BULLETIN OF NATIONAL ACADEMY OF SCIENCES
OF THE REPUBLIC OF KAZAKHSTAN
ISSN 1991-3494
Volume 3, Number 379 (2019), 153 – 157 https://doi.org/10.32014/2019.2518-1467.81

UDC 342.8
IRSTI 10.15.37

D. B. Sergeev

Katanov Khakass State University, Abakan, Russia.
E-mail: sergeev_db@mail.ru

INTERNATIONAL ELECTORAL STANDARDS AND ELECTORAL LAW OF SUBJECTS OF THE RUSSIAN FEDERATION

Abstract. Research objective is the legal research of the international electoral standards applied at legal regulation of elections to public authorities of subjects of the Russian Federation.

The analysis, synthesis and legal method are applied. Contents of the Constitution of the Russian Federation, regarding use of rules of international law, international legal acts, including selective (Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, Document of the Copenhagen meeting of the Conference on human measurement of CSCE, Convention on protection of Human Rights and Fundamental Freedoms and Convention on standards of democratic elections, electoral rights and freedoms in the State Parties of the CIS), decisions of the Constitutional Court of the Russian Federation and the Russian common courts in which these bodies applied electoral laws, decisions on electoral disputes of European Court of Human Rights and works of scientists are studied.

The author analyzes the ideas that in electoral law of subjects of the Russian Federation it is difficult to find consequences of application of the international electoral standards and comes to a conclusion that as this standards are the principles, the provided statement is exaggerated.

Keywords: international electoral standards, electoral law, subjects of the Russian Federation, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference for Security and Co-operation in Europe, Convention on protection of Human Rights and Fundamental Freedoms, Convention on standards of democratic elections.

Introduction. In the Constitution of the Russian Federation 1993 there are no basic provisions concerning elections and the electoral principles. Authors of the Constitution made an exception only for the election of the President of the Russian Federation, that he is elected for four years by citizens of the Russian Federation on the basis of general equal and direct suffrage by secret ballot (Paragraph 1 of Art. 81 of the Constitution of the Russian Federation). The researcher I. Zhuravleva notes that these principles are equally obligatory for all elections in the Russian Federation. It follows from Art. 15 of the Constitution of the Russian Federation according to which universally recognized principles and norms of international law are a component of a legal system of the Russian Federation [17]. The constitutional obligation of the electoral principles (general equal suffrage at free will, obligation of periodic elections) extend to all elections in Russia by interpretation of the Constitution of the Russian Federation with reference to universally recognized principles and norms of international law [1].

Methods. The analysis, synthesis and legal methods were used in the study of the international electoral standards applied at legal regulation of elections to public authorities of subjects of the Russian Federation.

Discussion and results. As observed by the Kazakh researchers Z.K. Ayupova and D.U. Kussainov and the American scientist W. Nagan all the legal systems of the world enter into cooperation especially in relation to those objects, and in those areas of public relations. This cooperation on specific issues directly and most significant influence on the intensity of the universalization of legal systems, the convergence of

legal families and the overall intensity of legal integration [2]. The primary sources for the international standards set forth in these guidelines are various international, regional and un declarations and conventions on human rights and other relevant legal documents. the more important of these instruments include the following: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention (together with its Protocols) for the Protection of Human Rights and Fundamental Freedoms, the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference for Security and Co-operation in Europe (CSCE), the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights and the African Charter on Human and People's Rights [12]. Also, these sources of law are the most important international electoral acts. These standards have been endorsed in a series of authoritative conventions, treaties, protocols, and guidelines by agencies of the international community, notably by the decisions of the United Nations (UN) General Assembly, by regional bodies such as the OSCE, the Organization of American States, and the African Union, and by member states in the UN [5]. If electoral laws fail to meet the international standards, the electoral process will likely be marred by malpractice and irregularities [15].

The Constitutional Court of the Russian Federation extends the principle of equality on the right to elect and be elected to all public authorities and local governments irrespective of sex, races, nationalities, language and also other circumstances. In several decisions the Constitutional Court of the Russian Federation pleaded to the International Covenant on Civil and Political Rights and the Convention on Protection of Human Rights and Fundamental Freedoms [16].

