

«Resolution of electoral disputes»

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Resolution of electoral disputes in the IPA CIS member nations: the ways of optimization (on the basis of the International Institute for Monitoring Democracy Development, Parliamentarianism and Suffrage Protection of Citizens of IPA CIS Member Nations (IPA CIS IIMDD) conclusions)

Dear colleagues!

Let me greet you, say thanks to organizers for invitation to participate in this important forum and wish to all of us fruitful discussion of our main topic – resolution of electoral disputes.

Let's take a look on disputes, which appear on different stages of electoral process between the subjects implementing their rights and authority through this process, from the point of view of the theory of organizational management. Obviously, that electoral process, as combination of legal, organizational, political and social-economy elements, has all the characteristics of the cybernetical system: unity, entirety, organized nature and emergence. From this point of view electoral disputes can be viewed as a problem, that is the discrepancy between the actual state of the control object - the electoral process - targeted, and optimization means the reduction in the number of problems (disputes) during the implementation of this type of activity. As well as process itself, arisen problems and methods of their resolution applies to statutory regulation, further my report will be dedicated to the experience of the Interparliamentary Assembly of Member Nations of the Commonwealth of Independent States (IPA CIS) in the field of creation, developing and monitoring of electoral legislation, advantages and preferences arising for supranational institutional communities member – nations.

One of the most important goals by the CIS Charter is ensuring human rights and fundamental freedoms in accordance with generally accepted principles and norms of international law (article 2), forming, whereby, course of the Commonwealth members on developing of democratic institutions and civil society. CIS member – nations has been connected by common historical experience, which forejudge common traits of this social-economic and political development.

Among other issues, this resemblance is conditional on possibility of common discussion and resolution of latest questions of human rights in common and political participation in particular, letting optimize efforts and terms, which allowed to optimize the efforts and time required for the creation and development

of democratic institutions by using the positive experience of each country by all members of the community.

Ensuring of the human rights and fundamental freedoms belongs to sphere of joint activity between member – nations and is implemented by common coordinating institutes in accordance with the obligations voluntarily accepted by the member – nations of the Commonwealth (article 4). As well as through collaboration in the field of rights and promotion of approximation of national legislation (article 20), that is one of the most important aims of IPA CIS.

According to the constituent Convention of the IPA CIS, as one of the statutory body of the Commonwealth, it is authorized to adopt recommendations on the approximation of the legislations of the member nations (paragraph “B” article 4) and also to bring these legislations in accordance with the international contractual terms, conducted within framework of the Commonwealth (paragraph “E” article 4). Besides, it can establish subsidiary bodies, which can be necessary for successful implementation of these aims (article 10), and its Secretariat provides needed assistance to these bodies (article 11).

Through the lens of electoral rights, the provisions of the constituent document regarding supranational coordination were specified in the Convention on Standards of Democratic Elections, Electoral Rights and Freedoms in the CIS Member-Nations (2002). And this is not by chance. The institute of elections can solve the tasks assigned to it, namely: to legitimize the formation of public authorities, consolidate the political system and thereby promote social stability, only relying on fundamental principles that have gained international recognition.

External electoral monitoring is one of the conventionally envisaged methods of control on states’ undertaken commitments fulfillment. This type of monitoring is implemented by subsidiary advisory body of IPA CIS – the International Institute for Monitoring Democracy Development, Parliamentarianism and Suffrage Protection of Citizens of IPA CIS Member Nations (IPA CIS IIMDD), established in 2006.

As follows from the above, the mandate of the International Institute at the interstate level is consistent with the prerogatives of the Venice Commission and, in part, of the OSCE / ODIHR with regard to monitoring carried out on the basis of obligations under the Copenhagen Document (1990).

In turn, as the Secretariat of the Council of Europe organizes the activities of the Venice Commission, the IIMDD IPA CIS is entrusted with the organizational framework of the inter-parliamentary observation missions within the overall framework of the monitoring mechanism.

Activity of International Institute includes elaboration of suggestions and recommendations for perfection and unifications of international standards for electoral rights protection, which, first of all, are based on multidimensional

examination of the legislative regulation of the IPA CIS member nations in the field of the development of democracy and parliamentarism. Permanent monitoring both the norms of current legislation and the legislative activities of parliaments, legal and regulatory activity of election organizers of member nations, research and development carried out by the academic and expert communities of states, allows not only to determine the level of development of electoral legislation, but also to identify, based on experience and practices of different states, possible risks of electoral disputes pending the adoption of relevant legislative and regulatory acts by participants of the electoral process. Results of such monitoring are:

- Preparing and dispensing among interested bodies of member-nations research monographs, brochures on actual issues of democracy development, parliamentarism and protection of citizens electoral rights;
- Holding of conferences, Round tables and seminars with participation of representatives of member-nations parliaments, elections management bodies, experts and developers, representatives of sciences society, aimed to spreading and discussion of electoral process's topical issues, including related to legal and organizational lacunae creating prerequisites for the occurrence of electoral disputes;
- Preparations of methodological recommendations on separate subjects about experts' activity, international observation and others subjects of electoral process as a tool of improving the general legal culture of IPA CIS member-nations' citizens.

Existence in number of IPA CIS member-nations IIMDD's branches and mid-term nature of the thematic planning of researches and studies, which helps to be concentrated on priority aims for member-nations with general optimization of expenses for this aims, promote to full-scale range of relevant persons and spreading of the best practices.

The development of model legislative acts in the electoral sphere is carried out by the Permanent Commission on Practices of State-Building and Local Government. In present time elaboration of Model Election Code is being drafted, which provisions will create a platform for the further development of the electoral legislation of the participating States in the medium term. The expert assessment and practical experience of the IIMDD IPA CIS, accumulated during the monitoring of election campaigns, analysis of the current legislation of several states and generalization of recommendations issued as a result of monitoring missions, conducted activities and research, can improve the quality of the model law provisions and its prospects of implementation into the national legislations of the participants will help reduce the risk of electoral disputes.

