



**ISSUES OF ENSURING THE PRINCIPLES OF OPENNESS AND TRANSPARENCY IN
ELECTIONS TO LOCAL REPRESENTATIVE BODIES**

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Abstract

This article examines the urgent legal problems of ensuring the principles of openness and transparency in elections to local representative bodies. The primary objective of the research is to analyze the legal conflict between Articles 3 and 33 of the Electoral Code of the Republic of Uzbekistan and to institutionalize the participation of non-partisan civil society institutions (NGOs and independent volunteers) as observers in local elections. Using comparative-legal, systematic, and normative analysis methods, the legislation of the United Kingdom, the United States (California), and Poland was studied. As a result, specific legislative proposals were developed for amending the Electoral Code to include NGOs and independent citizens as observers and to introduce a mechanism for their official accreditation. It is concluded that the practical implementation of these legal proposals will strengthen effective public oversight over state governance in the country and raise the socio-legal trust in the electoral system to a high level.

Keywords: Local representative bodies, electoral law, principles of openness and transparency, public oversight, election observer, civil society, non-governmental non-profit organizations (NGOs), accreditation, legal conflict.

Introduction

In modern democratic states governed by the rule of law, popular sovereignty and the legitimacy of state governance are directly ensured through free, fair, and open elections. In global political science and legal scholarship, elections are recognized not merely as a technical mechanism for forming power, but as the most important political institution that guarantees citizens' participation in managing state and public affairs and ensures the accountability of government to the people. Of particular significance is the fair and transparent conduct of elections to local representative bodies – the Councils of People's Deputies – which form the bodies responsible for making critical decisions directly affecting citizens' daily lives: socio-economic development of territories, resolution of local problems, and implementation of state policy at the grassroots level. Their fair and transparent conduct plays a decisive role in strengthening public trust in state institutions.

One of the most fundamental criteria defining the democratic quality of electoral processes is the principles of "openness" and "transparency." In Article 3 of the Electoral Code of the Republic of Uzbekistan, adopted in 2019, alongside the fundamental principles of holding elections (universal,



equal, direct, and secret suffrage), the imperative legal norm that "elections are conducted in an open and transparent manner" is separately and explicitly enshrined. Under Article 8 of the Code, it is firmly established that all electoral commissions at every level must conduct election preparation and administration in an open and transparent manner.

Today, the full practical realization of these democratic principles and the establishment of effective public oversight has become one of the most priority directions of state policy. In particular, the Concept for the Development of Civil Society in 2021–2025, approved by Decree of the President of the Republic of Uzbekistan No. PF-6181 of March 4, 2021, designates as a strategic task the creation of necessary conditions for the active participation of civil society institutions in state and public governance and the implementation of effective public oversight[1]. This conceptual requirement of the Head of State urgently demands guaranteeing the participation of civil society institutions, particularly NGOs as independent observers, in electoral processes – and especially in local council elections.

However, despite the declaration of the principle of openness in legislation and the strong political will to support civil society in state policy, a serious legal gap persists in the area of directly monitoring local elections. Under Article 33 of the current Electoral Code, only representatives of political parties, citizens' self-governance bodies (mahalla), as well as representatives of other states and international organizations are authorized to participate as observers in elections. The absence of independent NGOs and impartial civic groups from this list restricts their lawful participation as observers in elections.

This situation creates an obstacle, in a certain sense, both to the full operation of the principles of "openness and transparency" guaranteed by Article 3 of the Electoral Code and to the goals of establishing effective public oversight over the activities of state bodies set forth in Presidential Decree No. PF-6181.

From this perspective, the primary objective of this article is to conduct a comprehensive analysis of the legal and practical problems related to ensuring the principles of openness and transparency in elections to local representative bodies, on the basis of international standards, advanced foreign experience, and national legal realities. The research is aimed at providing a scientific justification for the necessity of institutionalizing the participation of independent civic and NGO representatives as observers in local elections in legislation, and at developing specific practical proposals for improving Uzbekistan's electoral law.