At trial of electoral affairs Russian common courts appeal to international legal acts, Novosibirsk regional court established that extension of powers of the Novosibirsk regional council of deputies violates the electoral rights of citizens (provided by Art. 32 of the Constitution of the Russian Federation and also Art. 25 of the International Covenant on Civil and Political Rights of December 16, 1966 and Art. 21 of the Universal Declaration of Human Rights of 1948): the right to vote and be elected on true periodic elections. This decision of the Novosibirsk regional court is left without change by Judicial Board on Civil Cases of the Supreme Court of the Russian Federation [15].

According to Paragraph 4 of Art. 15 of the Constitution of the Russian Federation the universally-recognised norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation establishes other rules than those envisaged by law, the rules of the international agreement shall be applied because the Russian federal and regional legislators are obliged to consider the following international obligations of the Russian Federation in the electoral lawmaking:

in the Universal Declaration of Human Rights it is said that everyone has the right to take part in the government of his country, directly or through freely chosen representatives. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures. (Parts 1 and 3 of Art. 21);

The International Covenant on Civil and Political Rights reproduces that every citizen shall have the right and the opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives and to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors (the paragraphs "a" and "b" of Article 25);

in Paragraphs 5, 5.1 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference for Security and Co-operation in Europe (CSCE) of June 29, 1990 the State Parties solemnly stated that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are free elections that will be held at reasonable intervals by secret ballot or by equivalent free voting procedure, under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives;

in Protocol to the European Convention on Protection of Human Rights and Fundamental Freedoms of March 20, 1952 is established that the High Contracting Parties undertake to hold free elections at

reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature;

in the European Charter of Local Self-Government is said that local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute (Art. 3).

Universal international sources of electoral standards is also the Convention on the Political Rights of Women of December 20, 1952, the Convention on the Elimination of All Forms of Discrimination against Women of December 18, 1979, the International Convention on the Elimination of All Forms of Racial Discrimination of December 25, 1965.

One of the most volume international legal acts establishing electoral standards is the Convention on Standards of Democratic Elections, Electoral Rights and freedoms in the State Parties of the Commonwealth of the Independent States. This regional act fixes and opens the maintenance of next concepts: general, equal and direct suffrage; secret ballot; periodic, obligatory, open, public, free, genuine and fair elections; main beginnings of elections by electoral bodies and financings of elections; general order of the state information support of elections and propaganda activity; appeal and responsibility for violation of electoral rights and freedoms of citizens; status and powers of national and international observers; requirements to selective documentation; measures which should not be considered as discriminatory on elections.

Interesting sources of electoral international law is the Convention on Protection of Human Rights and Fundamental Freedoms as this act is applied and interpreted by the European Court of Human Rights. These law-enforcement acts as a matter of fact are obligatory for Russian federal and regional legislators. So, the European Court of Human Rights did not find violation of the European Convention in practice of creation of national electoral districts [8]. Though the Russian judicial practice recognizes creation of national electoral districts as illegal, however at corresponding change of the federal legislation creation of such constituencies will not contradict the international obligations of the Russian Federation.

In the Judgment of February 19, 1998 in the matter of Bowman against the United Kingdom the European Court of Human Rights recognized that, for all practical purposes, as a total barrier to Mrs Bowman's publishing information with a view to influencing the voters of Halifax in favour of an anti-abortion candidate. It is not satisfied that it was necessary thus to limit her expenditure to GBP 5 in order to achieve the legitimate aim of securing equality between candidates, particularly in view of the fact that there were no restrictions placed upon the freedom of the press to support or oppose the election of any particular candidate or upon political parties and their supporters to advertise at national or regional level, provided that such advertisements were not intended to promote or prejudice the electoral prospects of any particular candidate in any particular constituency. It accordingly concludes that the restriction in question was disproportionate to the aim pursued. It follows that there has been a violation of Article 10 of the Convention according to which everyone has the right to freedom of expression [6].

