

Analysis of electoral systems used in the election of deputies of the Parliament of the Republic of Kazakhstan

Abstract. *The article is devoted to the analysis of electoral systems during the election of deputies to the Mazhilis of the Parliament of the Republic of Kazakhstan. Based on the study of the laws of the Republic of Kazakhstan, many normative legal acts regulating the election procedure in Kazakhstan, the author conducted a study of the evolution of electoral legislation. The Constitution of the Republic of Kazakhstan of August 30, 1995, and the constitutional law of the Republic of Kazakhstan on elections have undergone significant changes, which are associated with the process of democratization of the political system and the gradual transition from the majoritarian electoral system to a proportional system of elections of deputies of the Mazhilis of Parliament. In the article, the author, relying on the study of monographic literature, the experience of foreign countries, conducts a study of the features of the proportional electoral system. The author reveals the differences between open and closed types of a proportional system, which depends on the methods of forming party lists, as well as the possibilities of voting by voters considering different forms of party lists. In the article, the author gives his vision of improving electoral systems during the election of deputies to the Parliament of the Republic of Kazakhstan.*

Keywords: *electoral law, electoral system, majority electoral system, proportional electoral system.*

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Introduction

In a modern democratic state, the core of constitutionalism is undoubtedly the fundamental value of democracy. The main criteria that determine the true democracy of each country are the fundamental rights and freedoms of the individual enshrined in the constitution, guarantees of his protection from arbitrariness and lawlessness. Therefore, from the first days of independence, the Republic of Kazakhstan has proclaimed a strategic course towards building a legal state and civil society. At present, the idea of a "hearing state" is being actively pursued. Providing an effective mechanism for the implementation of human

rights and freedoms today is one of the priority directions of both domestic and foreign policy of the country. The President of the Republic of Kazakhstan in his speeches repeatedly emphasizes the importance of compliance and full implementation of constitutional human and civil rights and freedoms in all spheres of society and the state. So, in the message to the people of Kazakhstan in 2020 «Kazakhstan in a new reality: time for action»

K.K. Tokayev noted: "The main goal of the reforms is to increase the efficiency of the functioning of the entire state. If we want to improve the lives of our citizens, then we should involve them in the reform process. Our subsequent political reforms should be aimed at

a wider involvement of people in governing the country" [1].

Some political rights enshrined in the basic law of the state are exercised by citizens through their participation in the electoral process in the formation of representative and executive bodies of state power, as well as local self-government with the use of active and passive suffrage.

It should be noted that in the modern world, every democratic state already having its own experience, as well as relying on the experience of past years, strives to open new opportunities for improving the institutions of democracy in the realities of today. Undoubtedly, one of the most important institutions of democracy on which public consent and political stability, success in the country and foreign policy, as well as universal international recognition, in general, depend, is the institution of legitimate elections.

Not only the very fact of holding free democratic elections is considered important, but also the process itself, as well as the system of their holding. It is unambiguous that a specific legal result, including the election results, is achieved by a whole set of legal facts, which, forming a certain system, ensure the consistent movement of participants in the process towards a given goal. Elections to government bodies are carried out according to the rules established in each society - electoral systems. The choice of a particular electoral system depends on many circumstances. This is the current political situation, the number of parties, and political tradition. Each state forms its electoral system, like the already known types, but still differing in nuances and details.

The main goal of this study is to carry out a comprehensive theoretical analysis of electoral systems, using the comparative-legal method and other methods of scientific knowledge. The main tasks of the author are to identify their advantages and disadvantages, coupled with the problems of exercising the electoral rights of citizens in the election process, as well as in the development of theoretical recommendations and proposals for resolving the existing problematic aspects in the field of electoral legal relations, the procedure for holding elections of deputies of the Mazhilis of

the Parliament of the Republic of Kazakhstan and their legal regulation.

Target

The purpose of this study is to determine the objective parameters of the electoral systems used in the election of deputies to the highest representative body of the Republic of Kazakhstan, to analyze the electoral legislation governing the procedure for the election of deputies to the Mazhilis of the Parliament of the Republic of Kazakhstan.