Functionality of International institute also includes the fundamental possibility of carrying out a preliminary legislative expert review. That's why besides examination of the current electoral legislation, which is carried out within the

framework of monitoring specific elections / referendums, the Institute carries out, albeit on a relatively smaller scale, a preliminary examination of draft laws sent for consideration by the authorized authorities of the IPA CIS member nations.

Answering on question about the level of implementation of convention obligations or recommendations of specialized international organizations in the field of electoral legislation on the stage of conduction of certain electoral campaign into national regulation, we are carefully analyzing not only all composite of national statutory instruments, but also more important aspects of law enforcement practice. The expertise is carried out in accordance with the methodology developed in accordance with the best monitoring practices, which have proved their relevance and are constantly being improved.

Foundational international documents, dedicated to election law, holding all the stages of electoral process, contain all the conditions of impartial and timely resolution of electoral disputes. For instance, the Convention of CIS, I'm repeating, that control on maintenance of liabilities of this agreement is the main direction of juridical examination of national legislation made by International Institute during elections campaign monitoring, provides for the right for juridical or other legal protection as one of the most important guarantee of realization both active and passive right to vote. Due to this, an analysis of the procedure for resolving electoral disputes has been placed in a separate section of legal expertise, which is an integral component of monitoring at its long-term stage. Following the results of monitoring by the International Institute, recommendations are made aimed at improving national regulation in this aspect.

Generally, it's necessary to point out, that in IPA CIS member-nations have quite reliable mechanism for the protection of electoral rights, which contributes to the objectivity of the consideration and efficiency of making decisions. These guarantees allow in a short time to recover the electoral rights, as well as to prevent further commitment of electoral offenses.

However, there are examples of IPA CIS IIMDD's recommendations, aimed at improving the norms of legislation relating to recent times.

Thus, based on the results of the examination of the legislation of the Republic of Kazakhstan, it was recommended to abandon the alternative definition of the method for appealing decisions made by election commissions in favor of an order that would exclude a possible conflict between administrative and judicial jurisdictions; It was noted that it is desirable to expand the circle of persons entitled to appeal to the Constitutional Council in the event of a dispute about the correctness of the election of deputies of the Majilis at the expense of all political parties participating in the elections (2016).

According to the results of the examination of the legislation of the Russian Federation, a certain conflict was ascertained between the administrative and procedural and electoral legislation in determining the procedure for the

consideration and resolution of electoral disputes (2016). In particular, the electoral law provides for the right of members of election commissions to appeal against actions (inaction) of election commissions to the court, without mentioning the grounds for appeal and not suggesting the possibility of appeal by commission members of commission decisions. However, the Administrative Procedure Code, giving members of commissions the right to challenge in court not only actions (inaction), but decisions of election commissions, establishes the basis for such an appeal – not any decisions, actions or inaction, but only those that violate the rights of the relevant member of the commission in the exercise of his powers can be challenged. In this regard, a recommendation was made to overcome this divergence.

It was also recommended, with a view to strengthening the right to an effective investigation of electoral disputes, to change the order and terms of storage of electoral documentation and audio-visual materials from webcams installed in the polling stations and territorial election commissions (2018). Currently, they cannot be less than one year from the date of publication of the results of voting and election results, and in the case of consideration in court of a complaint about the decision of the commission on the voting results, election results, initiation of criminal cases related to violation of electoral rights, are extended to entry into force of a court decision or termination of a case in accordance with the law. To make it possible to determine the actual results of voting by recounting ballots or other actions prescribed by the court, it was recommended, first, to provide for the transfer of documentation of election commissions of all levels, including signature lists, ballots, voter statements and their lists, to the archives of the relevant subject of the federation. Secondly, to keep the mentioned election documentation, as well as all audiovisual materials, up to the day of the official publication of the decision on the appointment of the next election. Thirdly, it was recommended to revise in the direction of a substantial reduction of a too long period (30 days), during which the responsible organization should provide an answer to the request for the provision of video from webcams.

Based on the results of the examination of the legislation of the Republic of Armenia, taking into account the fact that observers, as well as media representatives who, including, have the ability to take photographs, videotaped the process of summarizing the results of voting, have the right to be present, it was recommended to adjust the requirement of the physical presence of the trustee and candidate included in the electoral list of the party participating in the elections, when counting the votes, for them to realize the ability to claim the necessity of vote recalculation (2017). Obviously, the right to appropriate treatment can be based on evidence of violations, which were photographed and videotaped by observers and media representatives present during the counting of votes.

Cooperation with the relevant parliamentary committees and commissions, the organizers of the election of the member-nations of the Inter-Parliamentary Assembly during the period between election campaigns, in order to reflect the

recommendations in the norms of national legislation, which will contribute to both integration and optimization processes, is being introduced into the practice of the IIMDD IPA CIS activities.

In conclusion, let me draw attention to the provisions of the Charter of the Venice Commission, which state that in order to promote the core values of the rule of law, human rights and democracy, the Commission encourages the creation of similar structures in other regions of the world and can establish contacts with them for the successful implementation of joint programs in its field of activity (Art. 1, p. 3) and note the progressive development of relations between the Venice Commission and the International Institute. This was convincingly testified by the 14th Conference of the Association of European Election Officials (2017) held in St. Petersburg at the headquarters of the IPA CIS. I want to express hope for the further strengthening of this cooperation, which is undoubtedly useful for both parties, the readiness to exchange experience in various fields of activity, conduct joint events and constant information exchange.

Thank you for attention!