

## IMPLEMENTATION OF INTERNATIONAL ELECTORAL STANDARDS ON VOTER REGISTRATION IN ELECTORAL LEGISLATION: COMPARATIVE LEGAL ANALYSIS

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ABSTRACT	KEYWORDS
<p>This article examines the role and significance of international electoral standards for voter registration. The constitutional and legal guarantees of the voters of the Republic of Uzbekistan, the implementation of international electoral standards in the national electoral legislation of developed democratic states are analyzed on a legal basis. The author, on the basis of fundamental human and civil rights and freedoms, formulated the most important principles of electoral law. The basic elements of democracy, human rights and fundamental freedoms, as well as the principles of free and fair elections are revealed. The author pays special attention to the definition of such concepts as "formation of the voter list", "state system of registration (registration) of voters", "universal suffrage", "ensuring the rule of law".</p>	<p>international electoral standards, free and fair elections, universal suffrage, electoral system.</p>

### Introduction

Traditionally, attempts to cover the diversity of voter registration practices in different countries are reduced to the isolation of two sets of states, often incomparable in size, in which registration procedures have one or another common feature. For example, in one of the classifications, voter registration is characterized as public (mandatory), in the second – as personal (voluntary, optional). The criterion for this is the so-called "burden of registration" [1].

The Voter Register is a data set of all voters eligible to vote in a particular election.

The list of voters, unlike the register of voters, is a set of records of all persons entitled to vote and assigned to a particular polling station. Elections may be held without a voter register, but rarely are they held without voter lists. If the voter lists are derived from the population register or the voter register, the total number of entries in the list will be equal to the number of data in the voter register or the number of voter data in the population register.

The list of voters acts as one of the key mechanisms in the procedure for the implementation of the active electoral right of citizens, designed, among other things, to provide protection against distortion of the expression of will by means of double voting when implementing several forms of voting, and

is among the documentary factors guaranteeing the realization by a citizen of his active electoral right[2].

In most countries of the world, the duty of forming a list of voters is assigned to public administration bodies [3]. For example, in the Russian Federation, the state system of registration (registration) of voters, referendum participants is organized by the Central Election Commission of the Russian Federation together with the election commissions of the subjects of the Federation in cooperation with federal executive authorities, executive authorities of the subjects, local self-government bodies and officials of local self-government bodies using automation complexes of the State automated system "Elections".

With the help of the State system of registration (registration) of voters, participants of the referendum, the number of voters, participants of the referendum is established on the territory of the municipality, in the federal territory, on the territory of the subject of the federation, in Russia and beyond its territory, a Register of voters, participants of the referendum is formed and maintained [4]. Information about voters, participants of the referendum, entered into the state system of their registration (accounting), is updated as of January 1 and July 1 of each year. On the eve of election day, including using the State Automated system "Elections" (i.e. based on the data contained in the Register of Voters), the relevant commission draws up a list of voters. The list includes citizens who have active suffrage on the day of voting [5].

The states, as subjects of the United States of America, have significant powers in regulating the electoral process, unlike the subjects of the Russian Federation.

Article 5 of the Electoral Law of the State of New York [6] regulates the issues of voter registration and consists of the following sections: section 1 "General Conditions"; section 2 "Voter registration and Party registration"; section 3 "Party registration"; section 4 "Cancellation of registration"; section 5 "Registration documents"; Section 6 "Registration and storage of registration documents"; section 7 "Checks against fraud".

Section 1, which regulates the general conditions of registration, contains requirements for voters, as well as circumstances in which a US citizen cannot register and vote.

Three electoral qualifications are presented to voters: US citizenship, age (18 years), and residency qualification (a citizen must reside in the state, district, urban or rural settlement in which the relevant elections are held, for at least 30 days).

The peculiarity of voter registration in the States is that it is voluntary, since it involves active actions of persons entitled to vote to include them in the registration electoral documents.

There are two documents for registration of each voter in New York State: "registration poll records" and "central file registration record". The registration electoral document is sent by the election commission, in which it is kept until the day of voting, to the polling station where the voter is authorized to vote.

Between elections, it is stored in the main or other office of the election commission. The central registration document is permanently stored in the main or other office of the election commission. The Law contains a requirement for the production of these registration election documents in different colors.

The incoming voter pronounces his name and address of residence, and the election inspector checks the availability of data on such a person in the voter list.

