

## ABSTRACT

**of the dissertation on theme: «Rather-legal analysis of citizens voting rights of the Republic of Kazakhstan and Russian Federation»  
for the degree of doctor of philosophy (PhD) in the specialty 6D030100-Jurisprudence  
by Bilyalova Marzhan Isakovna**

**General characteristics of the work.** The proposed dissertation research was undertaken for a full and comprehensive study of the mechanism of constitutional and legal regulation of political rights in the Republic of Kazakhstan based on an analysis of existing legislation in comparison with foreign experience. The dissertation research is aimed at improving the institution of suffrage in accordance with the requirements of the time. The practical significance of the study is to improve the electoral legislation of the Republic of Kazakhstan. Obviously, this problem cannot be solved without developing a theoretical concept of modern suffrage and taking into account both domestic experience in the legal regulation of elections and international electoral standards for their organization and conduct, adequately meeting those socio-political processes that are due to the implementation of radical reforms of state and public structure. However, the issue under study is not limited to the analysis of national legislation. A comparative legal analysis of the electoral rights of citizens of the Republic of Kazakhstan and the Russian Federation is carried out. The international standards of electoral rights of citizens are considered, questions of their implementation in the national legislation are touched.

**The relevance of the thesis research.** Considering that fair and equal elections are one of the main criteria of a modern democratic society, a comparative legal analysis of the electoral rights of citizens is one of the most pressing issues. Currently, the Republic of Kazakhstan has entered the era of globalization and new constitutional development. Changes and additions made to the Constitution of the Republic of Kazakhstan will increase the importance of establishing a new democratic society and political rights. Topical issues at the present stage include the definition of the role and function of political rights during the period of new constitutional transformations of the electoral law, recognized as its integral element in the political system of the state. The elections are recognized as an effective institution for the formation of representative foundations of democracy in the life of Kazakhstan and Russian society. As witnesses to the formation and development of the modern electoral system of the Republic of Kazakhstan and the Russian Federation, in practice we are actively searching for legal forms of protection and exercise of the constitutional right of citizens to elect and be elected to state bodies and local governments. Applying a comparative legal analysis of the electoral legislation and national norms of the Republic of Kazakhstan and foreign countries, we examined the peculiarities of the electoral rights of Russian citizens as the only legitimate tool for ensuring the modernization of the electoral foundations of the state and municipal authorities of the named state. It is important to take into account that without the relevant legal rules specified in the norms of suffrage, maintaining the appropriate legal relationship and dependence of the electorate and political public authority is impossible.

At the present stage, it is necessary to develop a theoretical concept of suffrage. This problem cannot be solved without taking into account domestic experience in regulating suffrage, as well as without taking into account international electoral standards based on the fundamental reforms of the state and public structure of the Republic of Kazakhstan and the Russian Federation, their organization and conduct. These norms are aimed at accelerating the development of the democratic potential of the electoral system. A significant increase in the volume of regulatory legal acts in the field of organization and conduct of elections as a result of over-clarification of certain aspects of the election process of the Law on Elections of the Republic of Kazakhstan, federal and regional legislation of Russia does not contribute to the holistic, systematic and consistent legislative regulation of the legal regime for the implementation and protection of citizens' electoral rights. As a result, many fundamental issues of the legal regulation of electoral relations have not yet received the necessary scientific understanding and justification and cause serious misunderstandings between scientists and practitioners. It is this situation that compels us to propose solutions by means of a comparative

legal analysis of the urgent problems of the theory and practice of the formation and development of suffrage in modern Kazakhstan and Russia. The relevance of the topic at the present stage is due to the need to enhance the political rights of citizens of the Republic of Kazakhstan as an opportunity to participate in the public and political life of the state and the implementation of state power. Thus, having comprehensively analyzed this issue using a comparative legal analysis of the legislation on elections in the Republic of Kazakhstan and the Russian Federation, we consider it necessary to submit proposals on improving the national legislation governing the electoral rights of citizens of the Republic of Kazakhstan. Thus, all of the above is a justification of the relevance of the topic of the dissertation research and confirms the need for its scientific research in order to create an effective model to ensure compliance with the electoral rights of citizens of the Republic of Kazakhstan.

