

THE RIGHT TO VOTE ACCORDING TO INTERNATIONAL INSTRUMENTS AND MECHANISMS

Gasper Kokaj,

University “Luigj Gurakuqi”, Shkoder, Albania (PhD student)

Paulina Hoti,

University “Luigj Gurakuqi”, Shkoder, Albania (PhD)

ABSTRACT: *The right to vote is an important political right, presented as a right and as an opportunity to participate in the governance of the country. Suffrage was a right or a privilege of voting to elect public officials and to adopt or abolish legislation. It is a political institution that existed since ancient times. As a fundamental right, it is mentioned in various international acts, declarations, charters and agreements. This article makes a listing of the documents which in international level provide for the right to vote and to be elected in their texts, referring to free, fair and regular elections that implement democratic legal standards. These documents provide also some international standards on elections, which constitute some criteria and main principles internationally recognised for the determination of free and fair elections. The fulfilment of these standards allows measuring the criteria for democratic elections.*

KEYWORDS: *Right to Vote, International Instruments, Mechanisms*

INTRODUCTION

A realistic concept such as democracy, considering the history and the unchangeable difference of concepts between the governors and the governed, requires that the first ones should be set in a continuous relation with the second ones, so that government activity results in compliance with the effective needs of the community. Thus, there are two ways of choosing governors: (i) by democratic means and (ii) by non-democratic ones. The first way is realized through choice (election). This could be through various forms and electoral systems. Meanwhile, the second method involves inheritance, occupation or other ways of gaining power by force (Martines, 2005, p. 218).

Suffrage was a right or a privilege of voting to elect public officials and to adopt or abolish legislation. It is a political institution that exists since ancient times. The right to vote was not always a political right or freedom. In most cases of the old and new history, the election was not democratic, it determined who will command and it was not always elected the best and the most wise person.

The right to vote as a political right in the earlier stages of human development can be seen in the first forms of democracy in the Greek polis. The development of elections, their form and

content has changes continuously. Often in political theory and its history, Ancient Greece is mentioned as the initial source of the right to vote. The elections took place in the early Middle Ages. By rejecting the principle of inheritance or force, as 'men of God', they chose an absolute head by secret ballot (Haxhiu, 2013, pp. 21-23). The following gives a general overview on the history of the right to vote, the main international legal framework on elections and several regional developments related to the right to vote and international standards on elections.

A general overview on the historical developments of the right to vote as a human right.

In its beginnings, the right to vote was a privilege for a narrow circle of persons; it did not include the whole spectrum of political, economic and social groups, but only certain groups, classes and interests. The road to an equal right to vote was long and difficult (Anastasi, 2006, pp. 403, 418, 487; Omari, 2004, p. 141). The right to vote was conducted in *curial groups*, also based on property and tax *census* (Omari & Anastasi, 2010, pp. 270-271). There were no genuine choices. However, throughout history ran a bitter political and military struggle between the monarchy and progressive internal forces. The feudal absolutism began to fall, first in England and then beyond, with the limiting of monarch powers since the *Magna Charta Libertatum* of 1215th (Anastasi, 2006, pp. 249-250). The institution of the right to vote is historically denied and limited. Denial and restriction were expressed in different forms and ways, although many city-states of the Middle Ages called themselves democratic countries (Haxhiu, 2013, p. 22).

The extension of subjects of the right to vote begins at the time of the French Revolution (Omari, 2004, p. 141; Anastasi, 2006, p. 358). It was first known as a privilege the big and small owners' class. Later, in the 1791st constitution and the draft Constitution of 1793rd, the right to vote was acknowledged to all men (Omari & Anastasi, 2010, p. 269). In the USA, the right to vote before 1776 was a recognized right in some of the American colonies, with the exception for Indians and slaves. Suffrage began to expand during the 19th Century. This came as a result of U.S. policy that increasingly became more inclusive. The old ways were dissolved; formerly excluded groups began to engage in the political process. Originally, were lifted the restrictions related to religion and property. Then after a civil war (1861-1865) on the issue of slavery, three amendments to the U.S. Constitution significantly changed the scope and nature of American democracy: the 13th Amendment, the 14th and the 19th one (Anastasi, 2006, p. 340).