Setting goals

To achieve the goal of the study, the task was set to analyze the Constitution of the Republic of Kazakhstan and the constitutional laws of the Republic of Kazakhstan in the process of their evolution, to conduct a comparative legal analysis of changing legislation to identify their adequacy to modern realities, to study foreign experience in this direction to improve the electoral system of Kazakhstan.

Research methods

In writing this article, the methodological foundation was provided by general scientific methods of knowledge, as well as specific sociological methods based on knowledge, analysis and classification of facts, phenomena, and processes including the documentary method. In addition, analytical, systematic, formal, logical, and other research methods have been used to analyze in a comprehensive manner the system of legal regulation and application of electoral systems in the formation of State authorities.

Results and discussions

The question of the study of electoral systems, despite numerous scientific publications by domestic and foreign scholars, is still topical. This is due to the abundance of similar yet divergent academic and political opinions on the concept of the electoral system, its operating conditions, and the impact of the application of different types of electoral systems on the development of statehood. According to the authoritative Kazakh

scientist E.B. Mukhamedzhanov, «the electoral system must be understood as the procedure for holding elections and determining their results based on electoral law» [2, 25 p.]. A similar point of view is taken by A.N. Sagindykova, who believes that «all these actions, including voting day, are covered by the concept of «election company». It is organized and conducted according to certain rules and principles established by law. All these principles constitute the electoral system» [3, 42 p.]. An analysis of the views of Russian and Kazakh scientists revealed that there were similar views that coincided with those of domestic scientists. A renowned scholar in the field of constitutional and electoral law, S.A. Awakyan, in his writings, defines the electoral system as follows: «The electoral system means the actual procedure for the preparation and conduct of elections of deputies and elected officials of state power and local self-government in the state» [4, 84 p.].

The most frequent disputes arising in legal science and the political environment raise questions of the application and functioning of certain electoral systems by the state in the process of forming elected bodies of state power.

In the modern world, many varieties of electoral systems are recognized, but most often states use the main two types: proportional and majoritarian, together they create a mixed electoral system, which is also actively used in various countries. It should be noted that each of the given electoral systems has several advantages and disadvantages, and it is natural that the search for an optimal electoral system for the state is always extremely difficult. The electoral system in each country is created, depending on how you understand the interests of individual political parties and society in general, and whether it complies with existing political concepts and traditions.

Thus, we can say that the electoral system is a political and legal institution that ensures the continuity and reproduction of state power and local government and self-government by democratic technologies and procedures, institute political and legal criteria for the legalization of the free expression of the will of public of the

rule of law in the electoral process, considering the attention of the multiparty system and philosophical pluralism supported on suffrage.

After gaining sovereignty in Kazakhstan, and, incidentally, as well as before other post-soviet states, the problem of choosing an electoral system for the formation of state authorities arose. It should be noted that at the initial stage of the formation of statehood in many countries of the post-Soviet period, the previously used majority system of absolute majority remained. The further development of Kazakhstan's statehood actualized the issue of the need to gradually introduce the use of first a mixed electoral system in the election of deputies of the lower house of Parliament, and then a transition to a fully proportional electoral system for electing deputies of the Mazhilis of the Parliament of the Republic of Kazakhstan.

The constitutional development of Kazakhstan is not something frozen, dogmatic, determined once and for all. It seems that this is a permanent state necessary for the construction of a legal statehood, in this connection, in our opinion, the formation of a modern electoral system in Kazakhstan, operating in relation to the elections of parliamentary deputies, is closely related to a period of significant changes and transformations in the state. Consequently, the initial stage was the adoption by a popular referendum on August 30, 1995, of the Constitution of the Republic of Kazakhstan and the consolidation of important provisions on the introduction of a bicameral Parliament into the system of government. One of the chambers of the professionally acting Parliament is the Mazhilis, whose deputies were elected based on universal, equal, and direct suffrage by secret ballot. And the upper chamber is the Senate, whose deputies were elected by indirect suffrage by the deputies of the Maslikhats of regions, cities of republican significance, districts, and cities [5].