The European Court of Human Rights established by other decision that it is not any or disproportionate, and free will of the people is not interfered when choosing legislature by application of Art. 56 of Paragraph 3 of the Constitution of Greece establishing the prohibition to certain categories of public servants to the military personnel, serving legal entities of public law, state and municipal enterprises and institutions to propose the candidates in parliamentary elections and to be elected in any constituency of the country where they carried out the official duties more than three months for three years preceding elections. Moreover, these persons lose such rights even in case of their resignation before elections that it is not provided in relation to some other categories of the public servants falling under operation of Art. 56 of Paragraph 1 of the Constitution of Greece [7].

The legal position of the European Court of Human Rights that the order of pronouncement of decisions on compliance of candidates to the established requirements has to provide pronouncement of fair and objective decisions, prevention of abuses of authority from the corresponding officials, stated in the resolution of April 9, 2002 in the matter of Podkolzina against Latvia has to be a peculiar reference

point for legislators. The court considered the procedure of additional check of knowledge of a state language by candidates in Latvia which is not corresponding to this criterion and recognized that when the declarant was excluded from lists of candidates in parliamentary elections on the basis of insufficient knowledge of a state language, the provision of Protocol of the European Convention on protection of human rights was violated [9].

During the last 25 years, international human rights law has evolved considerably over the question of the best way to achieve the goal of democratic elections, and a set of criteria for democratic elections has gradually emerged based on international law, and the practice of States and inter-governmental organizations [12].

Conclusion. In jurisprudence the opinion was spoken that in in electoral law of subjects of the Russian Federation it is difficult to find consequences of application of the international electoral standards and comes to a conclusion that as this standards are the principles, the provided statement is exaggerated.

Д. Б. Сергеев

Н. Ф. Катанов атындағы Хакан мемлекеттік университеті, Абақан, Ресей

ХАЛЫҚАРАЛЫҚ-ҚҰҚЫҚТЫҚ САЙЛАУ СТАНДАРТТАРЫ ЖӘНЕ РЕСЕЙ ФЕДЕРАЦИЯСЫ СУБЪЕКТТЕРІНІҢ САЙЛАУ ҚҰҚЫҒЫ

Д. Б. Сергеев

Хакасский государственный университет им. Н. Ф. Катанова, Абакан, Россия

МЕЖДУНАРОДНО-ПРАВОВЫЕ ИЗБИРАТЕЛЬНЫЕ СТАНДАРТЫ И ИЗБИРАТЕЛЬНОЕ ПРАВО СУБЪЕКТОВ РОССИЙСКОЙ ФЕДЕРАЦИИ

Аннотация. Целью исследования является юридический анализ международно-правовых избирательных стандартов, применяемых при правовом регулировании выборов в органы государственной власти субъектов РФ.

С применением анализа, синтеза и юридического метода изучены содержание Конституции РФ, в части применения норм международного права, международно-правовые акты, включая избирательные (Всеобщая декларация прав человека, Международный пакт о гражданских и политических правах, Документ Копенгагенского совещания Конференции по человеческому измерению СБСЕ, Конвенция о защите прав человека и основных свобод и Конвенция о стандартах демократических выборов, избирательных прав и свобод в государствах-участниках СНГ), решения Конституционного Суда РФ и российских судов общей юрисдикции, в которых названные суды ссылались на данные акты, а также решения по избирательным спорам Европейского Суда по правам человека и труды ученых-юристов.

В статье приводится мнение отдельных учёных-правоведов, что в избирательном праве субъектов Российской Федерации трудно обнаружить какие-либо отзвуки международных обязательств Российской Федерации в области избирательного процесса, однако, учитывая, что международные избирательные стандарты являются нормами-принципами, то можно прийти к выводу о преувеличенности данного утверждения.

Ключевые слова: международно-правовые избирательные стандарты, избирательное право, субъекты Российской Федерации, Всеобщая декларация прав человека, Международный пакт о гражданских и политических правах, Документ Копенгагенского совещания Конференции по человеческому измерению СБСЕ, Конвенция о защите прав человека и основных свобод, Конвенция о стандартах демократических выборов, избирательных прав и свобод в государствах-участниках СНГ.