The 13th Amendment of the USA Constitution, ratified in 1865, abolished slavery "*Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction*" (<http://constitutionus.com/>, consulted on August 2014). The 14th amendment – ratified in 1868 – stated that all people born or naturalized in the United States are citizens of the country and state where they live and that their rights to life, liberty, property and equal protection by the laws, must be enforced by the federal government "*All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United*

States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” (<http://constitutionus.com/>, *ibid*).

The 15th Amendment was ratified in 1870. It prohibited the federal government and state governments to discriminate against potential voters because of race, color or previous condition of servitude (*The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.*). However, still the word ‘gender’ remained off the list, not because of negligence. Thus, women continued to remain outside the polls.

Extending the right to vote to former slaves involved a campaign that moved perks of time for women's rights to vote. Finally, in 1920, the 19th Amendment stipulated that the vote should not be denied to anyone because of gender “*The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.*” (<http://constitutionus.com/>, *ibid*). Today nearly all U.S. citizens over the age of 18 native or naturalized are entitled to vote (*USA Constitution, Amendment XXVI* in <http://constitutionus.com/>).

During the XIX Century, in Prussia (Germany), Russia, Belgium, Austro-Hungarian, etc., we can find solutions of indirect elections in two or more scales (Saliu, 2004, p. 252).

In England, which is considered the ‘cradle of parliamentarianism’, there was a limited number of voters until the electoral reform of 1832nd, while the general right to vote was reached in 1918 (Omari, 2004, p. 141).

In Germany the general right of election is set in 1872 (Omari & Anastasi, 2010, p. 270).

While in Albania, the right of vote in the full sense of the word, a general, equal and free right to vote was conducted after the establishment of a democratic system in 1991 (Omari & Anastasi, 2010, pp. 271, 277). Regarding the full right to vote in European countries, it is applied after World War II, thus in 1946.

The right to vote, elections and international acts

An expression found in the constitutional provisions of most countries – although expressed differently, but almost with the same meaning – is that regarding “*Sovereignty belongs to the people who exercise it directly or through their representatives*”, for example:

- In Italy, Article 1 /2 of the Italian Constitution of 1948 (“*The sovereignty belongs to the people that exercise it in the forms and limits set by the Constitution*”, taken from <http://www.governo.it/Governo/Costituzione/principi.html>, on April 2014).
- In France, Article 3 of the French Constitution of 1958 (“*The national sovereignty belongs to the people that exercise it through its representatives and by referendum*” taken from http://www.assemblee-nationale.fr/connaissance/constitution.asp#titre_1, on April 2014).
- In Greece, Article 1 / 2,3 of the Greek Constitution of 1975 (“*2. Popular sovereignty is the foundation of government. 3. All powers derive from the People and exist for*

the People and the Nation; they shall be exercised as specified by the Constitution” taken from <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf> , on April 2014).

- In Russia, Article 3 of the Constitution of the Russian Federation, 1993 (“*1. The bearer of sovereignty and the only source of power in the Russian Federation shall be its multinational people. 2. People shall exercise their power directly, and also through the bodies of state power and local self-government. 3. The supreme direct expression of the power of the people shall be referenda and free elections. 4. No one may usurp power in the Russian Federation. Seizure of power or usurping state authority shall be prosecuted by federal law*”, taken from <http://www.constitution.ru/en/10003000-02.htm> , on April 2014).
- In Albania, Article 2 of the Albanian Constitution of 1998, etc.

A fundamental task, in realizing this function of agreement between the state and community representative bodies, is attributed to the political parties, which have the obligation of joining the interests of citizens, to represent and protect them in the respective institutions of representation. Such a delegating mechanism is realized by exercising the right to vote, from which the electoral body elects its representatives in parliament (Solenne & Verrili, 2009, p. 119).

Official constitutional recognition or establishment by law of the citizens’ right to vote plays a crucial role for all states; several countries have compulsory voting. However, the right to vote is not an absolute one, and it can be subject to reasonable restrictions which are not arbitrary and do not impede the free expression of the opinion of individuals (Zaganjori, 2002, p. 32). The right to vote as a fundamental right is mentioned in various international acts, declarations, charters, agreements, etc., but the most special are those after World War II, after receiving global size and importance.

