

МАКЕМБАЕВА Д. И.
КНУ н.а. Ж. Баласагын, Бишкек.
МАКЕМБАЕВА Д. И.
КНУ им. Ж. Баласагына
diana.legal@mail.ru

**Optimization of the electoral legislation of the Kyrgyz Republic
through implementation of information technologies**

**ОПТИМИЗАЦИЯ ИЗБИРАТЕЛЬНОГО
ЗАКОНОДАТЕЛЬСТВА КР В СФЕРЕ
ВНЕДРЕНИЯ ИНФОРМАЦИОННЫХ
ТЕХНОЛОГИЙ**

**Маалыматтык технологиялар тармагында Кыргыз
Республикасынын шайлоо мыйзамдарынына
ылайыкташтыруу**

***Abstract:** the article reviews the electoral legislation of the Kyrgyz Republic, including new legal norms and regulations that improve the organization and conduct of elections. The issue of introduction of information technologies in the electoral system is also considered. The author presents some results of the public election monitoring using biometric data during local and parliamentary elections. The main goal of this article is to provide legal information to representatives of political parties, public activists, members of election commissions for the purpose of improving the conduct of elections.*

***Аннотация:** в статье дается обзор избирательного законодательства КР, включающий новые правовые нормы и подзаконные акты, улучшающие организацию и проведение выборов. Рассматривается вопрос внедрения информационных технологий в избирательную систему. Автор представляет некоторые результаты общественного мониторинга выборов с применением биометрических данных во время местных и парламентских выборов. Основной целью данной статьи является предоставление правовой информации представителям политических партий, общественным активистам, членам избирательных комиссий для улучшения проведения выборов.*

***Аннотация:** макалада шайлоону уюштурууну жана өткөрүүнү жакшыртуу үчүн Кыргыз Республикасынын жаңы укуктук ченемдери жана жоболор шайлоо мыйзамдарынын жаатында серептелген. Шайлоо системасында маалыматтык технологияларын колдонуу боюнча маселеси каралган. Автор жергиликтүү жана парламенттик шайлоодо жүргүзүлгөн мониторингдин кээ бир жыйынтыктарын биометрикалык маалыматтарды колдонуу аркылуу чагылдырылган. Бул макаланын негизги максаты шайлоо өткөрүүнү о жакшыртуу үчүн саясий партияларга, жарандык активисттерге, шайлоо комиссияларынын мүчөлөрүнө укуктук маалымат берүү болуп саналат.*

Keywords: *reform; elections, information technologies, biometric passport, elections to local councils (local keneshes); electoral process; voters, automatic scanning ballot boxes; state registration service; biometric registration.*

Ключевые слова: *реформа; выборы, информационные технологии, биометрический паспорт, выборы местных кенешей; избирательный процесс; избиратели, автоматические считывающие урны; государственная регистрационная служба; биометрическая регистрация.*

Негизги сөздөр: *өзгөртүү; шайлоо, маалыматтык технологиялар, биометриялык паспорт, жергиликтүү кенештин шайлоосу; шайлоо процесси; шайлоочулар; автоматтык эсептөөчү урна; мамлекеттик каттоо кызматы; биометрикалык каттоо.*

The reform of the electoral legislation in Kyrgyzstan has started after 2010, when the constitutional law “On Presidential and Jogorku Kenesh Elections in the Kyrgyz Republic” and the law "On Elections to Local Keneshes" were adopted [1]. Based on the above-mentioned laws, the elections of the President, members of the Parliament (*the Jogorku Kenesh*) and local councils (*keneshes*) were held. In practice, previous elections were accompanied by violations that led to unfair and non-transparent election results. In particular, such phenomena as carousel voting and ballot stuffing could have affected the results of the voting. To prevent such violations, a bill was initiated to introduce information technologies in elections at all levels. The following new concepts were introduced in the field of the automated electoral process: *operator, thermal printer, automatic scanning, ballot box, check, failure.*

The country's authorities, demonstrating strong political will, began active lobbying of the new draft law "On the biometric registration of citizens of the Kyrgyz Republic" [2]. The system for collecting biometric data allowed to create the single information space and the single database of citizens of the Kyrgyz Republic with centralized storage and regular information update. The law was aimed at creating the database of citizens of the Kyrgyz Republic based on biometric indicators and the exact compilation of the voters list; as well as establishing a legal framework regulating relations arising in the performance of the government agencies in collecting, storing, using, processing, updating and protecting the biometric data of citizens.

