

# Foreign Constitutional Guarantee of Voting Right

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**Abstract:** The paper presents the results of a comparative legal study of the texts from the constitutions belonging to the member countries of the Commonwealth of Independent States to identify guarantees of legal voting right in them. The study was built based on a dialectical approach to disclosing legal phenomena and processes using general scientific (systemic, logical, analysis, and synthesis) and particular scientific methods. Based on the classification method, the sought guarantees were identified, named, and characterized in the following varieties: constitutional sovereign, electoral constitutional with a subdivision into the material (general and particular) and procedural (restrictive and technical) types, and institutional guarantees implemented by special and constitutional control entities as well as standardizing constitutional types. Within this working framework, the authors present the results of the comparative study devoted to the constitutions of the CIS member states in connection with the identification of guarantees of legal voting right in them. So far, no such comparative study has been conducted to identify the securities of the right to vote in the member states of the Commonwealth of Independent States.

**Keywords:** Elections, referendum, voting right, deputies, court, local government.

## INTRODUCTION

Voting right refers to the basic political rights that determine the legal status of a citizen, as well as the most important form of their participation in the management of state affairs (Beckman, 2006; Cingranelli, & Filippov, 2010; Sidorov, 2014; Viskulova, 2015). The basis for legislative regulation and guaranteeing the voting right's implementation are constitutions (Orr, *et al.*, 2003; Crawford, 2001). Within the framework of this work, the authors present the results of the comparative study devoted to the constitutions of the CIS member states in connection with the identification of guarantees of legal voting right in them. It is advisable to present the required guarantees in their specific differences.

## LITERATURE REVIEW

A group of scientists tried to know how much different elements of nationalistic mentalities influence revolutionary right democratic, close to the prior and new surveyed impacts of apparent ethnic danger, social separation to Muslims, Euroscepticism and political doubt. The discoveries indicated that public distinguishing proof, public pride and an ethnic origination of nationhood are extra clarifications of extremist right democratic. Public ID's impact on

extreme right democratic is discovered to be more grounded when populaces on normal see more grounded ethnic danger (Lubbers, & Coenders, 2017). It was found that the inflow of foreigners into a network significantly affects the expansion in the network's democratic offer for the FPÖ, clarifying about a 10th of the territorial variety in vote changes. Besides, it is recommended that citizens stress over unfavourable work market impacts of migration, just as about the nature of their neighbourhood (Halla, *et al.*, 2017; Steinmayr, 2020).

It was discovered that before 2014, reliability shares were famous among little family firms. Following the act, firms with one offer – one vote structure that declared they would quit the law caused a negative market response, recommending that investors have a positive view of dependability shares. It was given the idea that by empowering expensive observing by long haul investors, reliability offers can possibly profit all investors (Belot, *et al.*, 2019). Blockchain-enabled e-voting (BEV) could lessen elector misrepresentation and increment citizen access. Qualified citizens cast a polling form namelessly utilizing a PC or cell phone. BEV utilizes an encoded key and sealed individual IDs. An examination study featured some BEV executions and the methodology's expected advantages and difficulties (Kshetri, & Voas, 2018).

It was demonstrated how the discretionary rivalry between the three-party shafts happens at the

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miniature degree of social classes. A model of class casting a ballot that recognizes classes that are a gathering's safeguard, classes that are challenged fortresses of two gatherings and classes over which there is an open rivalry, was introduced (Oesch, & Rennwald, 2018). The advancement of the outside democratic issue in the Bolivian political setting somewhere in 2003 and 2009 was broke down. Analyzing the improvement of relations between the Bolivian government and its diaspora, it was shown how the point includes logically becoming focal inside Bolivian legislative issues and how migrants have impacted their own emancipation (Hinojosa, *et al.*, 2016).