If the name of the voter is included in the list of voters, but with an explanation that the identity of such a citizen is not fully established in accordance with the requirements of the legislation, the inspector is obliged to require the voter to confirm his identity using one of the following documents:

- 1) a driver's license or an identification card with a photo of its owner, which is not used to confirm a driver's license (non-driver photo ID card) issued by the Department of Motor Vehicles, or another valid document containing a photo of the voter;
- 2) a copy of the used invoice, bank statement, payment receipt, salary receipt or other document that contains the name and address of the voter's place of residence.

If a voter provides any of these documents, the inspector indicates this in the list of voters, and the identity of the relevant voter is considered established.

If a voter does not provide any of the provided documents, he may be allowed to vote only with the use of a ballot paper containing his written testimony, until otherwise provided in court.

Confirming his identity before voting, a voter can declare a change in his address of residence, as well as a change in his name. At the same time, the new address and the new name of such a voter are included either at the end of the voter list or in a special election document, the name of which can be designated as a report on objections drawn up in case of disagreement on election day, the meaning and basic requirements for the compilation of which will be discussed below. The previously entered address and name of the voter are not completely destroyed.

A distinctive feature of the Electoral Law of the state of New York is to provide the voter with the opportunity to vote even if his identity is not fully confirmed. The right to vote of such a voter will be established later.

First, a voter can provide a court decision requiring permission to vote.

Secondly, a voter can take an oath or sign a written statement in which he claims that he is properly registered, his place of residence is in the electoral district in which he is registered, he meets all the requirements imposed on voters, that his party affiliation corresponds to the one he claims, and also by the voter makes the assumption that his registration documents have been lost or moved to another place, that his name and signature have been omitted from the voter list.

In addition, these statements contain confirmation that the person giving them understands that any false statement made will be considered as perjury and will be punished in accordance with the law.

The voting of a voter who has given written testimony regarding those circumstances related to his active suffrage is carried out using emergency ballots, which are placed after filling in an envelope containing a letter.

In addition, in other countries, there is public (mandatory) and personal (voluntary) voter registration, depending on which body or person is charged with the duty of registration (registration) – the state in the person of its relevant bodies or the citizen himself [7].

The voter himself must apply with the appropriate application if he wants to be included in the list of voters (Spain, Mexico). Under the mandatory registration system (Great Britain, India, Italy), the voter is automatically included in the list, the registrar (commission) is obliged to find all persons who have voting rights and include them in this list" [8].

Imperative registration presupposes the unconditional generalization of a certain set of information coming from competent sources in order to establish the compliance of a particular person with a set of criteria provided for by law, registration of recognition by the state of the fact that such a person has an active electoral right and subsequent entry of an entry about him in the list of citizens who will be

able to take or will have to take part in voting in certain elections or all possible elections within a regulated period of time.

According to this principle, voter registration is organized in Germany, Poland, Portugal, Australia and other countries. For example, by virtue of paragraph 2 of article 113 of the Portuguese Constitution, the compilation of voter lists is mandatory, official, permanent and uniform for all elections, with universal and direct suffrage [9].

In some cases, the implementation of an imperative approach to electoral registration is due to the presence in the country of special rules for registering the population at the place of residence and accounting for migration processes, which ensures that the authorized bodies receive all the necessary information about persons living in the subordinate territories (Germany, Sweden, Hungary, Switzerland and others). For example, in Sweden, relevant information about voters is stored in the Central Statistical Office.

Voter lists in Sweden are compiled on the basis of population census data transmitted by the Tax Administration by virtue of the Law on the Provision of Personal Information by the Population Census Service of the Tax Administration and the Law on Registration of Rights to Immovable Property [10]. In Hungary, almost all 10 million Hungarian citizens are included in the electronic population register. A personal identification number is assigned to each newborn resident of Hungary and a person receiving a residence permit in the country [11].

If there is no system of permanent registration of population migration in the country, registration can be carried out immediately before the elections by visiting residential buildings by authorized persons. For example, in Indonesia, registration commissioners from the National Election Commission, which is responsible for compiling and correcting electoral lists, go around citizens' homes, collecting information about people living in them. According to Indonesian law, the compilation of lists should be completed six months before the elections, although it is not always possible to achieve this [12].

In turn, according to part I of Article 36 of the Constitution of Mexico, a Mexican citizen is obliged to register in the electoral lists in accordance with the procedure established by laws [13], and by virtue of section 1 of Article 14 of the Constitution of the Federal Republic of Brazil, registration in the voter lists is mandatory for persons over the age of 18 [14].