**Purpose and objectives of the research** - consideration and disclosure of the legal nature and mechanism for the implementation and protection of electoral rights in order to further strengthen statehood and the development of Kazakhstan's democracy. Development of the theoretical foundations of electoral law, a comprehensive study of the electoral rights of citizens of the Republic of Kazakhstan and the Russian Federation, as well as the formulation of theoretical provisions and specific recommendations that are of practical importance for improving the electoral law and the practice of its application. The objectives of the thesis research are:

- disclose and identify the place of electoral rights in the system of political rights of citizens;

- carrying out a historical and legal analysis of the formation and development process of the legislation of the Republic of Kazakhstan and the Russian Federation, which regulate the electoral rights of citizens and identify the main stages of the formation and development of election legislation;

- disclose and analyze the principles of suffrage, taking into account the improvement of electoral legislation;

- to analyze the electoral legislation of the Republic of Kazakhstan and the Russian Federation, as a result of which to develop proposals for the consideration of complaints and determine the powers of a higher election commission in order to improve the electoral legislation and strengthen guarantees of the electoral rights of citizens of the Republic of Kazakhstan;

- to formulate, on the basis of an analysis of the research and law enforcement practice of the legislation of the Republic of Kazakhstan On elections, proposals for improving legislation on accounting and analysis of appeals received by election commissions, and, first of all, complaints from citizens and public associations;

- to analyze and determine the mechanism of responsibility for violation of the electoral rights of citizens of the Republic of Kazakhstan.

**The object of the dissertation research** is constitutional and legal relations in the field of electoral rights of citizens.

**The subject of the research** is the concept, content, guarantees of the electoral rights of citizens, as well as improving the electoral legislation of the Republic of Kazakhstan.

**The scientific novelty of the dissertation research.** In the course of studying this topic, conclusions were drawn on the practical implementation of electoral rights at the current stage of globalization by conducting a deep study of issues relevant to modern society that arose in the framework of one of the rights of every person - electoral law, as well as a comparative legal analysis of the electoral rights of citizens of the Republic of Kazakhstan and the Russian Federation. New proposals have been developed that contribute to the science of constitutional law by analyzing the current legislation on elections and a comprehensive scientific study of the electoral rights of citizens.

**The theoretical foundations of the research.** The dissertation research is aimed at the maximum study of the mechanism of constitutional-legal regulation of political rights in the legislation of the Republic of Kazakhstan in comparison with the Russian Federation. The scientific conclusions and suggestions formulated as a result of the comparative legal analysis contribute to the formation of political and electoral law in a new political direction, and

contribute to the further improvement of electoral law. In addition, the dissertation research can be used as a teaching aid in the study of the disciplines of constitutional and electoral law.

The research methodology is based on general scientific theoretical and methodological principles: the method of truth, reality, versatility; cognition (analysis, synthesis, etc.). Also, in the course of studying the topic of the dissertation, the following special research methods were used: historical-legal, system-structural, comparative-legal, logical, official legal analyzes. The theoretical basis of the study is the scientific works of Kazakhstani and foreign authors, national and international regulatory legal acts.

**The practical significance of the dissertation research** is explained by the fact that it is aimed at improving the legislation of the Republic of Kazakhstan on elections.

**The results of the dissertation research.** The dissertation research suggests the following:

1. As a result of the theoretical and legal analysis of the political rights of citizens, it was determined that electoral rights occupy one of the most important places in the system of political rights, being their core, which is justified by their significance in the political life of the state. The electoral rights of citizens are an important democratic institution, one of the main forms of free expression of the will of the people and their participation in the political process. The importance of electoral rights in the system of political rights of citizens is determined by the fact that: they are an expression of the sovereignty of the people and a form of implementation of the principle of democracy; a necessary element of increasing the effectiveness of state power, the legal system as a whole; a mechanism for providing feedback between the people and public authorities.

2. Having studied the laws of the Republic of Kazakhstan and the Russian Federation governing the electoral rights of citizens, the following stages of the formation of electoral legislation were identified.

1. Stages of formation of the election legislation of the Republic of Kazakhstan.

The first stage: - adoption of the election code of the Republic of Kazakhstan dated December 9, 1993;

The second stage: - adoption of the Constitutional Law of RK "On elections in the Republic of Kazakhstan" dated September 28, 1995;

The third stage: - introduction of amendments and additions to the Constitution of the Republic of Kazakhstan dated October 7, 1998; introduction of a mixed electoral system;

The fourth stage: - introduction of amendments and additions to the Constitution of the Republic of Kazakhstan dated May 21, 2007, the introduction of a proportional election system.

2. Stages of formation of the electoral legislation of the Russian Federation.

The first stage: - adoption of the Federal law of the Russian Federation of November 26, 1996 N 138-FZ "On ensuring the constitutional rights of citizens of the Russian Federation to elect and be elected to local authorities";

The second stage: - adoption of the Federal law of June 12, 2002 No. 67-FZ "On Basic guarantees of electoral rights and the right to participate in the referendum of citizens of the Russian Federation";

- adoption of the Federal law "On the election of the President of the Russian Federation" dated January 10, 2003 No. 19-FZ;

The third stage: - adoption of the law "On the election of deputies of the State Duma of the Federal Assembly of the Russian Federation" dated May 18, 2005 No. 51-FZ.

- February 22, 2014 No. 20-FZ was again adopted "On the election of deputies of the State Duma of the Federal Assembly of the Russian Federation."