The lawful condition is the key factor in clarifying contrasts across nations, and the democratic premium is littler in nations with better legitimate assurance for minority and non-casting ballot investors and bigger for nations without such insurance. Considering the severe corporate administration prerequisites for Companies to list double class partakes in India and the different laws ensuring DVR investors' privileges against aggression, it tends to have contended that the markdown of 35-45% for DVR shares is somewhat exorbitant (Wadhwa, 2018).

Over the period 1995-2012, exchange stuns' effect was inspected, estimated as an introduction to low-wage nation import rivalry, on the neighborhood vote portion of the National Front, the French fundamental far-right gathering, during presidential decisions. Little people group (cantons) as units of perceptions and incorporate region (department) fixed impacts were utilized, so the distinguishing variety originates from inside area change in imports introduction after some time (Malgouyres, 2017). Monetary difficulty prompts extremist right democratic when the financial conditions are great and to revolutionary left democratic when net movement is unobtrusive. Discoveries of an exploration propose a certifiable mystery of radicalism: individual financial enduring may cultivate left and right radicalism, however mostly when that enduring happens in the midst of great conditions at the total level (Rooduijn, & Burgoon, 2018).

The various types of introduction to displaced people influence deciding in favor of far-right gatherings have been examined (Steinmayr, 2020). The EES 2014 information on deciding in favour of the egalitarian extremist right and the libertarian revolutionary left in nine European nations was dissected. Across nations, the sex hole in deciding in

favour of the populist radical right (PRR) is surely incompletely clarified by libertarian perspectives. For libertarian revolutionary left gatherings, the outcomes are less clear, recommending that populism has various implications to citizens on the left and on the right (Spierings, & Zaslove, 2017).

## METHODOLOGY

The study was built on the basis of a dialectical approach to the disclosure of legal phenomena and processes using general scientific (systemic, logical, analysis, and synthesis) and particular scientific methods. The latter include formal-legal, linguistic-legal, and comparative-legal methods used to identify guarantees of legal voting rights.

## RESULT AND DISCUSSIONS

So, we believe that the main variety of guarantees of legal voting rights are constitutional and sovereign guarantees standardly placed in the chapters on the power of the people or the constitutional system in correlation with legal voting right implemented in the basic forms of the direct will of the people. Guarantees may also be placed in constitutional units dedicated to local government or self-government.

An example of the Constitution of Azerbaijan is obvious here, which in Chapter I "The Power of the People" affirmed that the people of Azerbaijan have the sovereign right to freely and independently determine their fate and establish their own form of government, and exercises it directly by popular vote, or referendum, and through their representatives elected to the basis of universal, equal and direct voting right by free, secret and personal voting (Article 2).

Note that the standard set of principles of voting right in this norm is supplemented by free and personal voting.

Let us make a remark that all the constitutions studied formalized in their various structural parts the well-known voting right principles. Our position is that the principle norms should be distinguished from guarantees; therefore, if in the sought-for guarantee norms there is an association with the principles of voting right, this does not affect the transformation of the principle norms. They maintain their basic status emphasizing their targeting and inalienability of elections and referenda.

Article 2 of the Armenian Constitution is formulated in a meaningful approximation to Article 2 of the

Constitution of Azerbaijan: the people exercise their power through free elections, referenda, as well as through state bodies, local authorities and officials provided for by the Constitution (Chapter 1, "Fundamentals of the Constitutional System").

Article 2 from Section I "Foundations of the constitutional order" of the Kyrgyz Constitution is practically identical to the given above, detailing that laws and other important issues of national importance may be put to a referendum (popular vote).

Concise and conveying the stated meanings are Part 2 of Article 1 and Part 2 of Article 3 from the Constitution of Kazakhstan (Section I, General Provisions).

Part 3 of Article 3 from the Constitution of the Russian Federation indicated the referendum and free elections as the highest direct expression of the people power (Chapter 1, "Fundamentals of the constitutional order").

