

The Right to Free Vote and Democratic Elections in International Law

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Abstract

Taking into account the current socio-political processes in modern times, we have analyzed relations between states and citizens in our article from the aspect of democratic elections and free suffrage. In fact, since the ancient times, elections implemented in different forms at different environments are an integral part of human rights. Expressions such as the right to choose or suffrage, voting rights, freedom of free election have a wide coverage in the international law. Each of the above mentioned terms expresses a specific meaning in the context of human rights. These concepts are reflected widely in international doctrines, human rights declaration and other similar regulatory and legal documents. For example, the right of election and choice in European Union and Azerbaijan is used in the same meaning. People who have the right to vote in the representative democracies are accepted individuals who are able both to take part in the referendum, and also appoint managers. In terms of human rights, the right to democratic elections is a broad concept that covers both the right to vote and the right to be elected consequently, this term is a democratic expression of freedom of opinion, which includes the right to vote and the right to be elected. In a word, the right to democratic and free election is a mechanism for the self-determination of the people, both in the national and international arena, as an expression of human rights and freedoms.

Keywords: Democracy; Right to vote; Human rights; Elections; Suffrage; International law; Regulations; Administration policy; State and society

Introduction

Democracy – the use of sovereignty belonging to the people directly by them. In other words, it is understood as the ability of the people to self-control. However, it is now impossible for individuals who form a society to come together to make a joint decision on state governance. This form of government, which was applied in ancient Greece and characterized as a direct democracy, cannot be found in other states, with the exception of applying in some small cantons of the Swiss Confederation.

Recently, the growing demographic development of modern states necessitates the people to choose a certain representative over time, and protect the people's sovereignty by elected representatives. This method which is characterized as a representative democracy, basically, is a system of governance where administrators/managers are freely chosen by those who are managed [1].

According to democratic theories, legitimate power is a power which obtains its source by the will and consent of the people. In this context, the power of the ruling authorities and the commitment of the people to this authority must be based on free election, not on the individual qualities of managers.

Elections, comprising the hardcore of democracy, are a crucial tool for democracy. Also in a democratic state, those who come in the political power are determined through elections, and in the next election they still change hands merely by way of elections. As there cannot be democratic regime without elections. For this reason, elections are the source and foundation of democratic regime [2].

Elections necessary for dealing with democracy shall have a number of terms and conditions. In this context, in democratic states, elections must be arranged in accordance with universally accepted free and fair election criteria.

Free and fair elections, first of all requires the recognition of the right to free election. Suffrage is one of the indispensable conditions of

a democratic state in combination with the right to be a candidate in the elections and free election. According to the essence, the right to free election is reflected in many international human rights regulations, such as the Universal Declaration of Human Rights (UDHR), the United Nations Human Rights Declaration [3].

Free Electoral Right

The term election has two meanings being narrow and broad. In a narrow sense, choice expresses the decision made between variants more than one. In a daily life and domestic life, many activities consist of choices. Choice within the constitutional law and politics has even more narrow meaning. Election is a choice made determining the person or staff who will perform public duties among the candidates. Elections made for various positions such as parliament, local government bodies; presidential elections etc. are evaluated as a choice in the narrow sense. In this regard, election is processes that determine the duties and authorities of those who are elected defining the position of those who are selected and who select [4].

Choice is not only political, but also primary indicator of the existence of democracy in terms of participation in governance and legitimacy of managers adopted by the state as an economic management system and as a political manifestation of globalization. The functioning and sustainability of the democratic regime is possible through free, equal and honest elections. Democracy can be implemented only through free and fair elections.

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Received November 20, 2018; Accepted February 22, 2019; Published March 01, 2019

Citation: Mehdiyev H (2019) The Right to Free Vote and Democratic Elections in International Law. J Civil Legal Sci 8: 264. doi: 10.4172/2169-0170.1000264

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Regulatory Statue on International and Regional Framework for Free Election

Many norms that are intended to apply in the theory can experience difficulties in practice. The reason for this is the “confrontation” between those who come to the power and the rule of law. Usually, the society, which does not know its rights properly, believes that the current power is dominant in the elections. This, of course, leads to the formation of an entirely wrong idea and the gradual disappearance of democratic elections.