For example, in France, for citizens who have reached the full age of 18 and meet other established requirements, there is an application procedure for registering as voters. At the same time, due to the increase in the number of adult citizens not included in the lists, and in order to partially fill the gap in the databases of registered voters, a special law introduced the institution of mandatory electoral registration of persons who meet "the requirements of the age limit from the time of the last final closure of electoral lists or when they fulfill this requirement until the next final closure of these lists" (articles L.11 and L.11-1 of the Electoral Code of France) [15].

Such registration is carried out on the basis of data from compulsory health insurance and the National Institute of Statistics and Economic Research [16].

On the contrary, in some countries, an initiative (declarative) component is introduced into the mandatory, in fact, registration procedure. For example, in the Great Britain, the procedure for accumulating and processing electoral information is based on the annual mailing of special forms to individual houses and administrations of apartment buildings organized by authorized persons with a request to provide information about persons permanently residing in them who have the right to vote (in some cases – on a personal visit).

From the collected information, a list is formed, including all persons who have the right to vote and permanently reside in the territory of this district. At the same time, in February 2001, the existing registration system was supplemented by the introduction of a kind of individual current registration, thanks to which voters who have changed their place of residence can independently notify the voter registration bureau[17], which allows making the necessary changes to the voter register by the beginning of the month following the appeal [18].

The undoubted interest in the initiative component in the voter registration process is also evidenced by the ongoing discussion, with the active assistance of the Great Britain Election Commission, on the possibility of introducing declarative (personal) registration throughout the state instead of the existing system of home mailing forms to fill out [19]. In Northern Ireland, voter registration is already carried out on an application basis [20].

In the Great Britain, the registrar has the right to exclude from the register information about a voter in respect of whom the necessary information has not been received for two years, subject to prior notification to such a voter.

It is also noteworthy that in some cases the element of citizen participation in the process of updating electoral information is introduced even into the system of interdepartmental exchange of information necessary for the formation of voter registers or electoral lists: documents ensuring the receipt by authorized structures of personal data about citizens of the respective states often contain special items that allow obtaining the consent of potential voters to transfer information about them to the bodies that carry out electoral registration.

Thus, in a number of countries, registration is the responsibility of local authorities or structures established by them. For example, in the Great Britain, voter registration issues are assigned to the competence of the Voter Registration Bureaus established by local councils in each electoral district, where a person responsible for voter registration is also appointed (usually a senior official of the local government) [21].

In Poland, the registration of data on voters in the relevant part of the electoral register is carried out by the administration of communities on the basis of the registration of the population permanently residing in their territory by the civil registration authorities, with mandatory reflection of all current changes.

In Australia, voter registration is carried out by the Australian Electoral Commission [22]. In some States, in order to ensure the conduct of voter registration, structures are being created, the order of formation of which does not always allow them to be attributed to state or municipal bodies. Thus, in Chile, in accordance with the Law on the Voter Registration System and the Electoral Service, special registration councils are created, which include three persons who meet the following requirements: be over 21 years old, have at least secondary education, reside in the territory of this electoral district and do not have membership in any political party. It is characteristic that the position of a member of the registration board is mandatory and no one can refuse it without a valid reason [23].

The list of grounds for classifying voter registration systems in foreign countries, as well as the diversity of registration practices, are not exhausted by the issues discussed above.

Registration information contained in electoral registers can most often be provided to interested entities, however, the scope of its provision, the purposes of its upcoming use and the circle of persons who have the right to expect to receive it are very heterogeneous.



In some countries, information from the register is issued on the basis of a written application (Poland), in a number of other registries are subject to publication in the prescribed volume, including for subsequent sale. At the same time, in order to ensure the safety of citizens, they are granted the right to apply for additional protection of confidential information. For example, in some US states, certain categories of potential voters (law enforcement officials, employees of rehabilitation centers, judges, and others) may submit an application limiting the possibility of providing information about them to the public (Florida), excluding phone numbers and addresses from the data provided, or creating special conditions for storing registration information (California) [24].

In Germany, a citizen, even at the time of registration at the place of residence, has the right to make a reservation excluding the provision of personal information reported by him to the authorized body to third parties.

In different ways, the issue of informing a citizen about the registration procedure is solved in foreign countries. For example, in some countries, a notification is sent to a voter on the eve of voting day about his registration in the specified capacity and the number assigned to him in the register or the list of voters (for example, Canada, Germany).

On the official websites of the central election authorities of individual states, special programs are presented that allow citizens, by entering certain data (for example, postal codes), to obtain information about registration as voters in the relevant district, which, in particular, creates maximum convenience for people living abroad (Great Britain, Canada).

