

Annex № 1

CONCLUSION

on the compliance of the legislation, regulating the elections to the Majlisi namoyandagon of the Majlisi Oli of the Republic of Tajikistan on the 1st of March 2020, with the international standards of democratic elections

In the process of monitoring of the preparation and conduct of the scheduled elections to the Majlisi namoyandagon Majlisi Oli of the Republic of Tajikistan (hereinafter referred to as Majlisi namoyandagon, the chamber of the national parliament), the International Institute for Monitoring Democracy Development, Parliamentarianism and Suffrage Protection of Citizens of IPA CIS Member Nations analyzed the national legislation, regulating this category of elections, in terms of its compliance with:

- The Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member Nations of the Commonwealth of Independent States (hereinafter referred to as the CIS Convention);

- The Universal Declaration of Human Rights;

- The International Covenant on Civil and Political Rights, as well as comments to it, adopted by United Nations Human Rights Committee and containing the explanation of specific provisions of the International Covenant, including Article 25 "The right to take part in the conduct of public affairs";

- The Declaration of Principles for International Election Observation;

- the acts of the Organization for Security and Cooperation in Europe (Document of the Copenhagen Meeting of the Conference on the Human Dimension of 1990, hereinafter referred to as the Copenhagen Document; other international treaties, adopted within the framework of OSCE);

- the recommendations of the European Commission for Democracy through Law of the Council of Europe (hereinafter referred to as the Venice Commission), summarized in the Code of Good Practice in Electoral Matters, including sections "Guidelines on Elections" and "Explanatory Report"¹.

The national legislation was also reviewed in the context of Recommendations for Legislation Improvement in the Member Nations of IPA CIS according to the international electoral standards, adopted by the regulation of IPA CIS № 36-13 dated the 16th of May 2011; the recommendations, contained in the final documents of the IPA CIS Observers Mission on the observation of the previously conducted nationwide elections in the Republic of Tajikistan.

General Characteristics of the Electoral Legislation of the Republic of Tajikistan

¹ The Republic of Tajikistan, not being a member of the Council of Europe, is in a constant political dialogue with it for the purpose of realization of the main principles of democracy - the rule of law, freedoms and respect for individual rights across Eurasia; not being a country, which joined the Charter of the Venice Commission, the Republic of Tajikistan cooperates with it, applying to it for consultative support *ad hoc*. Particularly, according to the inquiry of the Chairman of the Constitutional Court of the Republic of Tajikistan, the Venice Commission performed an expert examination of the draft of the currently effective Constitutional Law "On the Constitutional Court of the Republic of Tajikistan" (dated 2014); according to the inquiry of the Chairman of the Council of Justice of the Republic of Tajikistan, an expert examination of the draft of the currently effective "Judges Code of Professional Ethics of the Republic of Tajikistan" (dated 2012) was performed.

The basis for legal regulation of the elections to the Majlisi namoyandagon (hereinafter referred to as the parliamentary elections) is the Constitution of the Republic of Tajikistan (hereinafter referred to as the Constitution). According to its provisions, people are bearers of sovereignty and the only source of state power (Article 6); the citizens have the right to take part in the political life and state administration directly or via their representatives, elect and be elected upon the attainment of certain age (Article 27).

According to the constitutional provisions, the Majlisi namoyandagon acts on a permanent and professional basis as one of the two chambers of the national parliament; each citizen, who is at least 30 years old and has a higher educational degree, can be elected as its deputy (Article 49).

The calling of elections to the Majlisi namoyandagon belongs to the powers of the President of the Republic of Tajikistan (Article 69); the detailed procedure for the conduct of elections, including the parliamentary elections, is regulated by a special constitutional law (Article 49).

Based on the norms of the Constitution, the legislation regulates all the stages of the electoral process, including specific guarantees for the observation of electoral rights. The Constitutional Law of the Republic of Tajikistan "On the Elections to the Majlisi Oli of the Republic of Tajikistan" (hereinafter referred to as the Law on elections, the basic law, the law; unless specifically mentioned, all the references in the text are given to this document) performs specific regulation of the preparation and conduct of the elections to the Majlisi namoyandagon.

Specific aspects of the legal relations, arising from the conduct of the parliamentary elections, are regulated by the Civil Procedure Code of the Republic of Tajikistan, the Criminal Code of the Republic of Tajikistan, the Administrative Offenses Code of the Republic of Tajikistan; the Laws of the Republic of Tajikistan "On political parties", "On non-governmental organizations", "On gatherings, protests, demonstrations, and street processions", "On state guarantees of equal rights of men and women and equal opportunities of their realization", "On appeals of the citizens", "On printed media and other mass media", "On television and radio broadcasting" and other pieces of legislation in the field of administrative, financial, and procedural law.

Pursuant to the law, the elections to this chamber of the national parliament are conducted according to the majority-proportional system: 41 deputies are elected in the single-member constituencies by the majority of votes; 22 deputies are elected in a unified nationwide constituency according to a proportional system of secret lists with an electoral threshold of 5% (Article 28); the turnout of registered voters is required to be at least 50% for the election to be declared valid (Article 48).

In the period after the previous parliamentary elections, on the basis of the adopted constitutional laws of the Republic of Tajikistan (№ 1452 dated the 18th of July 2017; №1508 dated the 21st of February 2018; № 1639 dated the 19th of July 2019), the amendments regarding the conditions of the realization of the right to be elected, the operating procedures of national and international observers, the formation of district electoral commissions were made to the basic law. In addition to that, the law of the Republic of Tajikistan "On the Central Commission for Elections and Referenda of the Republic of Tajikistan" (hereinafter referred to as CCER RT) was adopted in 2019. This being said, the introduced changes to the national legislation did not affect the basis of the electoral system and principle conditions of the conduct of parliamentary elections.