Literature Review and Methods

The theoretical foundation of the topic has been extensively developed in foreign literature. R. Dahl and P. Norris theoretically establish electoral openness as the central measure of democracy, emphasizing the necessity of free elections and independent information sources for government accountability[2,3]. S. Hyde and J. Kelley, studying the institution of observers empirically, demonstrate that independent observation is the primary mechanism deterring fraud, but that the incompetence of observers may lead to the opposite result[4,5].

In the legal direction, D.M. Khudoley, K.M. Khudoley, A.E. Postnikov, and L.G. Alekhicheva define the legal content of the openness principle as a set of rights: free participation in sessions of electoral



commissions, the right to observe vote counting, and the right to obtain copies of documents[6,7]. In the national context, A.E. Yuldoshev and S.O. Usmonov, A.A. Mirzarakhmonov have analyzed the existing shortcomings in regulating observation procedures in Uzbekistan's electoral legislation and the issue of the supervisory powers of the mahalla institution[8,9].

In this research, using the normative-legal analysis method, Articles 3, 8, and 33 of the Electoral Code of the Republic of Uzbekistan were deconstructed and legal conflicts related to public oversight were identified; through the comparative-legal method, the electoral legislation of the United States (California), the United Kingdom, and Poland was compared with national legislation within the framework of international standards; and the methods of systematic-functional analysis, deduction, and logical modeling enabled the study of the democratic principles of elections as an integral system and the development of specific normative proposals for improving national legislation.

Results

Article 3 of the Electoral Code of the Republic of Uzbekistan establishes the open and transparent conduct of elections as a fundamental principle, while Article 8 strictly mandates that electoral commissions at all levels must conduct election preparation and administration in an open and transparent manner[10]. These norms are of a general character, covering presidential and parliamentary elections as well as elections to local representative bodies – the Councils of People's Deputies.

Russian legal scholars L.G. Berlyavsky and A.V. Makhova define openness not merely as a declaratory norm, but as the central element that drives the entire procedural mechanism of elections; this definition retains its full force in relation to the activities of commissions responsible for organizing local elections[11]. According to the legal analyses of Russian scholars D.M. Khudoley and K.M. Khudoley, free, fair, and open elections constitute an integral dialectical unity of the democratic system – if openness and transparency are not ensured in the process, all other principles such as freedom and fairness automatically lose their legal force[6]. In our view, this theoretical conclusion is particularly relevant to local council elections in Uzbekistan, since these elections form the bodies that make the most important decisions directly affecting citizens' daily lives – socio-economic development of territories, communal services, land distribution, and similar matters.

Furthermore, as J. Hartlyn and J. McCoy emphasize, the failure of political parties and observers to be adequately prepared for ensuring openness gives rise to a peculiar "capacity paradox," and it has been proven that establishing full transparency in elections can only be guaranteed by incorporating impartial, independent observers into the process[12]. These conclusions fully justify the international standards set forth in OSCE/ODIHR election observation rules on the importance of independent public participation, and the requirements consolidated in the Venice Commission's "Code of Good Practice in Electoral Matters" establishing as a democratic standard the unobstructed participation of observers at all stages of the electoral process[13].

A.E. Postnikov and L.G. Alekhicheva define the legal content of the openness principle through three specific elements: free participation in sessions of electoral commissions; direct observation of vote



counting; and the right to obtain copies of all electoral documents – and the failure to ensure these rights is assessed as a gross violation of the openness principle[7]. Article 33 of the current Electoral Code, however, limits the composition of observers to representatives of political parties, citizens' self-governance bodies, and international organizations, excluding independent NGOs and impartial civic groups from this list. As a result, independent public oversight in local council elections remains legally unguaranteed.

In international practice, local elections are assessed as a particularly complex issue. The Congress of Local and Regional Authorities of the Council of Europe, in cooperation with the Venice Commission, is the sole international body specializing in observing elections precisely at this level[14].