Only a referendum is referred to in Article 9 of the Constitution of Uzbekistan (Section One, "Basic Principles"): the most important issues of public and state life are brought up for discussion by the people, and are put to a universal vote (referendum).

The constitutions of Belarus, Kazakhstan and Russia have established norms guaranteeing the exercise of citizens' voting right at the level of local government and self-government.

So, according to Article 117 of the Constitution of Belarus (Section V "Local government and self-government"), local government and self-government are exercised by citizens through local Councils of Deputies, executive and administrative bodies, bodies of territorial public self-government, local referenda, meetings and other forms of direct participation in state and public affairs.

Section VIII "Local government and self-government" of the Constitution of Kazakhstan, states that "The population elects Maslikhats... for a term of five years" (part 2 of article 86).

Based on part 2, Article 130 of the Constitution of Russia (Chapter 8, "Local Self-Government"), local self-government is exercised by citizens through a referendum, elections, other forms of direct expression of will, through elected and other bodies of local self-government.

We believe that the importance of constitutional sovereign guarantees lies in the fact that in their basic version they determine the existence of the right to elect and the right to be elected through the stipulated forms of direct expression of the people's will.

Further, we separated a variety of electoral constitutional guarantees in their material and procedural forms.

Within the framework of electoral constitutional material guarantees, we single out those that are general and comparable with the right of citizens to elect and the right to be elected. As a rule, these norms are enshrined in special sections of constitutions devoted to the rights and freedoms of an individual.

So, Article 56 "Voting right" (Chapter III "Fundamental rights and freedoms of a man and citizen") of the Constitution of Azerbaijan, part I, indicated that citizens of the Republic have the right to elect and be elected to state bodies, as well as to participate in referenda. The norm of part 32 of the Russian Constitution is identical to the above wording.

Of the meaningful approximation is the norm of part 2, Article 33 in Section II "Man and Citizen" of the Constitution of Kazakhstan with the addition of the right to elect and be elected to local authorities. The emphasis in Article 38 of the Constitution of Belarus (Section II "Personality, Society, State") is placed only on the right to freely elect and be elected to state bodies.

Another option for enshrining the desired legal right is Article 27 in Chapter 2 "Rights, freedoms, basic duties of man and citizen" of the Constitution of Tajikistan. In accordance with it, a citizen has the right to elect and be elected upon reaching the age of 18.

Elections and referenda are held on the basis of universal, equal, direct voting right by secret ballot.

Thus, the paper reflects legal voting right, including the right to vote and the right to be elected. Based on the inclusion in the norm of voting rights, the implementation of the law in question through elections and referendum is obvious.

Article 38 "The Right to Elect and Be Elected" of the Constitution of Moldova (Chapter II "Fundamental Rights and Freedoms") laid out legal voting right in detail with an emphasis on guarantees:

- The will of the people is the basis of state power. This will finds its expression in free elections (part 1);
- The right to be elected is guaranteed to citizens of the Republic of Moldova who have the right to elect, in accordance with the law (Part 3).

Note that, within the framework of constitutional sovereign guarantees, the desired norm was not found in the corresponding section of the constitutional act of Moldova. However, in fact, it is present and formalized in conjunction with the legal voting right of citizens. Situations of this kind are not isolated, but in general, the key is the constitutional consolidation of the guarantee, regardless of its placement in the structure.

The Constitution of Moldova has not ignored the referendum; it is formalized in Article 75, Part 3 "Legislation": the most important issues in the life of society and the state are put to a referendum.

Let us clarify that the represented wording of part 3, Article 38 from the Constitution of Moldova is an exception in the considered group of constitutions rather than a universal inclusion and was found once more in Article 117 of the Constitution Uzbekistan (Losilkina *et al.*, 2018).

Unlike the constitutions presented, which enshrined the desired subjective law in the chapters on the rights and freedoms of an individual, the Constitution of Uzbekistan contains Chapter XXIII "Electoral System", which has specified in article 117 that citizens of the Republic of Uzbekistan have the right to elect and be elected to representative bodies. Each voter has one vote. The right to vote, equality and freedom of expression are guaranteed by law.

