

Impact of the pandemic on the improvement of the electoral system and electoral legislation of the Republic of Kazakhstan in view of the elections held

Abstract. *The article discusses the current problems of improving the electoral system in the Republic of Kazakhstan in the context of a pandemic. It gives a brief description of the past elections of deputies of the Majilis of the Parliament and deputies of the maslikhat of the Republic of Kazakhstan. The article presents a legal assessment of the normative legal acts regulating issues in the field of elections, including an analysis of the Resolution of the Central Election Commission of the Republic of Kazakhstan dated December 4, 2020, on election procedure. A brief analysis of the Constitutional Law of the Republic of Kazakhstan «On elections in the Republic of Kazakhstan» in terms of the amendments made regarding the direct election of akims of cities of district significance, rural districts, towns, and villages. In addition, the resolution of the European Parliament adopted on the results of the election campaigns and the recommendations specified in it are being considered. The author offers her vision on the issues of election campaigning, analyzing the experience of other foreign countries. The article provides examples of international experience on the issues of campaigning by candidates and political parties. The necessary proposals are given to improve the institution of elections in general and the development of a multiparty system as one of the conditions in building a developed, competitive state with an effective electoral system. In this connection, based on the study of monographic studies and normative legal acts, specific proposals were put forward to improve the electoral legislation and the electoral system as a whole, in the conditions of a pandemic.*

Keywords: *electoral system, elections, parties, observers, multiparty system, opposition, democratization.*

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Introduction

It is well known that the modern world is going through difficult times because the pandemic has made its own adjustments in all spheres of society and the state. Undoubtedly, the pandemic has caused enormous damage to the economy and social welfare of our state, besides, society has faced certain restrictions on political rights, and the electoral legislation in general, and the electoral system in particular, have undergone some changes. This concerns, first of

all, the past elections of deputies of the Majilis of the Parliament and deputies of the maslikhats of the Republic of Kazakhstan under quarantine measures.

Proclaiming ourselves as a democratic State, we follow the established principles and international standards that all developing and competitive powers strive for. Among all these systems, elections occupy a central place in the formation of the country's public administration system as the most important political and legal institution in building a democratic state.

And participation in free and open elections through the realization of the basic civil and political rights of citizens determines the level of democratization of the state as a whole. It is widely known that in order to enter the top 30 competitive countries of the world, it is necessary to constantly develop and improve all spheres of life, including the qualitative organization of the electoral process by the authorized bodies and the flexibility of the electoral system – to adapt to the conditions dictated by the pandemic.

Today, Kazakhstan, as one of the countries participating in international agreements, complies with all obligations to conduct free and competitive elections. Elections in Kazakhstan are held in accordance with the legislation of the Republic of Kazakhstan and the principles laid down in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights, in the document of the OSCE Copenhagen Meeting [1]. This fact suggests that elections are an important process, through the implementation of which the people participate in the governance of the state. This is confirmed by Article 33 of the Basic Law of the country – the Constitution of the Republic of Kazakhstan, which states that citizens of the Republic of Kazakhstan have the right to participate in government directly and through their representatives [2], as well as to carry out other actions provided for by the norms of this article. The right to participate in the governance of the State is expressed by the direct participation of citizens in the republican referendum, and the exercise of their rights to elect and be elected to state and local government bodies. The participation of citizens in public administration through their influence on the activities of authorities, the exercise of power at the local level, the involvement of citizens in the process of making public decisions – all of the above is an important tool for the democratization of the state and the further building of a strong civil society. Therefore, we consider it necessary to address issues on further improvement of the electoral system of our state already in the conditions of a pandemic and with the restrictions faced by citizens in most countries of the world. It is also advisable to review some aspects of electoral

legislation in order to democratize the electoral process and increase the competitiveness of the Republic of Kazakhstan.

Research methods

The methodological basis of our research was general scientific methods of cognition, as well as analytical-systemic, formal-legal, logical and other research methods were used, which made it possible to comprehensively analyze the electoral system of the Republic of Kazakhstan within the legal field.