Paragraph 8 of the 1990 Copenhagen Document, which serves as the foundation for OSCE/ODIHR activities, imposes on participating states the obligation to create an unobstructed environment for observers at all stages of the electoral process, and this norm fully applies to local elections as well[15]. In studying the issue of implementing the institution of independent civic observation into national legislation for the purpose of ensuring openness and transparency in elections to local representative bodies, the comparative-legal analysis of international electoral standards and the experience of advanced foreign states is of paramount scholarly and practical significance.

The experience of the United Kingdom deserves particular attention as the most thoroughly developed legal regulation among states. Section 29 of the Electoral Administration Act 2006 inserted Sections 6A–6F into the Political Parties, Elections and Referendums Act 2000, thereby providing for the first time a complete legal foundation for the institution of independent observers. Section 6C(1) of this Act provides: any citizen over the age of 16 has the right to apply to the Electoral Commission to become an accredited observer, and may participate in the processes of postal ballot issuance and receipt, voting, and vote counting. Section 6D of the Act established a parallel mechanism for organizations: any organization may apply to the Electoral Commission for accreditation and nominate its members as observers; the Commission also retains the right to set a limit on the number of observers that a qualifying organization may have participating simultaneously[16]. Most importantly, Section 6A(5) clearly delineates the scope of the Act's application: this right covers not only parliamentary but also local government elections in England, Wales, and Northern Ireland in their entirety.

The United States Constitution leaves electoral matters within the jurisdiction of states, and there is no single federal observation law – each state regulates this institution independently. However, California has created the most comprehensive legal model in this area. Section 2300 of the California Elections Code – the "Voter Bill of Rights" – establishes the right to observe the electoral process as a basic civic right: under Section 2300(9)(A), any citizen has the right to ask questions about election procedures and to directly observe the electoral process; a citizen has the right to ask questions of and receive answers from election commission members and officials, or to be directed to the appropriate official[17]. This norm is of distinctive legal significance: unlike the United Kingdom or Poland, the right of observation is not established by a separate law but is directly incorporated into the catalogue of fundamental rights of the voter. The law AB 2021, adopted in 2016, established the obligation to ensure unobstructed and non-discriminatory access for observers at all public stages of the electoral



process – processing and counting postal ballots, voting, and certification of results. The administrative regulations of the California Secretary of State's office enumerate the rights of observers in detail: observing all processes from the opening to the closing of a polling station; observing activities at the central counting location until the certification of results; reviewing electoral rolls; and the rights to ask questions, receive answers, and use electronic devices[18]. Furthermore, it is specifically provided that any civic association organized on the basis of charter or constituent documents may also participate as an official participant in electoral observation.

The experience of Poland is also recognized as one of the most exemplary models for legally institutionalizing this institution in the European Union. Article 103c, inserted into the Electoral Code of 2011 by the law of January 11, 2018, established the institution of "social observers" as an independent legal status. Under paragraph 1 of this article, any civic association or foundation registered with the stated purposes of democracy, civic rights, and the development of civil society has the right to appoint one social observer to an electoral commission; under paragraph 2, such an observer has the rights to be physically present during vote preparation, voting, vote counting, and the drawing up of the protocol, to enter written comments into the protocol, and to participate in the delivery of the protocol to the higher commission[19]. According to the conclusions of the OSCE/ODIHR mission, this norm applies to both parliamentary and local elections[20].

Discussion

Based on the theoretical and comparative-legal analyses conducted above, and in order to realize the goals of "establishing effective public oversight over the activities of state bodies" set out in Presidential Decree No. PF-6181 of the President of the Republic of Uzbekistan, the following specific amendments and additions to the Electoral Code are proposed for the institutionalization of NGO and independent citizen oversight in local elections:

First, it is necessary to eliminate the legal conflict between the principles of openness and transparency enshrined in Article 8 of the Electoral Code and the scope of subjects participating as observers in elections. To this end, it is proposed that NGOs with legal entity status and independent volunteer citizens be incorporated into the legislation as legal subjects, and that Part Five of Article 8 of the Electoral Code be set out in the following wording:

"In all activities related to the preparation and conduct of elections, as well as in voting booths on election day and during vote counting, observers from political parties, citizens' self-governance bodies, **non-governmental non-profit organizations (civic associations) and from among independent volunteer citizens (social observers) who have been accredited in the established manner**, representatives of the mass media, observers from other states, and observers from international organizations have the right to participate."