Thus, in the period prior to the beginning of the election campaign, the national electoral legislation preserved its stability, which meets the requirements of the international electoral standards that "the changes to the legislation, setting the procedure and rules for the conduct of elections, shall not enter into force during the election campaign or three months before its start" (Recommendations on the Improvement of Electoral Legislation in the Member Nations of IPA CIS according to the International Electoral Standards), as well as

that "the fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election" (clause II 2.b of the Guidelines on Elections of the Code of Good Practice in Electoral Matters).

The legal regulation of elections of the Republic of Tajikistan is also based on the international legal principles and norms, being an integral part of the legal system. In case of discrepancies between the national legislation and the recognized international legal documents, the norms of the international legal documents shall be applied (Article 10 of the Constitution). The international documents on suffrage, which are considered in the national regulation, are represented by the acts of global and regional organizations, first and foremost mentioned in the preamble to this conclusion.

In addition to the laws, the legal framework of elections includes bylaws, first of all coming from the Central Commission on Elections and Referenda of the Republic of Tajikistan (hereinafter referred to as CCER RT), which is authorized to monitor the uniform application of the electoral legislation. CCER RT ensures the observation of the electoral process principles, set forth by the Constitution and national legislation; adopts compulsory guidelines and gives explanation regarding the application of the electoral legislation, within the limits of its power (Article 9 of the Law on CCER RT)².

In terms of its content, structure, and correlation between certain elements, the legal regulation of the parliamentary elections complies with the requirements of the CIS Convention (Clause 3 of Article 1); recommendations of the Venice Commission (Clause II.2.a of the Guidelines on Elections of the Code of Good Practice in Electoral Matters), defining that the main source of the legal regulation of elections shall be the Constitution and legislation; the provisions of the Copenhagen Document on the legislative recognition of the guarantees for human rights and the main freedoms, related to elections (Clauses 5.7, 5.8 and 7.1), as well as Guidelines for Reviewing a Legal Framework for Elections, published by the OSCE Office for Democratic Institutions and Human Rights and defining that the main instrument of regulation in the field of elections shall not be the collection of administrative policies, but a written law, which provides the benefits of certainty and transparency.

Formalization of Specific Standards of Democratic Elections

The international legal acts, setting forth the standards of democratic elections, designate the universal, equal, free, direct suffrage by secret ballot as fundamental principles (Article 1 of the CIS Convention).

According to the provisions of the Constitution (Article 49), reproduced by the basic law (Article 3), the Majlisi namoyandagon shall be elected on the basis of universal, equal and direct suffrage by secret ballot, which meets among other things the requirements of the International Covenant on Civil and Political Rights (Clause b Article 25), according to which each citizen shall have the right and opportunity to vote and to be elected at authentic regular elections, organized on the basis of universal and equal suffrage and held by secret ballot, guaranteeing the free will expression of the voters without any discrimination and unreasonable limitations.

The Principle of Universal Suffrage

The conduct of elections on the basis of the principle of universal suffrage is enshrined in the Constitution (Article 49), setting forth the equality of the citizens before the law and

² For example, the Guidelines on Elections to the Majlisi namoyandagon for the Electoral Commissions, the Rules of Nomination and Registration of the Candidates and Authorized Representatives of the Candidates at the Elections to the Majlisi namoyandagon, the Rules of Pre-Election Campaign Conduct at the Elections to the Majlisi namoyandagon, the Rules of Participation of International and Local Mass Media at the Elections to the Majlisi namoyandagon were adopted prior to these elections.

courts, regardless of the nationality, race, sex, language, religious beliefs, political position, social and property status (Article 17), which complies with the provisions of the Copenhagen Document (Clause 7.3) and the CIS Convention (Article 2).

According to the Constitution and the basic law, the citizens shall be entitled to elect the deputies of the Majlisi namoyandagon upon the attainment of the age of 18 (Article 27); and upon the attainment of the age of 30, the citizens shall be entitled to be elected to this body, if they have the citizenship of the Republic of Tajikistan only, a higher education degree and know the official language (Article 49). The basic law enshrines the realization of the right to vote for all the citizens, who have come to the age of majority before the day of elections, regardless of their nationality, race, sex, language, religious beliefs, political position, social and property status (Article 4). The relation between the attainment of certain age and the right to elect the deputies of the parliament, as well as be elected as such meets the requirements of the international legal documents (Clause 25b of the International Covenant on Civil and Political Rights; Clause 7.3 of the Copenhagen Document; Clause 1.1.a of the Code of Good Practice in Electoral Matters), this being said, the amendments, introduced to the national legislation, regarding the increase of the age qualification by five years for the elections to the Majlisi namoyandagon and a simultaneous decrease of the age qualification by five years for the members of the Majlisi Milli (2017), taken together, have a positive impact on the realization of the right to be elected by the citizens of the Republic of Tajikistan.

The law provides for additional qualifications for the right to vote and be elected, which do not contradict the principle of universal suffrage, complying with the provisions of the CIS Convention that the limitations of the voting rights and freedoms of citizens should not constrain or revoke the generally accepted rights and freedoms of the person and citizen or constitutional or legislative guarantees for their implementation or have a discriminating nature (Clause 3, Article 1), as well as similar provisions of the Code of Good Practice in Electoral Matters (Clause I.1.1 of the Guidelines on Elections).

For example, the Constitution establishes limitations for the right to vote and be elected for the citizens, who are deemed incompetent by court or who have been deprived of liberty in accordance with a court sentence (Article 27). In addition to that, the law limits the right to be elected for persons, convicted of serious and especially serious intended crimes. Also according to the changes, introduced to the basic law in 2017 (Article 33), the persons, who have lost citizenship or received the citizenship of another country and those, who failed to prove the knowledge of the official language are deprived of the right to be elected.