No scientific research takes place without philosophical worldview approaches – universal methods of cognition - dialectics or metaphysics. We are all aware that the dialectical approach proceeds from the position that all phenomena of the surrounding reality are interconnected. Cognition of one phenomenon cannot occur without taking into account the influence of other phenomena on it. Similarly, in our study, a dialectical approach to cognition of the electoral system of the Republic of Kazakhstan is applied, in which causal relationships are established: how the development of public relations in the field of elections affects the improvement of the electoral system as a whole. In this case, the dialectical method is applied in terms of defining the concept of elections as a phenomenon of objective reality.

In the course of the research, the author applied general scientific methods of cognition, such as: analysis and synthesis, induction and deduction, comparison, abstraction.

In order to comprehensively analyze the improvement of the electoral system of the Republic of Kazakhstan in the conditions of a pandemic, I have undertaken an analysis of the legislation of the Republic of Kazakhstan and the legislation of foreign countries, as well as the content of research materials of Kazakhstani other scientists, specialists in the field of constitutional (electoral) law. Thus, the methodological foundation of the research was general scientific methods of cognition, formal-legal, analytical-system analysis, comparison, and logical research methods.

Methods of analysis and synthesis were used in the study of various phenomena of reality in the electoral system, relevant materials in substantiating conclusions. The use of deductive and inductive methods made it possible to analyze the functioning of the electoral system, structure it according to its elements and assess the impact of one element of the electoral system on the development of the electoral system as a whole. For example, by analyzing the legislation in the field of elections, it was found that changing certain requirements for political parties (reducing the number of party members during registration) will lead to the development of a multiparty system in the Republic of Kazakhstan.

In addition, studying foreign experience in the course of the study, the comparison method revealed positive aspects in terms of the development of election campaigning and, thanks to this, the necessary recommendations are given to consider the application of international experience in Kazakhstan.

Systematic methods were also applied, which allowed studying the legislative bases of elections, in particular the last elections of deputies of the Majilis of the Parliament and maslikhats of the Republic of Kazakhstan, while defining the main criteria of the electoral process. Based on the application of this system method, some elements in the field of elections were considered as part of the electoral system as a whole.

Formal legal and logical methods were used to study normative legal acts regulating both the election procedure of individual candidates and the participation of political parties in the electoral process.

Formal legal and comparative legal methods were used for the study and interpretation of normative legal acts, definition of legal concepts, for comparison of normative legal acts of the Republic of Kazakhstan with each other and with international normative legal acts.

Using these methods made it possible to comprehensively and in detail investigate the object, conduct a generalizing effective analysis of theoretical, practical and legal material, as well as develop proposals and recommendations for improving the current electoral legislation of the Republic of Kazakhstan.

Discussion

Let's start discussing the problem of improving the electoral system and electoral legislation in the context of a pandemic with the last elections of deputies of the Parliament and maslikhats of the Republic of Kazakhstan. These elections were regular, that is, based on the implementation of Article 51 of the Constitution of the Republic of Kazakhstan, which stipulates that regular elections are held no later than 2 months before the end of the term of office of the current composition of the Majilis [2]. Due to the expiration of the term of constitutional powers, despite the pandemic, elections were scheduled for January 10, 2021. Thanks to the constitutional reform carried out in 2007, the elections of 98 deputies of the Majilis of the Parliament are carried out according to the proportional electoral system according to party lists (on the basis of universal, direct, equal suffrage, taking into account the secrecy of voting). As a rule, analyzing the proportional electoral system, it should be noted that in ten of the twelve countries of the European Union (except the French Republic and the United Kingdom of Great Britain and Northern Ireland), this electoral system is used. This largely defines advanced Western European democracy as a party democracy. The proportional system is considered more democratic, allowing to take into account the political sympathies of the people. In addition, the proportional system initiates a multi-party system, creates suitable conditions for the work of minor political parties [3]. Observing the evolution of the formation of the electoral system in the Republic of Kazakhstan, we note that this innovation served as a definite step towards building a multi-party system in the Republic of Kazakhstan, which guaranteed the participation of various political forces. And multiparty system, as we know, is an important component of a democratic state.