During the discussion of the draft law, two opposing views emerged in the society. The authors of the draft law, members of the Parliament (*the Jogorku Kenesh*), in their decision relied on the experience of other countries. For example, in many countries processing of biometric foreign passports lasted for ten years. In 2004, the European Commission issued an order on the integration of biometric information with foreign passports and

entry documents operating in the EU. These measures were taken to prevent illegal entry into the EU territory. Explanatory notes to the bill included arguments on the utility of the law for Kyrgyzstan. Although the issue of biometric passports was discussed during the adoption of the draft law, the main reason was the introduction of a biometric data system into the electoral process. This fact indicates that the authorities wanted to apply the experience of foreign countries in the use of new technologies exactly in the election process.

Introduction of biometric technology was to become one of the mechanisms to increase the level of citizens' trust in the elections, state electoral institutions and transparency of the electoral process. The government has fulfilled the task set for providing biometric passports to the population: from May 1 to the end of December 2017, the issuance of biometric passports to the population is free, and later it will become a paid service.

On April 15, 2014, the President of the Kyrgyz Republic A. Atambayev at the meeting of the National Council for Sustainable Development of Kyrgyzstan instructed the Government of the Kyrgyz Republic to begin the work on collecting biometric data of citizens. The government was in charge of resolving technical issues upon creation of the conditions for safe storage of the biometric data, purchase of equipment, development of software and opening of the biometric data collection points, as well as informing citizens about the need to participate.

On the other hand, active representatives of the civil society expressed doubts about the legality of the law: in their opinion, collection of the biometric data (fingerprinting and photographing) under compulsion is illegal, and contradicts the Constitution of the Kyrgyz Republic. In this connection, a petition was submitted by the civil activists to the Constitutional Chamber of the Supreme Court regarding the law "On the biometric registration of citizens of the Kyrgyz Republic." The Constitutional Chamber refused to satisfy the petition, referring to the political will of the country's authorities.

In October 2015, for the first time in Kyrgyzstan, parliamentary elections and in March 2016 elections to local councils were held using biometric data. The organization of the full-scale election activities using new technologies in Kyrgyzstan was a success. This process was observed by not only the whole community of Kyrgyzstan but also by the representatives of foreign countries. Implementation of the new information technologies in the electoral process has been supported by the multiple

factors: political will of the government officials, organizational and informational campaigns among the population, and extensive financial expenditures.

A new approach to the conduct of elections in Kyrgyzstan, with the use of innovative technologies actually contributed to the transparency of the elections that led to a significant increase in the voters' trust. Testing election management information system in the pilot areas helped to identify the strengths and weaknesses of their use. One of the problems was prevented admission of a certain number of voters to the voting process due to their absence in the database of polling stations. Representatives of the State Registration Service (SRS) explained this situation by the fact that the list of voters was formed from the database of the Central Election Commission (CEC).

The application of automatic scanning ballot boxes met expectations on the prevention of mass ballot stuffing with influencing the results of the voting. At the same time, it should be noted that during the initial launch of the system in some areas has delayed the voting process because of the automatic scanning ballot boxes failure. While calculating the results of the voting it became necessary to re-count the ballots in order to confirm the results. Manual counting of the ballots resolved the questionable issue. Based on the analysis of the shortcomings, recommendations were made for amending the law and for further implementation in practice during the parliamentary elections.

In April 2015, the following amendments were introduced into the constitutional law of the Kyrgyz Republic "On Presidential and Parliamentary Elections in the Kyrgyz Republic":

1. The identity document according to the new Elections Law is only passport (ID card). In this regard, officer's identification certificate, pension certificate, driver's license lost their force and were not allowed during the election processes.

2. Early voting and the marking of voters were excluded.

3. Automatic scanning ballot box is used on the Election Day. In case of failure of one machine, the spare machine is used. In case of failure of the spare machine, the process continues with the use of stationary box for voting.

4. The voters list is prepared in both electronic and hard copy versions.

5. The voters list includes only citizens who have biometric registration.

6. Voters list is compiled by the State Registration Service on the basis of information about voters – their biometric and personal data.