Let us specify that the Constitution of Belarus also separates an independent Section III "Electoral System. Referendum" where Article 64 defines the subjects of the right to vote in relation to the election of deputies and other persons elected to public office by the people.

We take as a guarantee the wording that any direct or indirect restriction of citizens' voting rights in other cases is unacceptable and punishable by law.

Further, in articles 65-68, voting rights' well-known principles are formalized and written out.

Chapter 2 "Referendum (popular vote)" of the Constitution of Belarus united articles 73-78 in the

basic version, securing the participation of citizens of the Belarus Republic with voting right in the referenda, as well as the procedure for conducting republican and local referenda.

We'll clarify that the specialized sections of Belarus and Uzbekistan's constitutions that consolidate the diversity of norms on the electoral system and referendum should be called the systemically electing ones.

Among the considered series of constitutions, part 1 of article 52 of Chapter III "Citizenship. Rights and Obligations of a Citizen" in Kyrgyzstan contains limited provisions on the fact that citizens have the right to participate in a referendum in the manner prescribed by constitutional law. However, this norm does not only indicate the implementation of the referendum in the state, as Article 2 of Section 1, "Fundamentals of the Constitutional System", also dealt with free elections.

We believe that to systemize the constitutional norms of the material variety guaranteeing the right to vote, it is logical to characterise private polling guarantees. We correlate them with the requirements for the implementation by a subject of the right to elect and the right to be elected.

Regarding the first type, the wording on the right to elect belongs to citizens who have reached 18 years of age (part 1, article 48 of the Constitution of Armenia, article 64 of the Constitution of Belarus, part 4, article 2 of the Constitution of Kyrgyzstan, article 38 of the Constitution of Moldova, article 117 of the Constitution of Uzbekistan).

The subjects of the right to be elected, which are constitutionally required to implement it, are most often presidential candidates, as well as parliamentarians.

The requirements for a presidential candidate are set forth in all the constitutions studied and are reduced to the following types:

- The availability of state citizenship (Azerbaijan, Moldova, Russia, Tajikistan, Uzbekistan), specifying this characteristic by birth (Belarus, Kazakhstan) or by being the person the last 6 years a citizen of the Republic only (Armenia);
- Age qualification: not younger / older than 35 years old (Azerbaijan, Belarus, Moldova, Russia, Uzbekistan), not younger / older than 40 years old (Armenia, Kazakhstan); between the ages of 35 and 65 years (Tajikistan);

- Residency: be resident in the territory of more than / not less than 10 years (Azerbaijan, Moldova, Russia, and Tajikistan), not less than 10 years before the elections (Belarus, Uzbekistan), be resident in the country the last 6 years (Armenia), or living the last 15 years in the state (Kazakhstan);
- The availability of voting right (Azerbaijan, Armenia, Belarus);
- Command in the state language (Armenia, Kazakhstan, Moldova, Tajikistan, and Uzbekistan).

We draw attention to the fact that, in addition to the listed requirements, the Constitution of Azerbaijan requires the availability of higher education, as well as the absence of obligations to other states, conviction for a felony, and absence of dual citizenship.

With less detail, constitutional requirements are presented to deputies of the legislative (representative) bodies of states. Among those are the following:

- The availability of citizenship (Azerbaijan, Kyrgyzstan, Russia, Uzbekistan), with the specification that the last 4 years the person is a citizen of the Republic only (Armenia);
- Age qualification: not younger / older than 25 years (Azerbaijan, Armenia, Uzbekistan), 21 years old on the election day (Kyrgyzstan, Russia);
- The availability of the voting right (Armenia, Kyrgyzstan, Russia).

Note that, in part 2, Article 48 of the Constitution of Armenia, the requirements for permanent residence during the last 4 years in the Republic, as well as proficiency in the Armenian language, are also presented to the deputy of the National Assembly.