According to the law, the right to be elected is given to the citizens, who have been living in the Republic of Tajikistan for no less than the last five years (Article 33). Taking into account the provisions of Clause 1.1. of the Guidelines on Elections of the Code of Good Practice in Electoral Matters, stating that "a length of residence requirement may be imposed on nationals solely for local or regional elections", as well as Clause 24 of the Copenhagen Document, stating that "any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law", the application of the residence qualification for the realization of the right to be elected at the parliamentary elections with regard to the national specifics of the Republic of Tajikistan with a mixed electoral system seems to be compliant with the provisions of the international standards of democratic elections in general.

The observation of the principle of universal suffrage in terms of the realization of the right to vote is ensured among other things by a proper registration of voters, making it possible to timely update the lists of voters.

A passive system of the registration of voters is used in the Republic of Tajikistan: local executive authorities maintain such records and submit the information to the precinct electoral commissions about the voters living within the corresponding territory for compiling of the lists of voters; a precinct electoral commission may involve representatives of the

public to participate in the compiling of a list of voters (Article 23). The voters living within the territory of the relevant polling station but omitted in the list due to some reasons are included into it according to the decision of the precinct electoral commission (Article 24).

Every citizen is guaranteed the right to receive information about his/her inclusion in the list of voters, to correct that information in order to assure its completeness and correctness, to appeal by the procedure, stipulated by laws, against refusal to be included in the list of voters (Article 25), which complies with the provisions of the CIS Convention (Clause d, Article 2).

With regard to the amendments and additions, made to the Constitutional Law in 2019, regarding the transition of CCER RT to the activity on a professional basis (Article 11), the establishment of a procedure for the formation of district electoral commissions "upon the proposal of local executive bodies only" (Part 3, Article 13) and the introduction of the requirement that the members of electoral commissions shall not take part in the activity of political parties (Part 1, Article 18), the legal norms, taken together, contribute to the impartiality of their activity and guarantee objective reflection of information in the list of voters.

The organized electronic information sharing between CCER RT and single-member constituencies also ensures completeness and correctness of the information in the list of voters.

The expert group recommends to include the provisions about the procedure for formation, maintaining and updating of the permanent list of voters to the national legislation.

According to the principle universal suffrage, any discriminating limitations shall not influence the realization of the right to vote of each legally competent citizen, including those caused by the health state of a voter or other circumstances, objectively impeding him/her to vote in the premises of a polling station at the place of residence on the day of elections.

With regard to this law, following the provisions of the CIS Convention (Part 3, Article 3), an opportunity of voting outside the voting premises (Article 42) and early voting (Article 44) is provided.

The observation of the principle universal suffrage in terms of the realization of the right to be elected is ensured inter alia by the procedure for the nomination and registration of the candidates.

The standards of democratic elections provide for sufficient inclusiveness of the nomination procedure: "The right of persons to be elected should not be limited unreasonably by requiring candidates to be members of parties or of specific parties" (Clause 17 of the General Comment 25 to Article 25 of the International Covenant on Civil and Political Rights); "the rights of citizens to seek political or public office, individually or as representatives of political parties or organizations, shall be respected without discrimination" (Clause 7.5 of the Copenhagen Document).

The procedure for nominating the candidates to deputies of the Majlisi namoyandagon, defined in the national legislation, completely complies with these requirements.

According to the law, political parties have the right to nominate candidates and also citizens have the right to self-nominate; political parties can nominate persons as candidates, who are not members of political parties (Article 30); at any time prior to elections, a candidate can decline his/her candidature by submitting an application to the respective district electoral commission; the body of a political party, which has proposed the candidate, has right to cancel its own decision about the nomination of the candidate at any time prior to elections (Article 36); it is stipulated that the candidates pay a registration fee (Article 32¹). The candidates of the nationwide constituency (party lists) are registered by CCER RT, and candidates of single-member constituencies - by the district electoral commissions.

It should be noted that giving a voter an opportunity to support the registration of the candidate implements the principle of authentic elections, where political diversity and ideological pluralism are foreseen.

Putting a signature in the subscription list, which means that he/she has no objection that a corresponding person exercises the right to be elected, does not predetermine the expression of will of a voter at the upcoming elections.

According to the national legislation, a voter can support the nomination of only one candidate from the electoral district of his/her place of residence (Article 31). For the purpose of further strengthening of political diversity of the Republic of Tajikistan, during further development of the national legislation, it seems appropriate to give the right to the voters to support several candidates at the same time.

Thus, it may be concluded that the national legislation contains the legal norms, which ensure that the parliamentary elections are conducted on the basis of the principle of universal suffrage.

The Principle of Equal Suffrage

The principle of equal suffrage, enshrined in the CIS Convention (Article 3) and also set forth by the Code of Good Practice in Electoral Matters (Clause I.2.1 of the Guidelines on Elections), provides for equal opportunities for each voter to influence the results of elections.

According to the Constitution, the elections are equal: the voters have equal number of votes; each voter has one vote at each elections, the vote of each voter has equal power (Article 65), which complies with the principle of one person – one vote, contained in the international documents (Clause 21 of the General Comment 25 to Article 25 of the International Covenant on Civil and Political Rights; Clause 7.3 of the Copenhagen Document).

In accordance with the law, the voters take part in elections on equal terms (Article 5); a voter can be included in the list of voters at one polling station only (Article 24), it is prohibited to give additional ballots to a voter (Article 42).