Of course, the adoption of the new Constitution of the Republic of Kazakhstan entailed a series of changes in the political and institutional system, which led to the reorganization of the previous electoral system and electoral legislation in general. The main legislative act regulating and

fixing legal relations in the field of electoral law, the process, and application of the electoral system of that time was the Decree of the First President of the country N.A. Nazarbayev, having the force of constitutional law, «On elections in the Republic of Kazakhstan» dated September 28, 1995 [6]. In accordance with this regulatory legal act, a two-round majority system of the absolute majority was established for all categories of candidates. Particularly noteworthy was the fact that during that period, citizens actively exercised their passive electoral right, taking part and nominating themselves as self-nominated candidates. It should be noted that the exception was the formation of local self-government bodies, the candidates for which were elected based on a relative majority according to the majoritarian system, in contrast to the lower house of parliament. So, in the history of independent Kazakhstan, after the adoption of the Basic Law of the country by popular vote on August 30, 1995, the first elections of the professional Parliament of the Republic of Kazakhstan of the first convocation were held on December 9, 1995, which now consists of permanent deputies.

Since the greatest scientific interest in this study for us is caused by the historical and legal aspects of the formation of the lower house of parliament of the Mazhilis, it should be noted that 67 deputies were elected by direct voting in single-mandate constituencies formed considering the administrative-territorial division of the Republic and with an approximately equal number of voters.

Thus, in the elections of deputies to the Mazhilis of Parliament of the first convocation in 1995, a majoritarian electoral system of the absolute majority was applied, since in the elections the winner was the candidate who received 50% and 1 vote in the first round of voting or the largest number of votes in the second round of voting, if the winner was determined in the second round.

Amendments to the electoral legislation in 1998 marked the next stage in the reform of the electoral system for the lower house of parliament. Thus, the implemented reforms affected the change from a full majority electoral system to a mixed electoral system. As noted

earlier, a mixed electoral system implies the simultaneous application of the majority and proportional systems. Under such a system, representatives from political parties and representatives of territories can be present in the legislative body. A voter votes both for a party list and for a specific candidate nominated in a specific territory. At this stage, the number of Mazhilis deputies increased to 77 deputies, while 67 deputies were still elected in single-mandate constituencies, and 10 candidates were now elected according to a proportional electoral system, that is, according to party lists. This was the beginning of a gradual transition to a proportional system of elections to the Mazhilis. Accordingly, according to these rules and this mixed electoral system, regular elections to the lower house of the highest representative body of the Republic of Kazakhstan were held in 1999 and 2004.

The peculiarity of this stage of transformation of the electoral system was the innovations in the electoral mechanism, which consisted in the transition to a mixed majority-proportional system of elections to the Mazhilis. This changed the principle of forming the deputy corps of the lower house of Parliament. Changes and amendments to the Constitution of the Republic of Kazakhstan and the legislation on elections made it possible to expand the degree of individual and party participation in the next elections to the country's parliament. The current electoral system has provided an opportunity for the main participants in the electoral process to widely use a variety of electoral technologies.

The gradual modernization of the legislation on elections in the Republic of Kazakhstan, bringing it in line with norms and international standards, gives a further impetus to improve democratic institutions, therefore, the adoption in 2007 of qualitatively new changes in the electoral system is very justified and timely. During this period, not only the electoral system has changed, but also the quantitative composition of the lower house of Parliament, it increased to 107 deputies.

The fundamental innovation that led to a serious transformation of the entire electoral

system in relation to the formation of the Mazhilis of Parliament was the transition from a mixed to a proportional system based on party lists, providing for the creation of a single electoral district. It is known that when using the proportional system, citizens vote for party lists, which, in turn, in a world practice are divided into two types: open and closed. In some countries, voters are given a choice: to vote for the entire party list or for a specific candidate or candidates. Such party lists are called open lists or free lists.

The rule of «free lists» allows a voter who voted for the entire list to express his attitude towards candidates by putting his preferences against their names in numbers or in some other way, i.e., indicate whom he wants to see elected in the first place, whom in the second, etc. Such rules are in force in Sweden, Austria, Switzerland, Denmark, Japan, and some other countries, when a voter, through open lists, votes for specific persons, despite having a party-list [7; 56].

With closed lists, the voter has no influence on the composition of the party's representation. With closed lists, the party initially prioritizes candidates: the first candidates at the top of the list receive mandates. At the same time, the voter is deprived of the opportunity to determine his attitude towards candidates, since he votes for a party, and not for a specific candidate. A voter may not give his vote to an unacceptable candidate at the head of the list, only by voting against the entire party, if such a choice is provided for in the electoral system of the state.