3. Having carried out a comprehensive analysis of the principles of suffrage, it was revealed that in the Republic of Kazakhstan and the Russian Federation a system of fundamental principles of suffrage was formed: the principle of the universality of suffrage, the principle of equal suffrage, the principle of direct suffrage, the principle of secret ballot.

At the same time, we believe that the progressive development and improvement of the electoral law of the Republic of Kazakhstan at the present stage of development indicates the need to supplement the current system of principles of the electoral law of the Republic of Kazakhstan. In our opinion, improving the legal mechanism for the implementation of suffrage at the present stage allows us to highlight the following procedural principles:

-principle of transparency of the activities of electoral bodies;  
-the principle of freedom of citizens to appeal against the wrong actions of the electoral bodies (officials);

-principle of responsibility of electoral bodies (officials).

4. Analyzing the electoral legislation of the Republic of Kazakhstan and the Russian Federation, in order to improve it and strengthen guarantees of the electoral rights of citizens of the Republic of Kazakhstan, it is proposed to legislatively determine the powers of a higher election commission to consider complaints. The provisions of article 75 of the Law of the Russian Federation «On basic guarantees of electoral rights and rights to participate in the referendum of citizens of the Russian Federation» may be included in the Constitutional Law of the Republic of Kazakhstan «On elections of the Republic of Kazakhstan». Concerning:

1) paragraph 9 of article 20 of the Constitutional Law of the Republic of Kazakhstan «On elections of the Republic of Kazakhstan» shall be supplemented with a paragraph as follows:

«A higher election commission, when considering a complaint, has the right to take one of the following decisions:

- not satisfy the complaint;
- eliminate the appealed decision in whole or in part (recognize the action (inaction) as illegal) and make decisions on the merits;
- cancel the appealed decision in whole or in part (recognize the action (inaction) as illegal), oblige the lower commission to review the complaint».

2) in order to optimize the procedure for considering citizens' appeals to the electoral bodies, it is proposed to supplement article 49 of the Constitutional Law of the Republic of Kazakhstan «On elections of RK» with paragraph 6 as follows:

«When considering the complaint by the election commission, as well as when considering a complaint about violation of the electoral rights of citizens and the rights of citizens to participate in a referendum, applicants, as well as persons whose actions (inaction) are appealed, should be invited».

5. Based on a study of the election legislation of the Republic of Kazakhstan, analysis of law enforcement practice, we propose the following additions and amendments to the Constitutional Law of the Republic of Kazakhstan «On elections in the Republic of Kazakhstan», adopted on September 28, 1995:

- In order to take into account and analyze the appeals received by the election commissions and, above all, the complaints of citizens and public associations, we consider it necessary to establish in the constitutional Law of the Republic of Kazakhstan «On Elections in the Republic of Kazakhstan» a provision on the registration of statistics of citizens with regards to electoral matters rights received by all election commissions. When conducting such an account, it will be possible to find out the complete and objective situation of all appeals, to determine the nature and tendency of violation of the electoral rights of citizens. These reports provide objective information on the nature and number of electoral rights violations 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 ensure objective, comprehensive and timely consideration of appeals of individuals and legal entities, if necessary, with their participation; inform individuals and legal entities about the decisions made in writing or in the form of an electronic document.

6. We consider it necessary to provide for liability for the publication of the ballot in the social network in the Code of the Republic of Kazakhstan on administrative offenses. To prevent such an offense, polling booths at polling stations can establish a prohibition on recording photographs and videos. We propose introducing a new article 112-1 «Responsibility for the publication of the ballot paper on the social network» in the Code of administrative offenses of the Republic of Kazakhstan and state it as follows: «photography and video shooting during voting in the booth at polling stations are prohibited».

**Theoretical and practical significance of the research.** The scientific and theoretical conclusions and recommendations reached as a result of the study can be used later in the research on the legal regulation of the electoral rights of citizens, contributing to the improvement of the theory of constitutional and electoral law. They can also be used in the

educational process in the framework of the discipline "Electoral Law" in the development of educational materials. The main provisions and conclusions formulated in the thesis can be used in law-making activities of legislative bodies, law enforcement practice of the CEC and in local authorities, as well as in judicial bodies.

**Approbation of the results of the research.** The main provisions of the dissertation were discussed at a meeting of the department of constitutional and international law of the Karaganda state university named after academician E. A. Buketov, at a scientific and theoretical seminar. The main theoretical provisions, conclusions and scientific and practical recommendations based on the results of the study were highlighted at international scientific and practical conferences, published in publications recommended by the Ministry of education and science, as well as in foreign publications.

**The volume and structure of the work.** The dissertation was carried out in the amount established by the relevant provisions of the Committee for control in education and science of the Ministry of education and science of the Republic of Kazakhstan. The structure of the work consists of notation and abbreviations, introduction, three sections, uniting eleven subsections, conclusion and list of references.