The procedure for the formation of electoral commissions also ensures the implementation of this principle. According to the law, the norms of the number of voters in the polling station are determined by dividing the total number of voters in the republic to the number of single-member constituencies, which are formed within the territory of Tajikistan. This being said, tentative equality of constituencies based on the number of voters must be ensured with an allowed deviation of 15% from the total number of voters and this figure may reach 20% in remote regions (Article 21), which complies with the provisions of the CIS Convention.

During the formation of the polling stations in the diplomatic representations of the Republic of Tajikistan in the foreign countries, the number of voters for one polling station can exceed the established maximum of 3000 people (Article 16). According to the CIS Convention, "every citizen, living or staying in the period of conducting of the national elections beyond the boundaries of his/her state, has the voting rights equal to those pertaining to other citizens of their state", and "the diplomatic representations and consulate facilities of the state, and their officials support citizens in execution of their voting rights and freedoms" (Clause "c" Article 2). The obligation that the same voting conditions must be created for voters, living beyond the boundaries of their state, and those, expressing their will within the territory of the republic, does not result from the provisions of the Convention due to a possible limitation of financial resources of a certain state.

The national legislation contains the legal norms, which ensure that the parliamentary elections are conducted on the basis of the principle of equal suffrage.

Direct Suffrage

According to the Constitution, the elections are held on the basis of direct suffrage (Article 49).

In accordance with the law, parliamentary elections are conducted on the basis of direct suffrage with no quotas prescribed (Article 3); the deputies of the Majlisi

namoyandagon are elected by the citizens directly (Article 6), which meets the requirements of the CIS Convention (Article 4).

The national legislation contains the legal norms, which ensure that the parliamentary elections are conducted on the basis of the principle of direct suffrage.

The Principle of Secret Suffrage

The secrecy of voting, preventing possible pressure on the voters, is intended to ensure free nature of elections (Article 5 of the CIS Convention; Clause I.4 of the Guidelines on Elections of the Code of Good Practice in Electoral Matters).

It is formalized constitutionally and legislatively that the elections to the Majlisi namoyandagon are conducted by secret voting (Article 65 of the Constitution, Article 3 of the Law on Elections).

According to the law, the voting shall be secret, the interference in the will expression of the voters is prohibited (Article 7). Exclusion of any control over the will expression of the voters is ensured by the organization of voting at the polling station, which meets the requirement of the international electoral standards "to ensure that votes are cast by secret ballot or by equivalent free voting procedure"(Clause 7.4 of the Copenhagen Document).

Particularly, premises for voting are equipped with polling booths or other specially equipped places for secret voting; the voters must go to a ballot box through a booth or a room for voting (Article 40); each voter votes for himself/herself, voting instead of others is not allowed; a voter fills in a ballot paper in a polling room or booth in secret, presence of other persons when filling in a ballot-paper except for voter is prohibited; in case of attempts to violate the secrecy of voting, a member of the election commission is immediately suspended from the participation in the work of the commission and an observer and other persons are withdrawn from the premises for voting (Article 42).

Criminal liability for the violation of the secrecy of voting is established.

The national legislation contains necessary legal norms, which ensure that the parliamentary elections are conducted on the basis of the principle of secret suffrage.

Regular and Obligatory Elections

The regularity and obligatory nature of elections are set forth in the provisions of the Constitution, characterizing elections as supreme direct manifestation of the power of people and prohibiting the usurpation of state power or appropriation of its powers (Article 6), establishing a five-year long term of powers of the Majlisi namoyandagon, as well as the termination of its powers on the day, when the Majlisi namoyandagon of the new call starts to operate (Article 49).

According to the law, the elections shall be appointed by the head of the state at least 75 days before expiration of the term of office of deputies of the previous call. In case of early dissolution of the parliament, the head of the state appoints extraordinary elections no later than 80 days after the dissolution, which shall be announced in mass media no later than within three days. In such a case any actions or calls to violate, cancel or reschedule the elections or actions or calls to violate the electoral procedures, set forth by law, are prohibited (Article 27).

The national legislation contains necessary legal norms, which ensure that the parliamentary elections are held on the basis of the principle of obligatory and regular elections.

Publicly Open and Transparent Elections. Guarantees of the Status of National and International (Foreign) Observers

According to the CIS Convention, public openness and transparency are the essential guarantee of the democratic elections, which implies comprehensive provision of information to the participants of the electoral process about the process of preparation for elections, their

conduct and results (Article 7), as well as transparency of the electoral process and its accessibility for control for national and international observers (Articles 14, 15)

The law provides for measures to ensure this principle. For example, the electoral commissions are ordered to prepare and conduct the parliamentary elections in a publicly open and transparent way, therefore they inform the population about their work, polling stations, their staff, location and working hours of electoral commissions and acquaint people with the lists of voters, the list of political parties participating in elections and give information about candidates, results of voting and elections (Article 8); all the meetings of electoral commissions shall be publicly open and accessible for public and mass media (Article 19). The representatives of printed media, television and radio can be present at the meetings of the electoral commissions, stay in the premises for voting, cover the process of preparation for elections and their conduct, as well as the decisions of the electoral commissions (Article 8).

CCER RT shall carry out its activity in a transparent way; its meetings shall be publicly open and accessible for the public and mass media; CCER RT shall provide information through mass media about its composition and location, meetings and decisions made there, and also about the activities organized (Article 4 of the Law on CCER RT).

In addition to a comprehensive and objective coverage of the electoral process, the principle of public openness of elections suggests that the public can participate in the observation of elections and necessary conditions for activity of national and international observers are created. The law sets forth significant guarantees for the activity of national (Article 8¹) and international observers (Article 8²). According to the amendments, made to the basic law in 2018, the procedure for registration of the national observers is settled, and the time of the beginning and end of their authorities are determined legislatively.