Information about the author:

Sergeev D. B., Cand. Jurid. Sci., Associate Professor, Department of State Law, Institute of History and Law, N. F. Katanov Khakass State University, Russia; sergeev_db@mail.ru; https://orcid.org/0000-0002-6120-3093

REFERENCES

[1] Alenicheva L.G. (1999) Constitutional basis of the ratio of federal and regional electoral law // Russian law journal [Zhurnal rossiyskogo prava]. 9: 9-15 (in Rus.).

[2] Ayupova Z.K., Kussainov D.U., Nagan W. (2019) Novelties in the Legal System as Motive Force of Legal Integration // News of the National academy of sciences of the Republic of Kazakhstan. Series of Social and Human Sciences. 1: 102-106. ISSN 2224-5294. https://doi.org/10.32014/2019.2224-5294.15 (in Eng.).

[3] Baimakhanova D.M., Ospanova D.A. (2018) Constitutional and Legal Consciousness as an Important Component of Constitutionalism and Its Role in the Solution of Human Rights Problems // News of the National academy of sciences of the Republic of Kazakhstan. Series of Social and Human Sciences. 5: 126-136. ISSN 2224-5294. https://doi.org/10.32014/2018.2224-5294.22 (in Eng.).

[4] Borisov I.B. (2000) International and domestic law in matters of elections. http://www.roiip.ru/public/law-in-el.htm (in Rus.).

[5] Carroll D.J., Davis-Roberts A. (2013) The Carter Center and Election Observation: An Obligations-Based Approach for Assessing Elections // Election Law Journal: Rules, Politics, and Policy. 12(1): 87-93. doi:10.1089/elj.2013.1215 (In Eng.).

[6] Case of Bowman v. the United Kingdom. Judgment of the European Court of Human Rights. https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58134%22]} (in Eng.).

[7] Case of Gitonas and others v. Greece. Judgment of the European Court of Human Rights. https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58038%22]} (in Eng.).

[8] Case of Mathieu-Mohin and Clerfayt v. Belgium. Judgment of the European Court of Human Rights. https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57536%22]} (in Eng.).

[9] Case of Podkolzina v. Latvia. Judgment of the European Court of Human Rights. https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22Podkolzina%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-60417%22]} (in Eng.).

[10] Foos V. Electoral law – the key to democracy. Evening Astana. 08/29/2013 (in Rus.).

[11] Hassan N.M. (2019) Flawed Laws, Flawed Elections: Local Elections in Pakistan // Election Law Journal: Rules, Politics, and Policy. 18(1): 1-15. doi:10.1089/elj.2017.0479 (in Eng.).

[12] International Electoral Standards. Guidelines for reviewing the legal framework of elections (2002) / Printed and bound by B. Tryckeri. Halmstad. ISBN 91-89098-88-9 (in Eng.).

[13] Mukashev R. (2002) Electoral law and democratization processes in the Republic of Kazakhstan // Policy [Sayasat]. 2: 10-17 (in Rus.).

[14] Mukhamedzhanov E.B. (2001) Electoral law of the Republic of Kazakhstan: theoretical and legal issues. Almaty: Zheti Zhargy. ISBN 5-7667-5067-6 (in Rus.).

[15] On some issues of the application by courts of the electoral law in the resolution of disputes related to the election of deputies of the State Duma of the Federal Assembly of the Russian Federation, the President of the Russian Federation, as well as to legislative (representative) and executive bodies of the subjects of the Russian Federation (1998) Bulletin of the Supreme Court of the Russian Federation. 1: 18-24; 2: 13-18 (in Rus.).

[16] The ordinance of the Constitutional Court of the Russian Federation "On the Case of Revision the Constitutionality of a part of the second Article 3 of the Law of the Orenburg Region of September 18, 1997 "About Elections of Deputies of Legislative Assembly of the Orenburg Region" of March 23, 2000 in Connection with the Complaint of Citizens G.S. Borisov, A.P. Buchnev, V.I. Loshmanov and L.G. Makhova". Russian newspaper. 04/26/2000 (in Rus.).

[17] Zhuravleva I.A. (1999) Problems of legal regulation of elections of deputies to representative (legislative) bodies of state power of subjects of the Russian Federation: Cand. Jurid. Sci. diss, Moscow Law Institute of the Ministry of Internal Affairs of Russia (in Rus.).