It is widely known that the elections during the pandemic, due to the restrictions imposed on social contacts between people, forced political parties to come up with new ways of campaigning before the elections, which had to conduct campaigning programs online and through social

networks. So, in one of his speeches, German expert on communication Frank Brettschneider gives a legal assessment, saying that campaigning on the Internet gives advantages to leading and large parties that have the opportunity to promote their program by all possible means. However, it is difficult for minor parties to compensate for these advantages with increased volunteer activity [4]. In addition, the experience of our neighbors of the Republic of Kyrgyzstan is very relevant in terms of campaigning for the election campaign: namely, before the scheduled elections of members of Parliament, Internet broadcasting in live broadcasts of social networks was widely spread, well-known bloggers of Kyrgyzstan promoting the programs of political parties were involved. However, this requires a lot of money, which not everyone can afford. Also, online discussions were held by parties, in which users of social networks were actively involved, thereby representatives, organizers of discussions created the desired information field that guides and forms the necessary opinion of society [5]. Due to some restrictions that not only citizens, but also political parties faced during the election and election campaign, we consider it necessary to create conditions for parties during the pandemic, thanks to which the competition would take place «in an online format», in the media, as well as on the Internet. We propose to legislate the procedure for passing election campaigning online and other procedures, including online voting of citizens in elections, as well as voting using postal services and so on.

The conducted research on the problems of improving the electoral system in the context of a pandemic as a factor of increasing the competitiveness of the Republic of Kazakhstan is becoming more pronounced is relevant and requires the necessary study within the legal framework. In this regard, it is necessary to consider and give a legal assessment of the normative legal acts regulating issues in the field of elections. For example, before the start of the elections of deputies of the Majilis and local representative bodies, the Resolution of the CEC of the Republic of Kazakhstan dated December 4, 2020 on election procedure issues gained wide resonance.

Analyzing resolution above, we will focus on the main points. Firstly, the powers of observers enshrined in the Constitutional Law «On Elections» were limited by this legal act. Every citizen knows that the role of observers in the electoral process is great, as only their quality work depends on whether the elections will be competitive and free. In addition to national observers, there are also observers of international states and organizations that take part in the electoral process and, based on their experience, carry out observation, as well as participate in the conduct of elections. It is important to note that the participation of international observers increases the authority of Kazakhstan in the international arena. Also, such cooperation has a positive effect on the system of election campaigns and, thanks to the exchange of experience at the international level, the principles of election legitimacy are observed [6]. However, after the elections, the European Parliament adopted a resolution regarding our state, which says about small errors and the introduction of a number of restrictions on the rights of citizens of the Republic of Kazakhstan [7]. At the same time, according to the EEU, the high effective organization of the last parliamentary elections in Kazakhstan in the conditions of the pandemic was noted. Following the results of election observation, one of the international observers of Italy noted the high voter turnout on the day of voting and the excellent organization of the security of the electoral process [8]. In addition, according to the observation of the European Parliament, the elections of deputies of the Majilis of the Parliament and deputies of maslikhats in the Republic of Kazakhstan were demonstrated in the form of successful implementation of reforms in the field of political activity with elements of modernization [9]. We believe that the comments demonstrated by the European Parliament in the resolution will be taken into account and small errors will be eliminated during subsequent election campaigns, and positive statements by international observers increase the level of competitiveness of Kazakhstan in the international arena.

We consider it necessary to take into account the recommendations of international states

Table No 1

№	Name of the political party	Number of votes	Percentage ratio	Number of mandates
1	Public Association «Nur Otan Party»	5 148 074	71,1%	76
2	Public Association «Democratic Party of Kazakhstan «Ak Zhol»	792 828	10,95%	12
3	Public Association «People’s Party of Kazakhstan» (ex. Communist People’s Party of Kazakhstan)	659 019	9,1%	10
4	Public Association «People’s Democratic Patriotic Party «Auyl»	383 023	5,29	0
5	«Political party «ADAL»	258 618	3,57	0

and take into account for holding open and fair elections in future election campaigns. By all efforts, including the adoption of a number of amendments and additions to the legislation on elections in the Republic of Kazakhstan, our state will promote the conduct of elections in accordance with international standards. We consider it is possible to take into account the recommendations of international observers and experts in the field of election campaigns and take measures to further improve the electoral system of the Republic of Kazakhstan.

Having considered another normative act adopted during the pandemic - the Resolution of the Central Election Commission of the Republic of Kazakhstan, I would like to note that the Resolution refers to the consideration of observers as representatives of legal entities (political parties, public associations, organizations, and so on). In addition, legal entities that send their observers carry out activities in accordance with the constituent documents. Based on this, it follows that national observers, as representatives of organizations, should prescribe the statutory purpose in the constituent document of election observation. The analysis of the Resolution makes it possible to conclude about a certain restriction of the freedoms and rights of legal entities to use their political rights [10]. In this connection, the country’s observers were unable to fully exercise their rights and participate in free elections.