The law determines the right of national observers to get acquainted with the protocols of the precinct electoral commissions and the right of the international observers to observe the process of voting, vote count and the determinations of voting results. Together with the provisions of the national legislation, binding the electoral commissions and state authorities to provide assistance to the observers, these legal norms are sufficient for the national and international observers to freely cooperate with the electoral commissions on the day of elections and comply with the provisions of the CIS Convention (Clauses "g", "h" Part. 8 Article 15).

Based on the provisions of the international standards that "the presence of observers enhances the trustworthiness of the electoral process" (Clause 8 of the Copenhagen Document), therefore they shall be given "the widest possible opportunity to participate in an election observation exercise" (Clause II.3.2 of the Guidelines on Elections of the Code of Good Practice), the expert group of the International Institute for Monitoring Democracy Development, Parliamentarianism and Suffrage Protection of Citizens of IPA CIS Member Nations recommends to consider to give an opportunity to the public associations and groups of voters to observe the elections, during further improvement of the national legislation, which complies with the CIS Convention, recognizing that every candidate, every political party (coalition), another public association, group of voters, other subjects of elections shall have the right to appoint observers (Part 1 Article 14), as well as specify the rights of observers for their uniform interpretation and realization at all the stages of the electoral process and prevention of double interpretation.

In order to observe the norms of the electoral legislation on the observation of repeated voting, it is recommended that the activity of the national and international observers should finish, when the final outcomes of elections are announced.

The national legislation provides for the legal norms, which ensure that the parliamentary elections are conducted on the basis of the principle of publicly open and transparent elections.

Free Elections

In accordance with the CIS Convention, the purpose of the democratic elections is to reveal the freely expressed will of the people (Clause 1 of Article 9), therefore the principle of free elections means that a voter is given a possibility to make his/her choice in respect of his/her participation or non-participation in elections without any influence, violence, threat of possibly applied violence or any other illegal action, not being afraid of penalty or other external influence (Article 8).

Highlighting that the participation in elections is free and voluntary (Article 3), the law contains special norms, which ensure the observation of the principle of free elections and facilitate "the conduct of elections in a free atmosphere" (Clause 7.7 of the Copenhagen Document).

For example, it is not allowed to use the methods of psychological, physical, and religious pressure when campaigning; the results of opinion polls, forecasts of the elections outcome and other surveys related to elections cannot be published in mass media five days prior to elections and on the day of elections (Article 39); the persons, who impede the free realization of the right to vote and be elected, to conduct pre-election campaign by force, deceptions, threats and by other ways are held to liable (Article 58), which complies with the requirement that "persons, entitled to vote, must be free to vote without undue influence or coercion of any kind" (Clause 19 of the General Comment 25 to Article 25 of the International Covenant on the Civil and Political Rights).

In addition to that, the rules of financing of the participants of the electoral commission are geared towards the observation of this principle, which complies with the requirements of the Code of Good Practice in Electoral Matters (Clause I.2.3.d of the Guidelines on Elections). For example, fees to the electoral funds of a candidate and a political party by foreign countries or foreign legal entities are not allowed; foreign citizens and persons without citizenship; legal entities, established with the participation of a foreign capital; international organizations and international civic movements; local bodies of state authorities and local self-governance; state enterprises and organizations, which share of state-owned stake is more than 30%; units; military and law enforcement bodies; religious and charity organizations.

On the elections day, in the premises of voting, presence of armed persons and persons in uniforms, including law-enforcement employees, except for the cases to eliminate violations, is prohibited (Article 40).

The national legislation contains necessary legal norms, which ensure free nature of the parliamentary elections.

Authentic Elections

The authentic nature of elections is ensured by political and ideological diversity, and a multi-party system, as far as institutional aspect is concerned (Clause 2 of Article 9 of the CIS Convention).

According to the Constitution, the public life of the Republic of Tajikistan shall develop on the basis of political and ideological diversity; the ideology of any party, public or religious association, movement or a group shall not be recognized as a state ideology (Article 8); the citizens are entitled to take part in the meetings, rallies, demonstrations, and peaceful processions, stipulated by law (Article 29); the freedom of speech, press, the right to use means of information are guaranteed; propaganda and campaigns, exciting the social, racial, national, religious and language hostility are prohibited (Article 30).

The provisions of the Constitution, recognizing that the participation of political parties in a political life facilitates the formation and expression of the people's will on the basis of political diversity, bear testimony to the recognition of "the importance of pluralism with regard to political organizations" (Clause 3 of the Copenhagen Document); this being

said, the establishment and activity of political parties, which promote racism, nationalism, social and religious hatred or calling for violent overthrow of the constitutionally established state order and formation of armed groups shall be prohibited (Articles 8, 28).

The authentic nature of elections is ensured by the fact that the candidates are given a comprehensive opportunity to conduct an election campaign (Clause 3 of Article 9, Clause 2 of Article 10 of the CIS Convention; Clause I.2.3.a of the Guidelines on Elections of the Code of Good Practice in Electoral Matters).

The pre-election campaign rules, enshrined in the law, facilitate the realization of this principle, mostly taking into account that "the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential, which implies the freedom to engage in political activity individually or through political parties and other organizations, as well as the freedom to debate public affairs" (Clause 25 of the General Comment 25 to Article 25 of the International Covenant on Civil and Political Rights) and meeting the requirements of the CIS Convention (Article 13).

The pre-election campaign starts from the date of the registration of the candidate (the list of the candidates) and ends twenty four hours before elections. Each candidate to deputies in the single-member constituency is entitled to have 20 minutes of airtime and each political party is entitled to have 40 minutes of airtime in the state radio and TV.