In Kazakhstan, the election of 98 deputies to the Mazhilis of Parliament is carried out according to the system of closed party lists. Political parties compile lists for the territory of a single nationwide constituency in alphabetical order. The inclusion in the party list of persons for election to the Mazhilis deputies is made by a majority vote of the total number of members of the supreme body of a political party, and they are not entitled to include in them persons who are not members of this political party.

Only one list from one political party with the number of candidates not exceeding the established number of deputy mandates,

distributed among political parties by thirty percent, is allowed for registration. Thus, voters vote for political parties, and not for specific candidates for deputies since the principle of closed lists is in effect. Voters choose this or that party, having no idea who will exactly enter the Parliament. The mechanism of inclusion in party lists remains unclear for the bulk of voters.

When holding elections to the lower house of the Parliament of the Republic of Kazakhstan, the voter is given a ballot in which he puts any mark in an empty box to the right of the name of the political party for which he is voting (clause 2 of article 42 of the Election Law). Thus, a voter votes for the party as a whole and does not have the right to vote for a particular candidate. Further, according to the results of voting on party lists, as follows from clause 5 of article 97-1, deputy mandates are distributed according to the sequence determined by the governing body of a political party from among the candidates included in the party list [6]. If the governing body of the party does not carry out distributions on time, the CEC distributes mandates according to the list of candidates provided to it, i.e., by alphabetical listing of the names of candidates.

Also, with the introduction of amendments and additions to the legislation in 2021, the possibilities for political parties to participate in the work of election commissions were significantly expanded. Political parties that do not have a representative in the election commission received the right to delegate their representative with an advisory vote for the period of preparation and conduct of the election campaign, who is endowed with all the rights of a member of the election commission.

Unusual and incapable of analogs in world practice, was the fact that the election of 9 candidates for the deputy corps of the Mazhilis of the Parliament, the Assembly of the People of Kazakhstan, was introduced into the specifics of the Kazakh electoral system. It should be continued that at this stage the changes in the reforming of the legislation did not end, but on the contrary continued with an even deeper introduction and strengthening of the

proportional electoral system in the elected bodies, both the highest representative bodies of power and local ones.

So, in 2018, the Parliament approved amendments to the constitutional law «On elections», securing the right for political parties to nominate candidates for deputies of the Maslikhats, elected by party lists and completely excluding the participation of self-nominated candidates in elections. Inclusion in the party list of persons for election as a deputy of the Maslikhat of the corresponding administrative-territorial unit is made by a majority vote of the total number of members of the supreme governing body of the corresponding branch (representative office) of the political party. Political parties do not have the right to include in party lists persons who are not their members. At this stage, it remains for us to state the fact of the transition of the formation of the lower house of Parliament and local representative bodies to a proportional electoral system.

After analyzing the opinions of various authors on the application of the proportional electoral system in the formation of the Mazhilis, its positive and negative aspects are revealed. As the merits of S.Z. Zimanov emphasizes that “during the elections, it is not the candidates for deputies who are assessed, but the programmatic goals of political parties that they will represent if they are elected to the Parliament” [8, 29]. A similar point of view is shared by I.A. Starostin, noting the more democratic nature of this system and the possibility of effectively representing political group interests in the legislative body, i.e., in his preference, the voter is guided by the programmatic guidelines of the political party, and not only by the personal characteristics of the candidates. At the same time, as obvious shortcomings of the proportional electoral system, she points to the possibility of candidates not always known, competent, and not always desirable for the voter, the excessive politicization of the deputy corps, as well as a relatively high number of invalid ballots [9, 209]. In our opinion, the use of the proportional electoral system in the Republic of Kazakhstan in the existing view in the

realities of today, undoubtedly, requires a revision of its application. Firstly, in terms of using closed party electoral lists and voting «blind» for a party, not being able to vote for a certain candidate from the list in the future. Secondly, now, the legislator has completely ruled out the participation of non-partisan citizens in the exercise of their passive electoral right by nominating representative government bodies that are formed according to a proportional system and depriving them of the right to self-nomination.

