

ELECTION RIGHTS-THE INTEGRAL PART OF POLITICAL RIGHTS AND THE IMPLEMENTATION OF THAT RIGHTS IN THE REPUBLIC OF AZERBAIJAN

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The Article analyses election rights as a part of civil and political rights and reveals the interrelation of this set of rights. Issues related to the international sources of civil and political rights are addressed as well. Furthermore, legislation of the Republic of Azerbaijan in the field of political rights is within the coverage of this Article. International standards of electoral process and implementation of these standards into legislation of the Republic of Azerbaijan are also the constituent element of the research.

Key words: “suffrage”, “human rights”, “constitution”, “international standards”, “democracy”, “civil and political rights”, “election rights”.

Civil and political rights are vested rights of individuals through which persons protect their freedom and consummate their political purposes. That set of rights (first generation of human rights or “so-called” negative rights) include but not limited to the protection from discrimination, freedom of thought, election rights, freedom of peaceful assembly, freedom of association, freedom of speech, right to petition and etc.[9] Each and every of these rights is in harmony with the very nature of human being and is devoted to different aspects of its existence. Because consciously decision-making, living in a collective (instead of living alone), having a unique and distinctive

character stems from the creation of human. These peculiarities establish parallels with the mentioned rights (remarkably, with the election rights). Having said that, election rights play a key role in the realization of political rights. That are the principal rights that foster individuals to influence the political system. These rights are considered as “trumps” for the individual against the community. [12] The right to vote and the right to stand for election are the constituents of the election rights. Despite elections rights are individual rights, it does not result in substantial changes, if not being realized by plurality. [8] Human rights, and as a subset of these rights civil and political rights have seen an unprecedented evolution since the end of World War II. This set of rights have been enshrined in various international treaties and conventions (Universal Declaration of Human Rights, International Covenant on Civil and Political Rights (ICCPR), European Human Rights Convention (ECHR), Charter of the Organization of American States, African Charter on Human and Peoples’ Rights) during the post world war period. As a first internationally adopted human rights document, Universal Declaration of Human Rights recognizes the importance of free and fair elections (Article 21) in ensuring the fundamental right of individuals. This notion is reiterated in the International Covenant on Civil and Political Rights, which in terms (Article 25) says “every citizen shall have the right and the opportunity without any distinctions



mentioned in Article 2, a) to take part in the conduct of public affairs, directly or through freely chosen representatives, b) 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 and c) to have access, on general terms of equality, to public service of his country.” The right to take part in the conduct of public affairs and, the right to vote and to be elected to government are at the core of democratic governance. [10] Article 2 of the ICCPR declares that each state party will respect and ensure these rights to all individuals within its jurisdiction without any distinction, such as race, religion, color, language, sex, political opinion, national origin, birth, property or other status. This article prevents party states from denial of listed rights whether intentionally or negligently. However, in some cases that rights may be restricted due to legal and justified requirements (e.g. national security). These restrictions are supposed to be proportionate to the reasons behind them. [13]

Each of the above-mentioned treaties contains relevant provisions regarding political rights, including election rights. These conventions impose responsibilities on party states (sometimes, even on non-party states as well) regarding enshrined rights. This nuance clearly qualifies the treaties as an international source of civil and political rights in respective regions. [11]

As we know, election rights are consummated through electoral process and during election period various civil and political rights involve. Therefore, it would be appropriate to consider realization of election rights by evaluating associated freedom and

rights. Other political rights together with election rights constitute a single system that satisfies individuals’ moral and legal demands. If we analyze the relations between that rights, we will see how these rights are reciprocally linked to each other (especially during electoral process):

– Principle of freedom from discrimination, as stated in the article 14 of the European Convention on Human Rights, ensures the equal participation of every individual (universal suffrage) in political sphere without any distinction. In return, maintaining the universal suffrage during elections results in politically more stable society.[14]

– Freedom of association entails with itself formation of and participation in political organizations. This is completely rational way to realize election rights (specifically for realization of passive suffrage right). Therefore, it should not be interfered with unless this intervention is strictly in conformity with the law and regulation of the particular jurisdiction conforms with democratic values.

– Since the electoral process is the mean of the expression of public opinion, freedom of opinion and expression should therefore, be secured firmly. However, as expressed in the ICCPR (Article 20), expression that constitutes propaganda for war or incites violence or hatred must also be restricted. For instance, European Commission of Human Rights held that distribution of leaflets urging soldiers to go absent during the war is against the national security. Therefore, interference if the freedom of expression in this matter does not constitute violation of the Article 10 (Freedom of Expression) of the ECHR. (Arrowsmith vs. U.K. 1982)

– Public gatherings are a core element of



electoral process through which people share their stance and political expectations, collect information regarding election rights and process. From this point of view, principle of the right to peaceful assembly must be followed.[14] However, as the right of the freedom of expression, freedom of assembly (Article 11 of the UCHR) is not absolute either. In this matter, European Commission of Human Rights held that in a democratic society restriction prescribed by law is not derogation from treaty obligations if there is no evidence of political discrimination to found violation on the ground of political opinion. (Rai, Allmond and “Negotiate Now” vs. U.K. 1995)

– All attendants of the electoral process should have an access to voter registration, polling stations or political rallies without any intimidation or hesitation, unless the laws (peculiar to democratic societies) requires particular restrictions.[8] Thus, electoral process must be held in conformity with the principles of freedom of movement and freedom from fear and intimidation.