Secondly, during the elections held on January 10, 2021, changes were also made that restrict photo and video filming during the observation

process. Thus, the resolution stipulates that video broadcasting can only be carried out by the mass media, which is not included in the circle of rights of observers, their function is to monitor the voting process. However, in accordance with art. The resolution of the CEC of the Republic of Kazakhstan provides that photo and video recording can be made only with the permission of an election participant, from a place (angle) specified by precinct election commissions and taking into account the secrecy of personal data. We believe that this provision carries some restrictions in the activities of observers, since in accordance with paragraph 2 of Article 20 of the Constitution of the Republic of Kazakhstan dated August 30, 1995, «everyone has the right to freely receive and disseminate information in any way not prohibited by law» [2]. In this regard, we consider it necessary to reconsider the issue of restrictions on the rights of observers, because the transparency and impartiality of elections depend on how monitoring is carried out.

As a result, already 5 parties participated in the elections held on January 10, 2021, we will conduct a small comparative analysis in the form of a table from below:

From Table No. 1, we see that according to the results of the elections, the 7% (seven percent) barrier established by the legislation was overcome and passed by three factions: «Nur Otan Party» (71.1%), «Ak Zhol Party» (10.95%), the People’s Party of Kazakhstan (9.1%) [11]. Accordingly, we can confidently talk about the emerging multiparty system, which will allow us

to cover the opinions and will of a wide range of people in the Republic of Kazakhstan. As you know, a multiparty system is a condition under which civil society and the rule of law interact, and it means not only a multitude of parties, but also their interaction in the process of power struggle, their participation in the management of state affairs. The only drawback in these elections was the lack of competition with the participation of the opposition party, and, as you know, the opposition is a political party represented in the Majilis of Parliament, which takes a different position on social and political issues than the parliamentary majority [12] and thanks to their participation, the elections are really considered competitive and fair. After all, the opposition expresses the opinion of the people, to raise issues of concern to the entire population of the country.

Although the legislative base of our state is being improved every time, as well as all actions taken should be aimed at developing the party field. However, the demands placed on political parties lead to some complications in its creation. For example, the latest law «On Political Parties» establishes requirements for the state registration of a political party: namely, it «must have at least twenty thousand party members representing party branches in all regions, cities of republican significance and the capital, numbering at least six hundred party members in each of them» [13]. We consider it possible to amend paragraph 6 of Article 10 of the Law of the Republic of Kazakhstan «On Political Parties» in terms of reducing the number of party members from 20 thousand to 10 thousand. This innovation will lead to an increase in the number of parties. In addition, at the legislative level, to allow political parties to establish their branches not in all regions, but in at least two-thirds of all regions of cities of republican significance and the capital, that is, to reduce and amend the requirements of paragraph 6 of Article 10 of the above-mentioned Law. Thus, proposals to reduce the number of citizens to register a political party will contribute to the development of civil society institutions, strengthen the role of political parties in the electoral process and in the

life of society and the state. Changes in terms of reducing the number of party members and the creation of branches of political parties not in all regions, as established at the legislative level, but to reduce the requirement to at least two-thirds of all regions in cities of republican significance and the capital will contribute to the democratization of the procedure for creating political parties, which will lead to a significant increase in the number of parties in the Republic of Kazakhstan, thereby expanding the representation of social strata in the legislative body - the Parliament of the Republic of Kazakhstan.

The electoral system of the Republic of Kazakhstan is being improved every time, and the legislation in the field of elections is being changed in order to improve the electoral process and increase the level of democratization of the state. So, in September 2020, the Head of State, speaking with a message to the people of Kazakhstan, spoke in favor of the direct election of akims of cities of district significance, rural districts, towns and villages that are not part of the rural district. Thus, the adopted Constitutional Law of the Republic of Kazakhstan dated May 24, 2021 «On amendments and additions to the Constitutional law of the Republic of Kazakhstan «On elections in the Republic of Kazakhstan» and the Law of the Republic of Kazakhstan «On amendments and additions to some legislative acts of the Republic of Kazakhstan on election issues» determined the direct electability of akims of cities of district significance, rural districts, towns and villages by including the whole 13-1 chapter. In this case, the participation of the above-mentioned akims is carried out by nomination from political parties and as self-nominees who have received 1% of the votes. We believe it is possible to reconsider the issue of collecting 1% of signatures for self-nominees, due to the fact that they are already well acquainted with the local population (village) live by the aspirations of the people of this region. Basically, practice shows that there is a lot of formalism, and no one will conduct a handwriting examination for their compliance. Moreover, this procedure takes a lot of time from the electoral authorities, which is also not fully justified. It is also necessary in order