According to the law, citizens, candidates, political parties are entitled to freely campaign for the participation in elections and comprehensively discuss the pre-election programs of the candidates, their political, business and personal characteristics, campaign "for" or "against" any candidate at the meetings and in mass media; they are entitled to determine the form and nature of such a campaign on their own (Article 39).

Members of electoral commissions, religious organizations, judges, workers of law-enforcement bodies and military servicemen shall not participate in the pre-election campaigns; participation in pre-election campaign is prohibited for foreign states, their organizations and citizens, persons without citizenship, international organizations and international public movements; journalists, other individuals engaged in creative work, as well as staff members of the editorial offices of mass media shall not participate in the coverage of elections through mass media, if they are not candidates or trusted persons of the candidates (Article 39).

In order to promote the principle of authentic elections further, it seems reasonable to decrease the time of request submission about a possibility to organize peaceful meetings, which is stipulated in the national legislation, to broaden the campaign forms by adding an element of competition – public debates, to specify the procedure of conducting campaign on a paid basis.

The national legislation contains the legal norms, which ensure the authenticity of parliamentary elections.

Fair Elections

The fairness of elections is ensured by the provision of sufficient and equal legal conditions to all the participants of the electoral process (Clause 1 of Article 10 of the CIS Convention) and prevention of electoral falsifications.

The basic law meets the requirements of the CIS Convention regarding the procedure for the nomination and registration of the candidates, the guarantees of their status (Articles 9, 10). Necessary guarantees of pre-election activity are formalized; for example, during the elections, it is prohibited to dismiss a registered candidate from his/her job (position) upon the initiative of the employer or transfer him/her to another position without his/her consent; a registered candidate may not be arrested, detained, or searched without the consent of CCER RT, except for the cases when he/she is caught in the act (Article 37). Candidates and political

parties, who have proposed the list of candidates, are entitled to have trusted persons (Article 38).

The principle of fair elections excludes unjustified limitations of the right to be elected, particularly by suspending potential candidates from participation in the election campaign. According to the law, the registration is denied to the candidate if unauthentic signatures are detected, which decrease the number of collected signatures to less than 500 signatures, and (or) if the provided information about the income and property, belonging to the candidate, is incorrect (Article 35).

In this context, it is recommended to give the candidates an opportunity to make changes to the documents, submitted by them, to correct insignificant mistakes or inaccuracies within a reasonable time period, as well as to secure the right of the potential candidates and their representatives to be present during the check of the submitted signatures.

The measures of the national legislation, ensuring equal status of the candidates, are aimed at strengthening the principle of fair elections. According to the law, from the moment of the registration, the candidates participate in elections on equal basis, have equal rights during the conduct of meetings before elections and other meetings, equal rights for the use of mass media, including radio and television (Article 37); it is prohibited to use state property and funds, not prescribed by law, for the financing of the election campaign (Article 9).

In the previous version of the law, the right to revoke a decision to nominate a candidate and the right of a candidate to withdraw from elections could be realized after the production of the ballots: the deadline was seven days before the day of elections for independent candidates; however, political parties were entitled to revoke their candidates up to the day of elections. Such a difference did not comply with the principle of fair elections; moreover, the crossing-out of the names of candidates, which the precinct electoral commissions were obliged to do according to the law, was fraught with the risk of mistakes and improper provision of information about the list of candidates to the voters. After the previous parliamentary elections, the amendments were made to the law, which took into consideration the recommendations of the international observers: the deadlines for withdrawal were aligned to the deadline for the printing of ballots (no later than 10 days before the elections) and made the same for all the candidates, who stand for elections in single-member constituencies (Article 36).

Transparency of electoral funding, to a large extent facilitating equal opportunities of the candidates, is determined as a significant guarantee of the fairness of elections by the CIS Convention (Article 12).

The established conditions and procedure of the state and non-state financing of the election campaigns comply with the standards of democratic elections: candidates and political parties, participating in the elections, establish their electoral fund for financing the elections, consisting of the budget funds, allocated for pre-election campaigning; personal funds of a candidate; the funds of a political party that has nominated a candidate in the single-member constituency and the list of candidates in the unified nation-wide constituency; contributions by private persons and legal entities (Article 9). A candidate or a political party has no right to use any other means to conduct the pre-election campaign, except for the means of the electoral fund. All financial transactions from the electoral fund shall be stopped one day prior to the elections. CCER RT controls legitimacy of non-budgetary funds, receipt of funds, proper use of budget funds, allocated for the conduct of elections, and the means of electoral funds.

The rules of elections organization and vote count are aimed at the implementation of the principle of fair elections: a precinct electoral commission informs the voters about the time and place of voting no less than 10 days prior to elections; on the day of elections, before it starts, the ballot boxes are checked, stamped or sealed by the chairman of the precinct electoral commission in the presence of all of its members, as well as with the participation of

representatives of the candidates, mass media and other persons; premises for voting are equipped with polling booths and other special places for secret voting; ballot-box must be placed in a visible and accessible place for the members of the commission and observers so that the voters approach it through the voting booths or a place for voting (Article 40); in order to take part in elections, a voter receives a ballot-paper, which is a special reporting document, the number of ballot-papers, which are counted, examined and attached to the protocol in the presence of the members of the precinct electoral commission, shall be compliant to the number of registered voters (Article 41).

