if at least two-thirds of the total numbers of commission members participate in them.

The glasnost principle means that the decisions of the commissions are taken by open voting by a majority of votes of the total number of their members, except in other cases established by the Constitutional Law of the Republic of Kazakhstan "*On Elections in the Republic of Kazakhstan*". Members of the election commission that do not agree with its decision have the right to express a dissenting opinion, which is immediately notified to the higher election commission and is attached in writing to the protocol of the commission meeting.

The principle of openness assumes that election commissions create conditions for the free familiarization of all individuals with their decisions, which are placed in publicly accessible telecommunications networks, and in cases stipulated by the Constitutional Law, are subject to other publication. The openness of the activity of election commissions can also be judged by the fact that political parties that do not have a representative in the composition of election commissions have the right to delegate their representative to the relevant election commission with an advisory vote for the period of preparation and conduct of the election campaign, which gives them the right to speak meeting of the election commission, to make proposals on issues falling within the competence of the election commission, to appeal actions (inaction) of the election commission to a higher election commission or court.

Candidates for deputies, political parties that nominated party lists, when considering issues related to them, are notified in advance of the date and agenda of the meeting.

In addition, candidates, trustees, observers, representatives of the media can attend the election commission meetings, which also indicates the openness of the electoral process in the Republic of Kazakhstan. Thus, these provisions show that the electoral process as a whole, meets the principles of openness, openness and collegiality. At the same time, in order to broaden the principles of transparency and openness, article 49 of the Constitutional Law of the Republic of Kazakhstan "*On Elections in the Republic of Kazakhstan*" should be supplemented by establishing the duties of election commissions to provide objective, comprehensive and timely consideration of appeals from individuals and legal entities, participation; to inform natural and legal persons about the decisions taken in writing or in the form of an electronic document.

## CONCLUSIONS

Based on the above, we propose to make certain changes and additions to improve the electoral process in the Republic of Kazakhstan.

Article 49 of the Constitutional Law of the Republic of Kazakhstan "*On Elections in the Republic of Kazakhstan*" requires the provision that citizens or public organizations can apply to election commissions with proposals, statements, complaints, requests or responses. It is also necessary to give definitions to these concepts. This will make it possible to delineate complaints



from other types of appeals to election commissions. In the final report of the OSCE mission, complaints about violations of electoral rights are subjected to analysis. As for proposals, statements, requests or responses, they are not associated with violations of electoral rights of citizens, but indicate the desire to improve certain aspects of the electoral process, or the need to obtain certain information affecting the electoral rights of citizens.

It is advisable in the Constitutional Law of the Republic of Kazakhstan "*On Elections in the Republic of Kazakhstan*" to regulate in more detail the procedure for the consideration by election authorities of appeals of individuals and legal entities, including complaints, to violations of electoral legislation. As an initial option for amending the Constitutional Law of the Republic of Kazakhstan "*On Elections in the Republic of Kazakhstan*," it would be possible to recommend the basic procedures for considering appeals from individuals and legal entities laid down in the Law of the Republic of Kazakhstan "*On the Procedure for Considering Appeals from Individuals and Legal Entities*" features established in the Constitutional Law of the Republic of Kazakhstan "*On Elections in the Republic of Kazakhstan*".

In order to take into account and analyze incoming appeals to election commissions and, first of all, complaints of citizens and public associations, it is necessary to establish in the Constitutional Law of the Republic of Kazakhstan "*On Elections in the Republic of Kazakhstan*" the provision that accounting in statistical bodies and special accounts citizens were to be contacted on the issues of the implementation of the electoral law, coming to all election commissions. Through this account, you can create a complete and objective picture of all appeals; identify the nature and dynamics of violations of electoral rights of citizens. The data of these reports would be an objective and complete picture of the nature and number of violations of electoral rights for the OSCE mission.

Article 49 of the Constitutional Law of the Republic of Kazakhstan "*On Elections in the Republic of Kazakhstan*" should establish the obligation of election commissions to provide objective, comprehensive and timely consideration of appeals from individuals and legal entities, if necessary with their participation; to inform natural and legal persons about the decisions taken in writing or in the form of an electronic document.

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