7. To participate in the elections citizens have to check if their name is included in the final voter list not later than 15 calendar days before the voting day and should have passed the biometric registration.

8. State Registration Service forms the voter list based on the biometric data and transmits the database electronically to the CEC 50 calendar days before the voting day.

9. The CEC immediately prints out the voter list and sends it to the Precinct Election Commissions (PECs). The PECs at least 45 days prior to the voting date post lists for review at the polling stations.

10. The verbal request for voting outside the premises is excluded (only a written request of the voter is allowed).

11. During the voting, after the identification of the voter a receipt issued to the voter. The voter presents the receipt to the member of the PEC, who gives him a ballot in exchange for the receipt.

12. In the polling station, identification of voter according to his / her biometric and personal data is implemented by operators, the representatives of the SRS, together with the members of the PEC.

13. The possibility of appealing decisions, actions (inaction) of election commissions in courts of first instance is not allowed. They can be appeal to a higher election commission.

14. Only decisions and actions of the CEC can be appealed in courts.

15. Voting on the Election Day is conducted from 8 a.m. to 20 p.m.

16. To vote outside the premises is only allowed for those citizens who have filed written application to the Precinct Election Commission (PEC).

17. The responsibilities and duties of the Internal Affairs bodies and the Prosecutor's office for consideration of complaints of participants of the electoral process are delineated.

18. After the voting and prior to the distribution of mandates, candidate included in the list of candidates by a political party has the right to apply to the corresponding territorial election commission for withdrawal from the list of candidates.

In addition, on June 6, 2017, the following amendments and additions to the above-mentioned law were adopted:

1. A new concept of "public observer" is introduced. It is a person appointed by a non-profit organization of the KR to observe the election process. At the same time, citizens of the Kyrgyz Republic cannot be accredited as international observers.

2. Internet publications can be used for informing voters and conducting election campaigns.

3. The law prohibits the use of green plantations, trees, slopes, peaks of mountains and hills, other natural elevations to accommodate agitation materials in any form.

4. Depending on the degree of completeness and purpose, the voter lists are divided into preliminary, control and final.

5. To conduct voting and count the votes of electors, polling stations are formed taking into account local and other conditions in order to create maximum convenience for voters. Electoral precincts are formed by the relevant territorial election commissions no later than 75 calendar days prior to the voting day, according to a rule of no more than 2500 voters in each sector. The management of the boundaries of polling stations is carried out according to the procedure approved by the Central Election Commission (CEC).

6. Election information campaigns carried out on the radio are not subject to the requirement that all printed and other informational materials should contain, i.e.: the name and address of the organization (as well as surnames, first names, patronymics and addresses of the place of residence of persons) that produced informational materials; the surname, first name, patronymic of the person (name of the organization) who ordered the production of materials; information on materials circulation and the date of issue; the name, patronymic, middle name of the candidate/authorized representative of political party.

7. The procedure for publishing the preliminary results of voting, the results of voting and the election results on the official website of the Central Election Commission has been established.

8. If earlier registration of a candidate has been canceled if the candidate, his representatives, or close relatives of the candidate bribing voters has been confirmed. Now, this list has been extended by candidate's authorized representatives and observers.

9. In addition, it is established that with the entry into force of the conviction of a court against a candidate, his/her registration is canceled.

10. According to the law, the next presidential election is not held on the third Sunday of November, as it was before, but on the third Sunday of October, in which the term of office of the President for which he has been elected expires.

11. The procedure for establishing the command of the state language by a presidential candidate was revised.

12. The size of the electoral fund of a presidential candidate has been increased. The applicant's own funds, which cannot exceed the estimated figure by more than 15,000 times, are increased to 150,000 times [3].

In implementation of the constitutional law, the Central Election Commission adopted a number of by-laws. These are the regulation "On the organization and procedure for voting and determining the results of voting by election commissions during the election of members of the Parliament" from July 28, 2015 [4], and the regulation "On the procedure for interaction of the Central Commission for Elections and Referenda and the State Registration Service" from August 12, 2015 [5]. The first one regulates the

organization of voting, the will expression by voters, including the use of innovative technologies, counting the votes of the electorate and determining the results of voting by election commissions. In addition, the other one determines the procedure for interaction between the two state bodies on the issues of drawing up, transferring the voter lists, getting acquainted with them, considering voters' statements about their intention to vote at the electoral address and on other issues requiring prompt resolution.