The international electoral standards highlight the necessity to thoroughly regulate additional types of voting to avoid their misuse. According to the law, if a voter cannot come to the polling station, where he/she is included in the list of voters, on the day of elections, he/she has the right for early voting by filling in a ballot paper in the premises of the corresponding district electoral commission. The electoral commission is obliged to ensure the secrecy of voting, protect the ballot, take the vote into account, when summing up the results of voting and determining the outcomes of elections, and avoid the distortion of the voter's will expression. On the day of voting, before the elections start, the chairman of the precinct electoral commission gives the information about the number of voters, who have voted early and then shows sealed envelopes with the ballots and the list of voters, who have voted early, in the presence of the members of the electoral commission, observers and other persons for visual inspection. After that, he/she opens each envelope one by one and casts the ballots into the ballot boxes, keeping the secrecy of the voters' will (Article 44).

That being said, the national legislation insufficiently specifies the procedure of voting outside the voting premises. Though it is stipulated by law, that if some voters "are not able to come to the premises for voting due to their state of health or other reasons, at their request the precinct electoral commission give an assignment to certain members of the commission to organize the voting at the place of residence of these voters, which is noted in the list of voters"(Article 42), the law does not define the notion of "other reasons", does not specify the deadline to submit such a request. With regard to the obligation "to create the system of legal, organizational, informational guarantees for the observation of the electoral rights and freedoms of citizens during the preparation and conduct of elections" (Clause "d" Part 2 Article 19), imposed by the CIS Convention, it is recommended to introduce necessary specifications to the current regulation.

The current rules of the vote count and the determination of the elections' outcomes meet the requirements of the CIS Convention.

According to the law, the vote count starts immediately after the end of voting and is carried out without any breaks until the outcomes of elections are determined. The actual vote count is carried out in specifically allocated places, equipped in such a way that the members of the electoral commission have access to them; the members of an electoral commission except for the chairman and the secretary of the commission are not allowed to use any writing tools during the vote count, at the same time, those present should see the actions of the commission's members during the vote count (Article 46). A precinct electoral commission makes a protocol about the results of voting (Article 45); approved copies of the protocol with the results of voting are introduced to all the members of the precinct (district) commission by its chairman or secretary and are posted on the wall of the building, where the elections were conducted, and stay there for three days (Article 46). If mistakes or discrepancies are identified in the protocols or if there are any doubts about the correctness of the protocol, received from a lower electoral commission, the higher electoral commission is entitled to take decision to repeat the vote count, performed by the lower commission; the repeated vote count is carried out with the obligatory participation of the members of a higher electoral commission and in the presence of observers and trusted persons (Article 47).

Currently a number of provisions, related to the sequence of actions of the precinct electoral commission during the vote count, are regulated by the bylaws of CCER RT. Their

formalization in the legislation would facilitate full observation of the provisions of the international electoral standards (Clause 20 of the General Comment 25 to Article 25 of the International Covenant on Civil and Political Rights; Clause I.3.2 of the Guidelines on Elections of the Code of Good Practice in Electoral Matters).

As for the determination of the voting results, the law contains certain legal instructions: in a single-member constituency, the candidate is considered elected, if he/she has gained more than 50% of the votes of electors, who participated in the elections; the elections in a single-member constituencies are considered invalid, if less than half of the voters, enrolled in the list, have participated in the elections; the elections in the unified nationwide constituency are considered invalid, if less than a half of electors, enrolled into the lists, have participated in it; political parties, which have gained less than 5% of the votes, are excluded from the distribution of the deputy seats according to the unified nationwide constituency (Article 48).

Fairness of elections depends among other things on the regulation of repeated voting and the recognition of elections invalid or ineffective. In accordance with the recommendations of the Venice Commission, the law shall provide for an opportunity to recognize the overall outcomes of elections invalid or within the boundaries of one constituency or one polling station, as well as to organize repeated voting within the corresponding territory in such a case (Clause II.3.3.e of the Guidelines on Elections of the Code of Good Practice in Electoral Matters).

The national regulation meets the above-mentioned criteria. Particularly, CCER RT can recognize elections invalid, if during the elections or during the vote count or in the time of determining the results of elections, the violations of law took place, which could have an impact on the victory of the candidate (Article 54); repeated voting is conducted no later than within two months after the day of the main voting (Article 49); repeated elections are conducted no later than within two months after the main elections (Article 53). The law also provides for an opportunity to conduct repeated elections in the unified nationwide constituency, if CCER RT recognizes that all the deputy mandates in this constituency remained undistributed due to the fact that neither of the parties, participating in elections, has reached the 5% threshold (Article 48).

The principle of fair elections suggests among other things effective countermeasures against electoral law violations. According to the law, the members of the electoral commissions, officials of the state bodies and political parties, who commit falsification of the electoral documents and intentionally incorrectly count the votes, infringe the secrecy of voting and infringe the electoral legislation in any other way, are made legally liable (Article 58).

Particularly, the Criminal Code of the Republic of Tajikistan contains norms, providing for criminal liability for the crimes against the electoral rights (Chapter 19 "Crimes against constitutional rights and freedoms of a person and citizen"), including the impeding of electoral rights enjoyment by citizens, as well as impeding of the activity of electoral commissions (Article 150), including qualified forms of this crime; falsification of electoral documents, the documents of a referendum or incorrect vote count, intentionally wrong determination of the results of elections or referendum, as well as violation of the secrecy of voting, committed by a member of the electoral commission (Article 151). The Administrative Violations Code of the Republic of Tajikistan (Articles 57-84) contains norms, providing for administrative liability for the violation of the electoral legislation, including the violation of the rights of voters, members of electoral commissions, observers, candidates, trusted persons and journalists, vote buying, for the violation of rules of conduct of pre-election campaign and funding of elections.

The national legislation contains the legal norms, which ensure the fairness of parliamentary elections.

The Conduct of Elections by Independent Electoral Bodies

The preparation and conduct of elections by independent bodies, which means those, which are not directly subordinate to other public authorities, is an essential requirement of the international standards on democratic elections. Particularly, the CIS Convention imposes the obligation on the CIS Member Nations to prevent the establishment and operation of other bodies, which replace electoral bodies or completely or partially fulfill their functions, or impede their legal activity, or illegally interfere in their activity or take their status and authorities.