Among the procedural electoral constitutional guarantees, we separate their restrictive variety. We associate with them the norms that exhaustively indicate the population's categories which, according to the law, may limit the exercise of legal voting right. Norms of this kind are found in all studied constitutions, with the exception of Kyrgyzstan.

The originality is distinctive for the wording of Part III, Article 56 of the Azerbaijan Constitution: the right to

participate in the election of military personnel, judges, public servants, religious leaders, persons deprived of their liberty by a court verdict that has entered into legal force, and of other persons specified in this Constitution and law may be limited by law.

As a rule, among the recipients restricted in their voting right are: incapable persons recognized as such by an enforceable court decision (Part 4, Article 48 of the Armenian Constitution, Article 64 of the Constitution of Belarus; Part 3, Article 33 of the Constitution of Kazakhstan, part 3, Article 32 of the Russian Constitution, Article 27 of the Tajik Constitution, Article 117 of the Constitution of Uzbekistan); persons convicted of crimes according to a court verdict (part 4, article 48 of the Constitution of Armenia, part 3, article 33 of the Constitution of Kazakhstan, part 3, article 32 of the Constitution of Russia, article 27 of the Constitution of Tajikistan; article 117 of the Constitution of Uzbekistan).

Article 64 of the Constitution of Belarus adds to legally incapable the persons in respect of whom, in the manner established by the criminal procedure legislation, a preventive measure in the form of detention has been chosen. At the same time, it is specified in the norm that any direct or indirect restriction of the electoral rights of citizens in other cases is unacceptable and punishable by law. A similar kind of norm is also characteristic of Article 117 of the Uzbekistan Constitution. As we believe this is due to the separation in their constitutions of special sections on electoral systems.

Part 2 of article 38 in the Constitution of Moldova is the most concise among the reviewed texts: citizens of the Republic have the right to vote, with the exception of persons deprived of this right in accordance with the law.

Among the procedural electoral constitutional guarantees, we also separate the procedural variety and associate it with the procedure for the implementation of legal voting right within the various stages of the electoral process in elections and referenda.

As a rule, constitutional norms specify the procedure for presidential elections. So, Articles 101 and 102 consolidated the basis for the election of the President of the Republic of Azerbaijan, including a tally of votes. The President of Azerbaijan is elected by a majority of more than half of the votes cast.

If such a majority is not gained in the first round of voting, then the second round is held on the second Sunday after the first round of voting. Only two candidates with the highest number of votes in the first round or two candidates following the candidates with the highest number of votes and withdrawing their candidacy shall participate in the second round of voting.

The candidate who won the majority of votes in the second round of elections is considered elected President of the Republic of Azerbaijan.

The results for election of the President of the Azerbaijan Republic are officially announced by the Constitutional Court of the Republic of Azerbaijan within 14 days after the day of voting (Article 102).

The desired norms are localized in Articles 81 and 82 of the Constitution of Belarus, Article 41 of the Constitution of Kazakhstan, Article 78 of the Constitution of Moldova, and Article 66 of the Constitution of Tajikistan. In terms of procedural content, they are identical to those formalized in Azerbaijan, with the exception of establishing an official announcement of the election results by the constitutional courts of the republics over a certain period.

Although on the basis of part 1, Article 79 of the Constitution of Moldova, the results for election of the President of the Republic are recognized as valid by the Constitutional Court.

Proceeding from the laws of parliamentary republic in Armenia, the election of the President by the parliament, or the National Assembly (Article 125), is logical.

As for the election of deputies, deputies of the Milli Mazhlis of the Republic of Azerbaijan are elected on the basis of a majoritarian electoral system according to Article 83 of the Azerbaijan Constitution "Basics of the Milli Mazhlis deputy election in the Republic of Azerbaijan".