Until the 20th century, the idea that political relations between the state and citizen would be the subject of international law had not yet been formed when human rights began to be institutionalized. However, since the second half of the century, it has been observed that the protection of human rights and democratic standards had risen from the domestic level to the global trend stage-by-stage. The universal understanding of human rights and reflection of the right to free election in the international documents is the most obvious example [5].

Recognition of the right to free election in the international law has been subjected to substantial objections by some states. As regulations related to the right to free election are deemed to organize intervention to the political system chosen by the state within the area of sovereignty. For this reason, many states made effort to create artificial obstructions in terms of the effectiveness and application of the right to free election. However, the above mentioned law doesn't create a threat of limitation in terms of the independence of states. In addition to democratic principles for states, it is intended that other governance is not relevant. The right of people/society to elect their leaders and take part in public activities through fair and free elections implemented by relevant intervals in this direction is emphasized especially in “Universal Declaration of Human Rights” of the UN [6].

One of the main declarations that reflect the norms on the right to free election, of course, is “International human rights declaration”. As this declaration bears the advisory character, though its legal sphere of influence was weak during the times when it was adopted, this declaration became the main source of human rights after passing certain periods. In addition to fundamental rights, this declaration regulates socio – economic and cultural rights in the state and society. A number of national and international organizations, even direct legislative bodies are guided by the norms of “International human rights’ declaration”. So, the above mentioned declaration is accepted as an international standard for freedom and justice [7].

The right to free election bore mostly the political nature in the Protocol No.1 to the European Convention on Human Rights. For this reason, there is no coverage about this in the main context of declaration. As it was not accepted unanimously as the concept of democratic rights of persons. As mentioned above, some states accept this as an intervention to the political regime of the countries. Later, based on International human rights’ declaration of the European Council, democratic rights were aligned with the norms of international human rights. After amendment, [8] Article 3 of the additional protocol to the Convention on the right to elect was approved as follows:

Article 3: When choosing a legislative body, the will of the people is absolutely taken as a basis. Conducting elections in secret and without any influence in a condition that every individual with the right to vote can express his/her opinion freely and at rational intervals is the main duty of states.

Elections and Suffrage in the Republic of Azerbaijan

Elections in Azerbaijan for the first time at the state level were carried out in 1918 with the establishment of the Azerbaijan People's Republic. As mentioned in the Declaration of Independence, the government should be elected only by the free will of the people. In the elections, the first state among the Islamic countries and which gave the right to vote equally to women in the east was Azerbaijan People's Republic.

Article 1 of the Constitution adopted by referendum on 12 November 1995 states that the only source of power is the Azerbaijani people [9].

It is determined in the article 56 of the Constitution of the Republic of Azerbaijan that any citizen of the Republic of Azerbaijan who meets the relevant requirements shall have the right to participate in the elections. Only the suffrage of citizens of some categories specified by the legislation can be limited. The Election Code of the Republic of Azerbaijan is a collection of legislative acts that regulate the electoral rights in the Republic of Azerbaijan. Main norms and principles of the right to free election are reflected in the preamble of the Code.

Also, only its own citizens have the right to vote in the legislation of Azerbaijan. It is not allowed to restrict the right to be represented [10] at state authorities and the right to free election of the representatives of a number of minorities that are the citizens of the Republic of Azerbaijan for their nationality, language, religion and political views. According to the norms determined in the chapter “Suffrage security and limitations” of the same Election Code, foreigners and stateless persons with permanent residence permit no less than 5 years have the right to vote in elections. However, such a democratic institution hasn't yet exist in many countries. Thus, Azerbaijan's legislation seriously protects human rights and freedoms without discrimination on the basis of nationality of persons [11].