According to the national legislation, the elections to the bodies of state authorities, including parliamentary elections, are organized and conducted by the system of electoral bodies, including CCER RT, district and precinct electoral commissions. All the electoral commissions are independent from other state authorities in their activity, which complies with the requirement "to establish an independent electoral authority to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws" (Clause 20 of the General Comment 25 to Article 25 of the International Covenant on Civil and Political Rights).

Resolutions and other official acts of electoral commissions, adopted within the limits of their competencies, are obligatory for all the state authorities, local self-government bodies, political parties, public associations, organizations and officials, candidates, voters and also for the lower electoral commissions (Article 10), which meets the requirements of the CIS Convention (Clause 1 of Article 11) and Recommendations of the Venice Commission (Clause II.3.1 of Explanatory Report of the Code of Good Practice in Electoral Matters).

The establishment of CCER RT is ascribed by the Constitution to the competencies of the Majlisi namoyandagon, the lower chamber of the parliament elects and withdraws the members of CCER RT upon the proposals by the head of the state (Article 57). When exercising its authorities, CCER RT is independent and not accountable to the state authorities, local self-government bodies and officials; the participation in its activity supposes the termination of membership in a political party (Article 1, 8 of the Law on CCER RT).

The district and precinct electoral commissions are formed upon the proposal of local executive authorities by higher electoral bodies (Articles 13, 16).

According to the law, a member of an electoral commission shall be impartial and unbiased while implementing his/her authority; he/she is not entitled to participate in the activity of a political party, to execute its orders, to participate in the pre-election campaign. Judges, prosecutors, workers of the law enforcement bodies, trusted persons of the candidates, national and international observers, representatives of mass media shall not be members of electoral commissions (Article 18).

At the same time, taking into account the latest changes (2019), instructing the members of electoral commissions to follow the principle of political neutrality (non-partisanship) for the realization of "the possibility of vesting the candidate, political party (coalition), which has put forward the list of candidates, with the right to appoint to the electoral body, which has registered the candidate (list of candidates), as well as to lower electoral bodies in one member of the electoral body with a deliberative vote, representing the candidate who has appointed him or her, the political party or coalition" (Part 4 Article 11), it seems reasonable to introduce such a norm during further development of the electoral legislation.

The national legislation contains the legal norms, which are necessary for the organization of parliamentary elections by the electoral commissions, acting on a collective basis and not being subordinate to other state authorities.

The Order and Conditions of Electoral Dispute Resolutions

Objective and timely resolution of electoral disputes is an integral component of international electoral standards (Clause II.3.3.92 of the Explanatory Report of the Code of Good Practice in Electoral Matters).

According to the Constitution, the citizens shall have the right to apply to the state authorities personally or jointly with a group of people (Article 31); everyone shall be guaranteed judicial protection; everyone shall be entitled to require, that his/her case is reviewed in the court, established according to the law (Article 19); judicial system is independent (Article 84), which complies with the provisions of the international documents, stating that "legislative and other measures may be necessary to ensure that citizens have an effective opportunity to enjoy their rights" (Clause 1 of the General Comment 25 to Article 25 of the International Covenant on Civil and Political Rights).

In addition to CCER RT (Article 12), district electoral commissions (Article 14) and precinct electoral commissions (Article 17) are given the right to review the applications and claims related to the preparation of elections, the conduct of elections and corresponding decisions taken; a member of the commission, who disagrees with its decision, is entitled to express his/her opinion in writing, which shall be attached to the protocol; if the votes are equally divided, the chairman's vote shall be decisive (Article 19).

Each citizen is given the right to appeal against non-inclusion, incorrect inclusion in the list or exclusion from the list, inaccuracies in the indicated data about the voter. Applications about mistakes and inaccuracies in the list shall be reviewed by the precinct electoral commission, which shall review an application, make necessary corrections in the list or give a copy of a motivated decision to dismiss the application no later than within two days or immediately – before the elections or on the day of elections. The decision of an electoral commission may be appealed to a court; the decision of the court is final. The precinct electoral commission shall make corrections in the list of voters according to the decision of the court (Article 25).

The decisions of the electoral commissions may be appealed by the bodies of political parties, which have nominated the candidates; candidates; trusted persons and observers; voters to the higher electoral commission or court within 10 days after the decision is taken; the decisions of CCER RT may be appealed to the Supreme Court of the Republic of Tajikistan within 10 days after the decision is taken; an appeal shall be reviewed within three days after its receipt, and if less than six days are left before the elections – immediately (Articles 10, 20, 31, 52, 54), which meets the requirements of international documents that each person should have effective means of legal protection against administrative decisions, which guarantee the respect of the fundamental rights, therefore the administrative decisions should have references to the available means of legal protection (Clauses 5.10-5.11 of the Copenhagen Document).

The national legislation contains the legal norms, which are necessary to efficiently review electoral complains and restore the violated electoral rights.

In the result of the analyses, performed by the International Institute for Monitoring Democracy Development, Parliamentarianism and Suffrage Protection of Citizens of IPA CIS Member Nations, it was revealed that the legal regulation on the preparation and conduct of elections to the Majlisi namoyandagon of the Majlisi Oli of the Republic of Tajikistan complies with the international standards of democratic elections.

The provisions of the national legislation implement the obligations, imposed by the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States, ensuring that publicly open and transparent parliamentary elections are conducted by the

independent electoral bodies on the basis of universal, equal, direct voting by secret ballot, with effective legal protection for the participants of the electoral process.