In Armenia, the National Assembly is elected according to the proportional election system (part 3 of article 89 in Chapter 4 "National Assembly"). This system is also characteristic of the election into the Zhogorku Kenesh in Kyrgyzstan (Article 70) (Nikonova, *et al.*, 2017).

Section IV, Article 51 "Parliament" of the Constitution of Kazakhstan determined that 9 deputies

of the Mazhilis are elected by the Assembly of the People of Kazakhstan. Regular elections of deputies of the Majilis are held no later than two months before the end of the term limit for the current convocation of the Parliament.

The election of deputies of the Senate is carried out on the basis of indirect voting right by secret ballot.

Chapter XVIII "Oliy Mazhlis of the Republic of Uzbekistan", Article 77 of the Constitution of Uzbekistan noted that the Oliy Mazhlis of the Republic consists of deputies elected in territorial constituencies on a multi-party basis for a term of five years.

It should be noted that the procedure for holding referenda is specified only in the Constitution of Belarus. A reference to the legislative procedure for regulating the referendum is more convenient for the considered constitutions.

Within the framework of the constitutional guarantees under consideration, we also consider it appropriate to highlight the institutional guarantees implemented by special authorities (represented by central commissions) and constitutional control authorities (constitutional control bodies authorized to consider electoral disputes, in particular, in connection with the implementation of legal voting right).

Among the first, the Central Election Commission, to which Chapter 11 of the Constitution of Armenia (parts 1 and 2 of article 194), and article 106 of the Constitution of Kyrgyzstan (Section VII "Other state bodies") are dedicated.

With regard to the mention of constitutional review bodies in correlation with the voting right, it is found in the constitutions of Armenia (Article 168) and Kazakhstan (part 1 of Article 72) in the context of the consideration of disputes related to election law.

We believe that it is advisable to separate the group of constitutional standardizing guarantees that indicate the unification of the election procedure or referendum at the legislative level by an authorized entity.

The examples from Part I, Article 94 of the Constitution of Azerbaijan are relevant here; they stipulate that the Milli Mazhlis of the Azerbaijan Republic establishes general rules on the election of the President of the Republic, election to the Milli Mazhlis, and the status of deputies of the Milli Mazhlis of Azerbaijan, referendum, and municipal elections.

This also applies to Part I, Article 138 of the Constitution of Azerbaijan in the aspect of Ali Mazhlis of the Nakhchivan Autonomous Republic.

In other cases, laconic wording is found in the constitutions and describing that law determines the order of the election (part 2, Article 61 of the Constitution of Moldova) of the President (part. 2, Article 81 of the Russian Constitution, Article 117 of the Constitution of Uzbekistan), representative bodies (part 2, Article 96 of the Russian Constitution, Article 117 of the Constitution of Uzbekistan), and local authorities (part 2, Article 181 of the Constitution of Armenia)

According to Part 3 "Legislation" of the Constitution of Moldova, organic law governs: a) the electoral system; b) organization and conduct of a referendum (part 3 of article 72).

References to the fact that the procedure for holding a referendum is determined by constitutional law are made in Part 2 of Article 183 of the Armenian Constitution, part 3, Article 2 of Kyrgyzstan's Constitution, and Article 9 of the Constitution of Uzbekistan.

## CONCLUSIONS

We believe that constitutional norms are basic guarantees of legal voting right. The streamlining of such norms is facilitated by the classification method. On this basis, we have identified, named, and described the following required guarantees. The main variety of legal voting rights guarantees are constitutional and sovereign. Independent groups consist of constitutional election guarantees in substantive and procedural variations. The first ones are divided by us into general and special forms. Procedural electoral, constitutional guarantees include their restrictive and procedural types. A special group consists of the constitutional institutional guarantees implemented by special and constitutionally-control authorities. It is advisable to separate groups of constitutional and standardizing guarantees indicating the unification of procedures for the election or a referendum on the legislative level by an authorized entity.

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