The Republic of Azerbaijan takes a leading position among the member states of the United Nations for the proper compliance of the rules specified in the Elections and the mechanism for the implementation of the Electoral Code. So that, delegations of different foreign countries are invited to observe elections by the Azerbaijani government and the Central Election Commission either in presidential elections, or parliamentary or municipal elections. This step taken by the principle of volunteerism is a clear example of democratic approach of the state towards the election. As a result, foreign observation board fulfilling this function compiles a report on the conclusion that elections are transparent. Of course, this unique position must be supported by all states and respectively, applied by them [12].

Conclusion and Recommendations

If we summarize opinions and ideas about the concept of choice, it is understood that the choice is actually a legal and political method giving an opportunity to the people to designate or change managers for a certain period of time [13]. In general, the availability of the right to free election is the manifestation of the level of democracy in the state. This right based on democratic basis is of great importance in terms of direct contact between the state and the citizens [14].

In modern times, the form of governance of many states in the world is based on the democratic principles. However, the notion of democracy is sometimes accepted differently for the specific socio – political peculiarity of societies and it can lead to confusion. So, the initial theories of normative and empirical democracies constitute

diversity. The etymology of normative democracy is formed from the combination of words “demos” and “kratos” – means “The power of the people”, that’s, management of power by the people. However, if we approach by the empirical theory, we will see that in practice, democracy is not the management of power by the people, but in fact, it is the fact that the representatives elected by the public come to the power over a certain time. Fundamental driving force of this concept or condition required by democracy is the creation of favorable fundament for free elections [15].

In modern times, though there are many alternative methods for elections, representative democracy is accepted as more rationale regime in many countries of the world. As the existence of the democracy without election cannot be thought, it would senseless to speak about the elections which are not democratic. In this regard [16] only in case choices meet legal requirements, they can be considered democratic. Of course, as mentioned in empirical democratic theory, in addition to conducting elections in a democratic way, it is mandatory to consider final voting as legitimate. Election commissions appointed for this control the provision of the right to free election and they confirm that the representatives elected by the society come to power on democratic basis [17].

It is common that the persons who are the citizens of the European Union to use the right to take part in the local elections of a country other than their own countries. This topic which was discussed at the European Council for several times still keeps its relevance. So, though the right to elect MPs at Parliamentary elections, as well as, Presidential elections, we think that this right can lead to severe results in case it would be accepted for other elections. As in this case, it is inevitable that individuals with the right to vote will be inclined to the choice of their personality (e.g. ethnic, religious belief) rather than democratic norms. Of course, every minority in the country will “favor” its representative without considering other criteria. In our opinion, taking all these into consideration, though European Union countries are allies, each country should recognize this authority only for their local citizens [18].

In summarizing the issues that we have analyzed in the article, it can be concluded that the system of governance both in the European Union or in the regional level, regardless of the activity methods of supervisory bodies for elections, the purpose of the elections (referendum, parliamentary, municipal elections etc.), it must be implemented in strict compliance with crucial principles and norms such as human rights and freedoms, transparent legislation, justice, equality, free and secret ballot. These are “*sine qua non*” conditions, that’s, “conditions without which it could not be” of democratic norms. We can say about the decisions of the European Court of Human Rights, the norms adopted by the Parliamentary Assembly of the Council of Europe and the United Nations that it is necessary to ensure

the right of the person to exercise his/her free will without imposing pressure and external interference. If required, citizens should take an active initiative for this and notify relevant authorities of any observed violation of law for their elimination. As in Azerbaijan’s model, in order to ensure the transparency of elections, various countries should invite also OSCE’s observation councils. The right to free election and representation granted to the citizens positively affects the result of elections in legal form. And also, regular registration of the citizens living outside the country must be conducted, ballot papers should be properly prepared at embassies or consulates. In addition, unhindered conditions for democratic elections by e-voting must be created and protocol rules should be complied with. Thus, every individual of the society actively using the right to vote which is natural right will determine its fate within the framework of international human rights’ norms. Protecting the principle of the rule of law, establishing a basis for the fair competition among candidates, free choice of citizens is the exceptional provision of the management of state and society according to legal normal in the subsequent phase after voting.

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