There is no definition of the concept of "international electoral standard" in the legal literature. At the same time, such are the provisions (norms) of international legal acts that enshrine the rights and freedoms of citizens to participate in free, fair, genuine and periodic elections.

In his monographic study, A.A. Veshnyakov gave the following definition of international electoral standards, which has received the widest distribution in the domestic legal literature: "the obligations of States not only to grant certain rights and freedoms to persons under their jurisdiction to participate in free, fair, genuine and periodic elections, but also not to encroach on such rights and freedoms, and to take appropriate measures to implement them" [25].

An interesting definition is given by Yu.A. Vedenev and N.M. Mironov, considering international electoral standards as "the normative minimum of the domestic legal regulation of public relations established by international law regarding the appointment, preparation, conduct and establishment of election results, as well as relations concerning the infrastructure of the electoral process" [26]. However, a significant disadvantage of this definition is the lack of connection with human suffrage. International electoral standards are international legal standards for the organization and conduct of elections, ensuring the observance and implementation of the right to free elections as a fundamental human right.

Such provisions (norms) are enshrined in the Universal Declaration of Human Rights of December 10, 1948 (paragraph 3 of Article 21), the International Covenant on Civil and Political Human Rights of 1966 (article 25), the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (Article 3 of Protocol No. 1) and a number of other documents.

In its content, this is an obligation of States to recognize these rights and freedoms, not to encroach on them and to take appropriate measures to implement them.

Electoral standards, which are understood as the rules of the organization of the electoral process supported by the international community, are undergoing significant evolution.

They are present not only in international legal acts, but also in other documents. Their form becomes more diverse, as well as the ways of their preparation and promotion. The composition of the subjects determining the international community's views on the rules of the organization of elections is changing.

If we classify the electoral standards by the time of their appearance, the result will coincide with the classification according to the object of regulation and some other criteria. In accordance with the proposed approach, two stages and two corresponding groups of electoral standards can be distinguished.

At the first stage (the middle and third quarter of the XX century), norms appeared in international law that enshrine human electoral rights. Such fundamental standards include universal, equal, free, secret and direct suffrage, as well as the frequency of elections. These standards appeared as a result of agreements between nation States, they have a special legal status and are now practically universally recognized. The main documents in which they are reflected: the Universal Declaration of Human Rights of 1948, Additional Protocol No. 1 to the European Convention on Human Rights of 1952, the International Covenant on Civil and Political Rights of 1966.

At the second stage (since the end of the XX century), the international community has been developing norms concerning not only the electoral rights of citizens, but also the organization of elections and electoral management. Along with the expansion of the scope of electoral standards, they are being detailed and specified. The composition of the subjects involved in their development and dissemination of standards is changing; their legal status is changing (in many cases they have the nature of recommendations). Although the impact of the new electoral standards on the domestic policy of states is becoming more flexible – they are based on the principles of "soft power" – the depth of this impact is significantly increasing.

Unlike the electoral standards of the first stage, modern international norms of the organization of elections are more instrumental and functional. Among the most important documents reflecting the electoral standards of the modern stage, of particular importance are the Document of the Copenhagen Meeting of the CSCE Conference on the Human Dimension of 1990, the Declaration on Criteria for Free and Fair Elections of the Inter-Parliamentary Union of 1994, General Comment No. 25 of the UN Human Rights Committee of 1996, the Set of Recommended Rules for Elections of the Venice Commission of the Council Europe 2002 We can also mention the document "Human Rights and Electoral Standards: an action plan", adopted in 2017 as part of a joint conference under the auspices of the UN High Commissioner for Human Rights and the Carter Center. The last document is very indicative for the current stage, since it has a recommendatory character.

The fundamental electoral standards adopted in the middle of the XX century regulated only some aspects of the institution of elections and only in the context of human rights. Modern standards, which have been developing since the end of the XX century, cover a much wider range of issues. At the same time, there is an obvious shift of attention towards the organization and management of elections. But the issue of the implementation of international electoral standards in the national legislation of states turned out to be ambiguous. Experts of the International non-governmental organization CIS-EMO analyzed the electoral legislation of a number of countries (Belgium, Great Britain, Hungary, Germany, Denmark, Latvia, Lithuania, Poland, Russia, etc., a total of 15 countries) for compliance with the constitution and election laws of the state with pan-European democratic standards. As a result, not a single state has been identified in which experts would note full compliance with

international electoral standards, on the contrary, in the analysis of each national legislation and law enforcement practice, a number of proposals have been formulated to improve electoral legislation in the context of OSCE observations [27].