to bring both nominees from political parties and self-nominees into more equal conditions.

In addition, the Constitutional Law of the Republic of Kazakhstan «On elections in the Republic of Kazakhstan» establishes the requirements for the akim of a city of district significance, village, settlement, rural district (Article 113-2), which in our opinion is generalized and requires some disclosure. In this regard, we consider it expedient to prescribe this norm, the necessary requirement of which will be residence on the territory of the relevant administrative-territorial unit, since a citizen who has lived in the area where he is nominated as a candidate should know the problems and the current situation of this area.

These innovations will determine further steps to expand the participation of the population in solving important public issues.

Results

Based on all of the above, we consider it possible:

1. In the context of a pandemic, it would be necessary to study in more detail the practice of Germany - the possibility of free delivery of postal votes, with a view to its application in the conditions of Kazakhstan. This experience will help in terms of the lack of direct contact between people, as well as the possibility of delivery by courier on election day.

2. We consider the issue of specifying in the charter the statutory purpose of a legal entity - election observation, established in the Resolution of the Central Election Commission of the Republic of Kazakhstan «On issues of exercising the powers of certain categories of participants in the electoral process» dated December 4, 2020, controversial. Due to the fact that any legal entity as a cell of civil society has the right to participate in election observation, and the statutory purpose is the direct activity of the organization aimed at obtaining final results.

3. We consider it necessary to supplement paragraph 3 of Article 27 with subparagraph 1-1: election campaigning is carried out: «through the means of the Internet network», due to the

fact that today, during the pandemic, in order to avoid a mass gathering of people, the population has faced restrictions. And this norm allows broadcasting not only through the mass media, but also in the Internet (in online mode)

4. We consider it possible in the approved version of Article 113-2. «On amendments and additions to the Constitutional Law of the Republic of Kazakhstan «On elections in the Republic of Kazakhstan» to prescribe the requirements for the akim of a city of district significance, village, settlement, rural district in the following wording:

«Akim of a city of district significance, village, settlement, rural district may be a citizen of the Republic of Kazakhstan who has a higher education and work experience of at least two years, as well as residing in the territory of the corresponding administrative-territorial unit of the Republic, and also meet the requirements provided for by this Constitutional Law, Article 36 of the Law of the Republic of Kazakhstan dated January 23, 2001 «On local public administration and self-government in the Republic of Kazakhstan» and the legislation on public service. An important requirement in this edition is to allocate residence on the territory of the corresponding administrative-territorial unit, since a person who has lived in the region where he is nominated for candidates must own the situation and know the problems and the current situation, and the level of well-being of residents of this area.

Conclusions

Thus, we see that the elections under the conditions of the pandemic were held at the proper level, following the results of the observation by international observers of the past elections, the relevant recommendations of the countries of the international communities were received. The past elections for our country were a certain experience in terms of organizing the election procedure under quarantine measures, as well as the need to exclude social contacts between citizens of the country as much as possible. We believe that the shortcomings

indicated by international organizations will be eliminated in future election campaigns and the recommendations of international countries will be taken into account. To build a competitive democratic state with a high-quality electoral system, we must meet all the requirements established in the world community.

Therefore, based on the above, we believe that the research in the field of improving the electoral system is relevant, timely, and requires further decisions (changes). Due to the past elections and the existing contradictions, it is necessary to carry out reforms aimed at further modernization

of the country, democracy, and stability. Based on the positive experience of foreign countries, it is necessary to intensify efforts to reform the political system of Kazakhstan in order to develop the multiparty system and expand civic participation in the public administration of the country. And the further development of civil society institutions and the electoral system of the Republic of Kazakhstan, which contributes to the formation of democratic state authorities, will lead to an increase in the national competitiveness of our state, including in political and other spheres.