Second, in order to regulate the procedural participation of these new subjects in the work of electoral commissions, to guarantee their legal capacity, and to prevent conflicts of interest (based on the British and Polish models), it is required to establish a mechanism for their formal accreditation. To this end, the following amendments and additions to Article 33 of the Electoral Code are proposed:



The title of Article 33 shall be set out in the following wording: "Article 33. Observers from political parties, citizens' self-governance bodies, **non-governmental non-profit organizations, independent volunteer citizens**, as well as from other states and international organizations."

Part One of Article 33 shall be set out in the following wording: "Observers from political parties, citizens' self-governance bodies, **non-governmental non-profit organizations and from among independent volunteer citizens**, as well as from other states and international organizations, carry out their activities on the basis of mandates **or accreditation certificates** issued by the relevant commissions."

Part Two of Article 33 shall be set out in the following wording: "Interested organizations **and non-governmental non-profit organizations** shall notify electoral commissions of their observers by submitting an application at least ten days before the election. **Independent volunteer citizens, in order to be accredited for the purpose of observing elections, shall apply to territorial electoral commissions in the established manner by electronic or written application at least fifteen days before the election.**"

Third, in order to maintain organizational stability at polling stations and to ensure the actual powers of observers as in the practice of the United States (California) and Poland, it is necessary to add to Article 33 of the Electoral Code (Rights of Observers) the following additional imperative norms:

- The authority of NGO and independent citizen representatives to enter their written objections in the record (protocol) of the precinct electoral commission in cases of violations shall be enshrined;
- A mechanism shall be established for setting a specific limit on the number of observers participating simultaneously at a single precinct from each civic organization or independent group, so as not to interfere with the electoral process.

The practical implementation of these normative-legal proposals in national legislation will transform the principles of openness and transparency in elections to local representative bodies from merely declaratory rights into practical, effective procedural guarantees, and will bring public trust in the electoral system to a new level.

Conclusion

The comparative-legal and theoretical analyses conducted within the scope of the research have proven that legal objections raised against the right of independent civil society institutions to observe elections – factors such as lack of legal capacity, bias, or the risk of interference in the process – cannot in any way serve as a basis for prohibiting this fundamental right within the framework of law. On the contrary, as demonstrated by international electoral standards and the advanced legal practice of states such as the United States, the United Kingdom, and Poland, such problems are resolved not through "restriction" of the right but through "regulation" by means of legislative technique – specifically through the introduction of an accreditation system and the strict delimitation of powers.

The practical implementation of the proposals developed in this scholarly article – incorporating NGOs and independent citizens into the Electoral Code of the Republic of Uzbekistan as official observer subjects and establishing a mechanism for their accreditation – simultaneously resolves several



strategic tasks. First, the principles of openness and transparency guaranteed in the Electoral Code are transformed from merely declaratory norms into practical, effective procedural rights, and legal conflicts in legislation are eliminated. Second, these changes ensure the direct implementation within the electoral system of one of the most fundamental goals set forth in the Concept for the Development of Civil Society in 2021–2025, approved by Presidential Decree No. PF-6181 of the President of the Republic of Uzbekistan – establishing effective public oversight over the activities of state bodies with the assistance of NGOs.

Most importantly, the legalization of the institution of independent civic and social observation in the electoral system creates a solid legal foundation for overcoming the syndrome of apathy (distrust) that may form toward state institutions in a transitional society, and raises the democratic standing of Uzbekistan's electoral system in the international arena to a higher level.

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