All of the above regulatory and legal acts are aimed at improving the electoral system, upgrading and facilitating the work of the members of the election commissions. Two state bodies, the CEC and the SRS, can interact in the rapid and qualitative compilation and updating of the voter lists, that is one of the important factors in the electoral process.

The Government of the Kyrgyz Republic and the CEC have made significant efforts to introduce a new system of biometric voter registration and electronic voting. During the testing of the automated control system, some problems were identified: the system could not recognize the fingerprints of some citizens, or the system displayed the data of another person in identification with fingerprints. In some cases, during the identification of voters some equipment malfunctions took place.

According to the results of the parliamentary elections observation by an independent organization - the Coalition for Democracy and Civil Society, it can be concluded that, in general, the violation rate is low (9%). However, in some regions violation were more common, for example, in the city of Osh (19% PECs), in Naryn oblast (14% PECs), Talas oblast (12% PECs) and Issyk-Kul oblast (12% PECs). Technical malfunction of equipment for the identification of voters was observed in 40% of PECs. In the regional context, the situation in Osh needs to be mentioned, as such: in every second PEC (50% of PECs) equipment malfunction lasted no more than 10 minutes, in 6% PECs equipment did not work for 10 to 30 minutes, and in 6% PECs equipment did not work for more than 30 minutes. In addition, problems with the operation of equipment were widespread in Chui oblast and in Bishkek (46% of PECs). Despite the first experience of using complex equipment and changes in the voting procedures, in 72% of PECs equipment worked properly [6].

On March 27, 2016, biometric identification technologies were also used in the elections to local councils (*keneshes*). Local elections took place in 6 cities and 21 villages (*ayil aimak*) at 199 polling stations. The SRS reported that 264,000 voters has participated in the elections. Local elections were conducted using procedures tested in the last parliamentary elections in October 2015, namely: identification of voters based on biometric data and using of automatic scanning ballot boxes. To implement the tasks set, the Law on Local Elections to the Jogorku Kenesh of the Kyrgyz Republic was

amended on January 21, 2016, two months before the election [7], to introduce these procedures.

As a result, we can say that the introduction of the information technology has brought greater transparency in the procedure of counting votes. It is worth noting that the results of these elections were not disputed by rallies and demonstrations. The electronic voting contributed to fulfilling the "one voter - one vote" principle. In the parliamentary elections of 2015, the CEC has limited itself to publishing preliminary data from the automatic scanning ballot boxes, while manual counting protocols are official, though the results of manual counting have not been posted on the CEC website.

Nevertheless, there is another problem, which cannot be solved using information technology in elections that is bribing of voters. According to experts, if earlier, before the use of new information technologies, candidates could buy wholesale votes of the members of election commissions or use the administrative resource; then during the parliamentary election campaign the practice of voters bribing started being used more widely.

Thus, the analysis of the election legislation of the Kyrgyz Republic and the practice of its application show the following positive aspects:

1. Innovation of information technologies in the electoral process;
2. Simplified counting of the votes when summarizing the voting results;
3. Decrease in the number of falsifications during elections;
4. The range of subjects of punishment for bribing voters, such as candidate proxies and observers, has been expanded.

However, at the same time, there are also negative aspects, such as:

1. Restriction of observers from non-profit organizations to move freely and to attend any polling stations, as well as to appeal against the decisions and actions (inaction) of the election commission.
2. Increase in the size of the electoral fund of a presidential candidate. This financial barrier opens the way only for rich and influential people to run for presidency.
3. Reducing the number of voters due to those who refused to undergo the procedure of biometric data collection.

Currently, the voter lists included 2 914 588 citizens of the Kyrgyz Republic who have reached 18 years of age and have passed biometric registration. That shows greater number of voters who passed the biometrics comparing to the last elections (2 807 549) [8]. For constant communication with the population, the Kyrgyz Central Election Commission (CEC) has started using a WhatsApp application, and in addition, operates a public consultation room. The President of Kyrgyzstan Almazbek Atambayev instructed the CEC to rectify all defects and omissions in the work of the automatic scanning ballot boxes to ensure the uninterrupted functioning.

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