It is necessary to note the positive tendencies in the reforms of the electoral legislation of today, which undoubtedly have a positive impact on the further development of democratic institutions of the state and society. The main direction of all innovations introduced to the constitution and electoral laws should be their democratization and adaptation to the task of forming a mechanism of state administration based on political institutions. Among other measures, this can be achieved by the broader participation of political parties and public associations in this process. For example, the recent elections in 2021 showed quite positive results with the introduction of such innovations as primaries (using online voting), which is one of the models of the electoral process in democratic countries, such mechanisms of party feedback with voters as work of public receptions, active presence in social networks, organization of hotlines, the introduction of gender quotas for women and youth, etc. Thus, the competitive struggle in the intraparty elections, by analogy with the best world practices, made it possible to attract the most gifted activists with leadership qualities to the party ranks.

Conclusion

The electoral system of a sovereign Kazakhstan has undergone significant changes since gaining independence, both because of the overall transformation of the political system, and the resulting constitutional and legislative changes in the principles and mechanisms of the electoral process. In our view, the modernization and

liberalization of the electoral system in the State reflect the essence of the political changes taking place in the modern period of the development of the State. Undoubtedly, the purpose of the process of improving Kazakhstan's electoral system is to establish an effective mechanism for the formation of State bodies. The study and

analysis of the problems of the functioning and formation of the electoral system in Kazakhstan have shown that it is important not only to study electoral policy itself but also to assess the substance of transformative political changes in the current period, for the prospects of further democratization of the political system.

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Қазақстан Республикасы Парламенті депутаттарын сайлауында қолданылатын сайлау жүйелерін талдау

Аңдатпа. Мақала Қазақстан Республикасы Парламенті Мәжілісінің депутаттарын сайлау кезіндегі сайлау жүйелерін талдауға арналған. Автор Қазақстандағы сайлау рәсімін реттейтін ҚР заңдарын, көптеген нормативтік-құқықтық актілерді зерделеу негізінде сайлау заңнамасының эволюциясына зерттеу жүргізді. 1995 жылғы 30 тамыздағы ҚР Конституциясы мен ҚР сайлау туралы Конституциялық заңы елеулі өзгерістерге ұшырады, олар саяси жүйені демократияландыру процесіне және мажоритарлық сайлау жүйесінен Парламент Мәжілісі депутаттарын пропорционалды сайлау жүйесіне біртіндеп көшуге байланысты болды. Мақалада автор монографиялық әдебиеттерді, шет елдердің тәжірибесін зерттеуге сүйене отырып, пропорционалды сайлау жүйесінің ерекшеліктерін зерттейді. Пропорционалды жүйенің ашық және жабық түрлерінің айырмашылықтары анықталды, бұл партиялық тізімдерді қалыптастыру тәсілдеріне, сондай-ақ партиялық тізімдердің әртүрлі нысандарын ескере отырып, сайлаушылар-

дың дауыс беру мүмкіндіктеріне байланысты. Мақалада автор Қазақстан Республикасы Парламентінің депутаттарын сайлау кезінде сайлау жүйелерін жетілдіру туралы өз көзқарасын ұсынады.

Түйін сөздер: сайлау құқығы, сайлау жүйесі, көпшілік сайлау жүйесі, пропорционалды сайлау жүйесі.

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**Анализ избирательных систем, применяемых при выборах депутатов
Парламента Республики Казахстан**

Аннотация. Статья посвящена анализу избирательных систем при выборах депутатов Мажилиса Парламента Республики Казахстан. Автор на основе изучения законов РК, многих нормативно-правовых актов, регулирующих процедуру выборов в Казахстане, провел исследование эволюции избирательного законодательства. Конституция РК от 30 августа 1995 года и конституционный закон РК о выборах претерпели значительные изменения, которые связаны с процессом демократизации политической системы и постепенным переходом от мажоритарной избирательной системы к пропорциональной системе выборов депутатов Мажилиса Парламента. В статье автор, опираясь на изучение монографической литературы, опыт зарубежных стран, проводит исследование особенностей пропорциональной избирательной системы. Выявляются различия открытых и закрытых видов пропорциональной системы, которая зависит от способов формирования партийных списков и возможностей голосования избирателями с учетом разных форм партийных списков. В статье автор дает свое видение совершенствования избирательных систем при выборах депутатов Парламента Республики Казахстан.

Ключевые слова: избирательное право, избирательная система, мажоритарная избирательная система, пропорциональная избирательная система.

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