The development of international electoral standards in the field of electronic voting began in the 2000s [28]. On September 30, 2004, the Committee of Ministers of the Council of Europe adopted Recommendations R (2004)11 to member States on Legal, Organizational and Technical Standards for electronic Voting (hereinafter referred to as Recommendations R (2004)11), which became the first electronic voting standard for member States.

During this period, the Council of Europe prepared standards of three levels [29]:

- legal standards reflecting the fundamental principles of elections enshrined in international legal documents;
- organizational standards concerning the main issues of organization and procedures in relation to electronic elections, which ensure compliance with fundamental legal norms;
- the main technical requirements that are necessary to ensure the operational standards of a safe and cost-effective method that ensures compatibility between devices and control at any stage of the electoral process.

Thus, the first regional international legal standards of electronic voting in the history of international law were established, taking into account the interests of both government and industry. The key position of Recommendation R (2004)11 is that electronic voting should be as reliable and secure as democratic elections and referendums conducted without the use of electronic means or devices, and that it should comply with the fundamental principles of democratic elections and referendums (universal, free, equal, secret and direct elections) [30].

The absolute advantage of this document can be considered the developed conceptual apparatus of the electronic voting system, which can be borrowed by states in the development and improvement of legal acts regulating the procedure of electronic voting on the territory of their country.

Recommendations R (2004)11 became invalid due to the adoption on June 14, 2017 at the 1289th meeting of Representatives of Ministers of the Committee of Ministers of the Council of Europe of new Recommendations "On the Rules of electronic voting" (hereinafter - Recommendation 2017).

The 2017 Recommendation was supported by the majority of participants at the meeting of the ad hoc working group on November 3-4, 2016; the Recommendation takes into account some of the Russian proposals, in particular on the following issues: the concepts of electronic voting and controlled area were introduced, as well as the wording of several provisions of the draft recommendation was taken into account or changed (paragraphs 7, 17, 18).

The recommendations of 2004 and 2017 are based on the obligations set out in international documents, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and others. This includes a number of "new" international documents, the provisions of which are taken into account in the 2017 Recommendation: the Convention on Standards of Democratic Elections, Electoral Rights and Freedoms in the CIS, the International Convention on the Rights of Persons with Disabilities, the UN Convention against Corruption, the Convention on Combating Cybercrime, the Convention on the Protection of Individuals with Automatic Processing of Personal Data, Additional protocol to the Convention on the Protection of Natural Persons in the Automatic Processing of Personal Data on Supervisory Authorities and Cross-border Data Flows, Recommendation of the Committee of Ministers to Member States No. CM Rec (99)5 "On the



protection of privacy on the Internet", the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the European Convention for the Protection of Human Rights and Fundamental Freedoms and, in particular, Protocol No. 1 thereto, The European Charter of Local Self-Government, the Council of Europe Convention on Computer Information Crime, the Convention on the Protection of the Rights of Individuals in Connection with the Automatic Processing of Personal Information, Recommendation of the Committee of Ministers on the protection of personal information on the Internet R(1999)5, The Document of the Copenhagen Meeting of the OSCE Conference on the Human Dimension, the Charter of Fundamental Rights of the European Union, as well as the Code of Good Practice in Electoral Matters adopted by the Council for Democratic Elections of the Council of Europe and the European Commission for Democracy through Law.

The 2017 recommendation accumulated provisions established in various international documents relating not only to the electronic voting procedure itself, but also to the personal rights and freedoms of a person and citizen affected in one way or another during the organization and conduct of electronic voting.

In the issue of improving national electoral legislation, international electoral standards are indispensable. Scientists, studying the legal norms of the current election laws, identify inconsistencies with established international electoral standards, contributing to the exclusion of contradictory norms. Summing up the above, it should be noted that the analysis of world practice indicates the preservation of certain specifics of existing voter registration systems in foreign countries, which, on the one hand, allows classification based on the generality of certain characteristics, and on the other, in our opinion, prevents the introduction into circulation of excessively generalizing terms that do not cover the full content of the phenomena under consideration.

Thus, the international legal standards of the right to free elections (international electoral standards) represent the basic requirements for the organization of national electoral processes arising from relevant international legal sources, aimed at ensuring respect for the electoral rights of citizens (the right to free elections).

At the same time, international electoral standards include the requirements of free elections, secret ballot, universal and equal suffrage, the non-discriminatory nature of the electoral process, its fairness, respect for the will of voters and the frequency of elections. None of these standards has priority, while the principle of free elections determines the possibility of compliance with all other standards.

## Footnotes:

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