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Өткізілген сайлауды ескере отырып, пандемияның Қазақстан Республикасының сайлау жүйесі мен сайлау заңнамасын жетілдіру мәселелері

Аңдатпа. Мақалада пандемия жағдайында Қазақстан Республикасындағы сайлау жүйесін жетілдірудің өзекті мәселелері қарастырылады, өткен Парламент Мәжілісі депутаттарының және Қазақстан Республикасы мәслихаты депутаттарының сайлауына қысқаша сипаттама беріледі. Сайлау саласындағы мәселелерді реттейтін нормативтік-құқықтық актілерге құқықтық баға беріледі, оның ішінде сайлау рәсімі мәселелері бойынша ҚР Орталық сайлау комиссиясының 2020 жылғы 4 желтоқсандағы Қаулысына талдау жүргізілді. Аудандық маңызы бар қалалар, ауылдық округтер, кенттер мен ауылдар әкімдерінің тікелей сайлануына байланысты енгізілген өзгерістер бөлігінде «Қазақстан Республикасындағы сайлау туралы» Қазақстан Республикасының Конституциялық Заңына қысқаша талдау жүргізілді. Бұдан басқа, өткізілген сайлау компанияларының қорытындылары бойынша қабылданған Еуропалық Парламенттің қарары және онда көрсетілген ұсынымдар қаралады. Автор басқа шет мемлекеттердің тәжірибесін талдай отырып, сайлау алдындағы үгіт мәселелері бойынша өзінің көзқарасын ұсынады. Мақалада кандидаттар мен саяси партиялардың үгіт жүргізу мәселелері бойынша халықаралық тәжірибенің мысалдары келтіріледі. Жалпы сайлау институтын жетілдіру және бәсекеге қабілетті мемлекет құрудың шарттарының бірі ретінде көппартиялықты дамыту жөнінде қажетті ұсыныстар беріледі. Осыған байланысты, монографиялық зерттеулер мен нормативтік-құқықтық актілерді зерделеу негізінде пандемия жағдайында сайлау заңнамасын және жалпы сайлау жүйесін жетілдіру жөнінде нақты ұсыныстар ұсынылды.

Кілт сөздер: сайлау жүйесі, сайлау, партиялар, бақылаушылар, көппартиялық жүйе, оппозиция, демократияландыру.

Жалпы сайлау институтын жетілдіру және тиімді сайлау жүйесі бар дамыған, бәсекеге қабілетті мемлекет құрудың шарттарының бірі ретінде көппартиялықты дамыту жөнінде қажетті ұсыныстар беріледі.

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Влияние пандемии на совершенствование избирательной системы и выборного законодательства Республики Казахстан с учетом проведенных выборов

Аннотация. В статье рассматриваются актуальные проблемы совершенствования избирательной системы в Республике Казахстан в условиях пандемии, дается краткая характеристика прошедших выборов депутатов Мажилиса Парламента и депутатов маслихата Республики Казахстан. Дается правовая оценка нормативно-правовым актам, регулирующим вопросы в сфере выборов, в том числе проведен анализ Постановления Центральной избирательной комиссии РК от 4 декабря 2020 года по вопросам избирательной процедуры. Проведен краткий анализ Конституционного закона Республики Казахстан «О выборах в РК» в части внесенных изменений по поводу прямой выборности акимов городов район-

ного значения, сельских округов, поселков и сел. Кроме того, рассматриваются резолюция Европейского парламента, принятая по итогам проведенных избирательных компаний, и рекомендации, указанные в ней. Автор предлагает свое видение по вопросам предвыборной агитации, анализируя опыт других иностранных государств. В статье приводятся примеры международного опыта по вопросам ведения агитаций кандидатами и политическими партиями. Даются необходимые предложения по совершенствованию института выборов в целом и развитию многопартийности как одними из условий в построении развитого, конкурентоспособного государства с эффективной избирательной системой. В связи с этим, на основе изучения монографических исследований и нормативно-правовых актов, были выдвинуты конкретные предложения по совершенствованию выборного законодательства и избирательной системы в целом в условиях пандемии.

Ключевые слова: избирательная система, выборы, партии, наблюдатели, многопартийная система, оппозиция, демократизация.

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