The *Universal Declaration of Human Rights of 1948* has determined in article 21 that *the election of representative institutions is the basis of governance and guarantees the right of every citizen to participate in government*. The right to vote is presented as a right and as an opportunity to participate in the governance of the country as provided for in Article 21, paragraph 1 “*Everyone has the right to take part in the government of his country, directly or through freely chosen representatives*”. This principle was reaffirmed also in other texts, international and regional ones, as:

- i. European Convention on Human Rights (hereinafter ECHR), the First Additional Protocol of 1952.
- ii. International Convention on the Elimination of All Forms of Racial Discrimination 1965 (approved by the General Assembly of UN with its Resolution 2106 A (XX) of 21 December 1965).
- iii. International Covenant on Civil and Political Rights of 1966 (approved by the General Assembly of UN with its Resolution 2200 A (XXI) of 16 December 1966).
- iv. Convention on the Elimination of All Forms of Discrimination against Women – 1979 (approved by the General Assembly of UN with its Resolution 34/180 of 18 December

1979).

v. Copenhagen Document of 1990 (it is a declaration of principles elaborated during the Copenhagen Meeting in the Conference on Human Dimension of CSCE).

vi. UN Declaration on the Criteria for Free Elections and Rights of 1994.

vii. Charter of Fundamental Rights of the EU, 7 December 2000 (2000 / C 364/01).

viii. American Convention on Rights and Freedoms.

ix. African Charter on Human and People's Rights.

These international acts on human rights provide for the right to vote and to be elected in their texts. Although differently expressed, by legal interpretation of the relevant articles, their meaning is essentially the same: *free, fair and regular elections that implement democratic legal standards, and free, secret, general and equal voting for all in order to choose their representatives in local and central bodies.*

Introduction to the international standards on elections

The above international and regional conventions and documents set some international standards on elections, which constitute some criteria and main principles internationally recognised for the determination of free and fair elections. They are universal principles and directives to promote authentic and democratic electoral processes. The international standards for democratic elections are not compulsory dispositions; they are generally regarded as *soft law*, and do not impose a particular electoral system or a certain law to be applied. There are principles that guide the development and implementation of electoral systems, laws, policies and procedures related to electoral democratic processes (National Democratic Institute, 2013, p. 4).

The specialized institutions for election or election specialists, when analyzing, reporting or measuring the progressive performance of the electoral process in different countries, does not judge on the basis of internal acts, but on the recognized international criteria. Generally, international standards for fair elections include three main rights:

- a) the right to participate in governance,
- b) the right to vote (active and passive voting),
- c) the right to equal access to public services.

For example, an important standard related to the right of citizens to participate in the governance of public affairs of their countries is set in the Universal Declaration of Human Rights, in paragraph 3 of Article 21 “*The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures*” (Center for Human Rights Geneva, 1994, p. 4). The same standard is provided in article 25 of International Covenant on Civil and Political Rights of 1966 (National Democratic Institute, 2013, p. 5), for which the Commission on Human Rights of UN made a ‘general comment’ *explicitly* stating that the right to participate in public affairs, the right to vote the right to equal access to public services, among other criteria for democratic elections mention the following principles (National Democratic Institute, 2013, p. 5):

- the freedom of political organizing,
- the freedom of peaceful assembly,
- the freedom of movement,
- the freedom of information,
- the freedom of political expression,
- the freedom from compulsion (or coercion) - to exercise political solution without intimidation or threats.

Inter-governmental bodies in Asia, Africa, Europe, Latin America and the Middle East have also provided guidelines related to democracy, human rights and the certification of the election by the Member States or by those countries which are obliged to respect them. Moreover, the UN and other intergovernmental institutions have accepted the role of international and national observers as nonparty participants in the electoral process (National Democratic Institute, 2013, p. 6). The international standards, processed within international acts and by the activity of inter-governmental organizations, referring to manuals and handbooks specially prepared by these institutions, can be grouped into 3 categories:

1. standards for elections,
2. standards for election observation,
3. standards for assessing electoral processes.

All these standards are determined, served and measures only for those states that preliminary agreed on such measurement and that have ratified the conventions or are part of organizations, through which have undertaken the fulfillment of these standards.

The international standards on elections are important parameters for the states with delayed democracy. They are important for these countries in order to see the fulfillment or achievement of one or more standards. International mechanisms on elections serve also as means for partnership with democratic countries and societies, and in the framework of guaranteeing main human rights and freedoms and the improvement of democracy.

CONCLUSIONS

- The right to vote is an important political right, presented as a right and as an opportunity to participate in the governance of the country.
- The international acts on human rights providing for the right to vote, although express it differently, their meaning is essentially the same: *free, fair and regular elections that implement democratic legal standards, and free, secret, general and equal voting for all in order to choose their representatives in local and central bodies.*

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