The above-mentioned requirements are the prerequisites of free and democratic society (in this case, of the realization of the election rights). The list of criteria could be prolonged with the principles of media freedom, access to information, freedom of petition and etc.

As can be understood from the discussed material, each political right plays an essential role in the fulfillment of electoral process. The process through which individuals materialize their right to vote and stand for election. In other words, system of civil and political rights (and election rights, as a unit of the system) is not complete without free and fair elections, as well as elections can

only be legitimized as free and fair only if the entire body of related rights are promoted. If not, there will always be legal issues and deficiencies to be reconciled.

Whereas, human rights treaties impose obligations on states with regard to that rights, depending on the nature of that rights different sovereigns fulfill their commitments via diverse mechanisms. In democracies, commonly, material facets of that rights are enshrined in the constitutions while procedural issues are addressed by separate legal acts. If we consider the practice of the Republic of Azerbaijan (member state of ICCPR, ratified in 1992) in the field election rights, we will see the similar tendency. Article 56 (Election rights), Part I of the Constitution of the Republic of Azerbaijan provides:

– Citizens of the Republic of Azerbaijan enjoy the rights to vote and to be elected, likewise to participate in referendum.

In this provision right to participate in referendum is enumerated within the right to vote and stand for election which means that right pertain to election rights.[8] This article is corresponding to the clause declared by ICCPR and other human rights treaties. Despite in the ICCPR, the right to participate in referendum is not barely specified, that is implied in the context of the Article 25. Article 56, of the Constitution is the supreme norm that shapes the domestic legislation in this realm of rights. However, it is the Election Code of the Republic of Azerbaijan that addresses procedural issues regarding political rights. In the Code, definition of the terms akin to “election rights”, “election” and “referendum” are explained as follows:

– “election” – the process of voting and being elected to the Milli Majlis (legislature) of the Republic of Azerbaijan, to the Presidency



of the Republic of Azerbaijan, to the local municipalities of the the Republic of Azerbaijan based on the Constitution and Election Code of the Republic of Azerbaijan;

– “election rights” – right to vote during elections to Milli Majlis, Presidential elections, municipal elections and to stand for the election to the Milli Majlis, Presidency, local municipals as well as to participate actively in electoral process;

– “referendum”-suffrage of the citizens of the Republic of Azerbaijan with regard to the matters displayed in the Constitution in the Republic of Azerbaijan.

As mentioned before, no derogation is permitted form these rights based on any “status”. In reality, extreme reasons pave the way to restrict elections rights of particular groups. Article 56, Part II and III of the Constitution of Republic of Azerbaijan are dedicated to that area of the rights. That category of people comprises members of armed forces, administration members of the State, judges, religious leaders and convicted persons. One of the major reasons behind this constraint is the adherence to the policy of secularity of Azerbaijan. The possibility of restrictions regarding political rights is provided in international treaties as well (ECHR, Articles 11, 15). It is Azerbaijan’s Election Code that thoroughly regulates these matters. The Code consists of the chapters that each regulates various aspects of electoral process such as main principles, Presidential elections, referendum, elections to legislature, elections to municipalities and phases of electoral process (including realization of other political rights during election). The provisions of these chapters meet the international standards of political rights (in particular, election rights) and electoral process as set out in international

treaties. However, that is the subject of another article.

To sum up, people are the ultimate source of authority (Constitution of the Republic of Azerbaijan, Article 1) in every democracy and elections are the legal form of direct manifestation of peoples’ authority.[8] Thus, election rights are the core constituent of the rights of human beings both nationally and internationally.

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**SEÇKİ HÜQUQU – BEYNƏLXALQ İNSAN HÜQUQLARININ
AYRILMAZ TƏRKİB HİSSƏSİ VƏ BU HÜQUQUN AZƏRBAYCAN
RESPUBLİKASINDA İMPLEMENTASİYASI**

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Məqalədə seçki hüququ vətəndaş və siyasi hüquqların tərkib hissəsi kimi analiz olunur və onun digər siyasi hüquqlarla qarşılıqlı əlaqəsi göstərilir. Həmçinin, vətəndaş və siyasi hüquqlara dair beynəlxalq mənbələr məqalədə araşdırılan məsələlərdəndir. Bundan əlavə bu sahədəki Azərbaycan Respublikası qanunvericiliyi də məqalədə əhatə edilir. Araşdırmanın əsas elementlərindən biri də seçki qanunvericiliyi ilə bağlı beynəlxalq standartlar və bu standartların Azərbaycan Respublikası qanunvericiliyində tətbiqidir.

Açar sözlər: *“insan hüquqları”, “konstitusiya”, “beynəlxalq standartlar”, “demokratiya”, “səsvərmə hüququ”, “vətəndaş və siyasi hüquqlar”, “seçki hüququ”.*

**ИЗБИРАТЕЛЬНОЕ ПРАВО – КАК НЕОТЪЕМЛЕМАЯ ЧАСТЬ
МЕЖДУНАРОДНОГО ПРАВА ПРАВ ЧЕЛОВЕКА И ИЗБИРАТЕЛЬНОЕ
ПРАВО АЗЕРБАЙДЖАНСКОЙ РЕСПУБЛИКИ**

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Ключевые слова: *«права человека», «конституция», «международные стандарты», «демократия», «избирательное право», «избиратель и политические права», «право выбора».*

