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## SOME METHODOLOGICAL PROBLEMS OF PREVENTING CRIMES AGAINST POLITICAL RIGHTS IN MODERN DEMOCRATIC STATES (PHILOSOPHY-LEGAL DIMENSION)

### Abstract

This article is devoted to the problems of prevention of political crimes and crimes against political rights, which were in the focus of attention of the thinkers of the ancient world. The thinkers of ancient Greece developed many methods of preventing political crimes both on the part of representatives of political power and on the part of ordinary citizens. Modern realities demand to return to the problems identified in the ancient period and to consider the problems of preventing political crimes and crimes against political rights in the context of a modern democratic state. The problems of preventing political crimes and crimes against political rights in modern legal, democratic states are particularly acute in the process of forming state elected bodies, that is, in the process of citizens exercising their political rights. Based on a comprehensive analysis and taking into account modern democratic foundations around the world, it is proposed to expand the range of political crimes and, as prevention of one of the cornerstone problems – the problems of preventing political crimes, to provide for criminal and/or constitutional responsibility for (radical) evasion of the election program at the highest legislative level.

*Keywords:* democracy, political rights, political crimes, crimes against political rights, the right of politics, political corruption.

### Introduction

From ancient times to the present day, the problems of the formation of state elected bodies have been and are under the close attention of specialists. Even before BC, thinkers of the ancient era had already begun to think about the right and wrong forms of government, about the role and qualities of rulers on which the development and prosperity of society and the state depended (Mirumyan, 2004). For example, Plato, in the dialogue “Politician”, has already begun to characterize politics as a royal art, for which he considered the ability to control people to be decisive, that is, the availability of appropriate knowledge. Moreover, appreciating political knowledge and political art, he functionally separated political art from military, judicial and oratory art. If he considered the task of judicial

art and judicial power to be the preservation, protection and implementation of laws, then by political art, Plato meant the ability to intelligently organize and control national life (Plato, n.d.). However, if Plato considered it reasonable to include women in the ruling class of the state, considering that they have the same virtues and abilities as men, except for the difference in physical strength between the average woman and the average man (Martin, n.d.), another thinker of ancient Greece, Aristotle, did not grant civil rights to women and all those who, due to lack of wealth, leisure and education, are not capable of reasonable independent decisions. Aristotle considered as a citizen only those who were entitled to participate in the legislative and judicial power of the state, which could be elected to any public office since for this it was necessary for citizens to have practical knowledge of the political or-

ganization of society and the life of the policy both as a subject and as an official. Since every citizen, according to Aristotle (1999), is a “particle of the state”, the state should be engaged in the education of all citizens, forming appropriate citizens who are obliged to take an active part in public affairs, showing political or cognitive activity. From the analysis of the approaches of ancient Greek thinkers, it follows that since antiquity, the problems of political maturity and political knowledge have been in the focus of the attention of the sages. And if Plato attributed the requirement of appropriate knowledge only to those who claim political power, then Aristotle raised the bar by demanding political knowledge from all citizens who will elect their rulers.

Despite the fact that the concept of “democracy” in the ancient and modern understanding differ somewhat, however, the problems of political maturity of society, political activity and relevant knowledge and qualities for both those claiming political power and for citizens are particularly acute in modern democratic, legal societies and, in particular, transitional states. If in ancient city-states political power was formed directly (Mirumyan, 2004), that is, we were dealing with direct democracy, but in modern times we are dealing with political power, which, on the basis of free elections, passes from one democrat to another (Harutyunyan, 2021 ). From this point of view and in this context, both problems related to the realization of political rights and political crimes acquire a fundamental character. Legal regulation, including criminal law, of the above-mentioned problems at the highest legislative level, is important both for the normal formation of state elected bodies, and during the transfer of political power, and in the process of governing a particular political force.

#### The Role of Political Rights in the Modern Democratic States

In the modern world, it is difficult to imagine a state that, at least at the level of the declaration,

is not democratic. This primarily applies to developing countries, as well as post-Soviet countries.

Both in the Constitutions of many modern states and the Constitutions of the Republic of Armenia and the Russian Federation, their constitutional characteristics are fixed at the highest legal level. For example, Article 1 of the Constitution of the Republic of Armenia states that the Republic of Armenia is a sovereign, democratic, social, legal state (Constitution of RA, article 1; 203), and article 203 - that articles 1, 2, 3 and 203 of the Constitution are not subject to change. Article 1 of the Constitution of the Russian Federation perpetuates that the Russian Federation - Russia is a democratic federal state governed by the rule of law, with a republican form of government, and Article 135 (Constitution of RF, article 1;135) establishes that articles 1 and 2 may be reviewed exclusively by the Constitutional Assembly. It follows from the above that the path of democracy chosen by the peoples of the Republic of Armenia and the Russian Federation has no alternative; that is, the highest state authorities and local self-government bodies are elective. The very concept of “democracy” provides that power in the State is exercised by its citizens in equal rights and on the basis of the consolidation of these rights in the Constitutions. This, in turn, means that in a modern democratic, rule-of-law state, political rights are among the most fundamental rights. It is no coincidence that Article 2 of the Constitution of the Republic of Armenia and Article 3 of the Constitution of the RF state that “Power belongs to the people. The people exercise their power through free elections, referendums (Constitution of RA, article 3; Constitution of RF, article 2 )”, that is, the people are the sole bearer of political power (in this case, the people should be understood as citizens) and exercise their power by exercising their political rights.

Political rights and freedoms are not only recognized by the state but also protected by it since the significance of constitutionally enshrined

rights is expressed in the fact that it is their implementation that ensures the declaration of the state as democratic and legal. Article 3 of the Constitution of the Republic of Armenia and Article 2 of the Constitution of the Russian Federation state that a person, his rights and freedoms (including political rights) are the highest value that the state protects the fundamental rights and freedoms of person and citizen. Moreover, the Constitution of the Republic of Armenia perpetuates that public power is limited by the fundamental rights and freedoms of man and citizen, which are directly applicable law (Constitution of RA, article 3).

Since political rights are in one way or another connected with the participation of citizens in the socio-political affairs of the state (for example: through political elections) or legal influence on the state power, the ruling elite (for example: through strikes, mass protests), it should be noted that political rights, in turn, are determined within the framework of the “Right of Politics”, that is, the right to participate in politics, which serves as a guarantee of a kind of influence on the part of citizens and civil society as a whole, on the state and on the activities of political figures (Harutyunyan, 2018).

There is a gap in the modern political science and legal literature regarding the rights related to politics, and, therefore, there is still no unambiguous approach to the concept of “The Right of Politics” in professional literature. Based on this, we propose the following definition.

The law of politics is a system of norms expressing the political rights of citizens of the state, determined by public authority and protected by state coercion, which is characterized by formal certainty and which, on the one hand, regulates political relations, on the other hand, ensures the functional activities of public authorities.

Political rights, on the other hand, are norms of behaviour of citizens in the sphere of state administration, which are enshrined in the Constitution of a particular state, as well as in other

laws and by-laws.

That is, in essence, the concept of “The right of politics” is broader than the political rights of a particular citizen. Moreover, political rights are just a constituent of the concept of “The Law of Politics”. However, it should be noted that since political rights are related to the right of citizens to participate in government directly or through their representatives, therefore, these rights, unlike other rights, belong exclusively to citizens and from this point of view can be considered civil rights.

It follows from the above that political rights arise in specific circumstances and have the following features:

- political rights and freedoms arise for a person from the moment of taking citizenship in accordance with the established procedure.
- from the moment they reach the age of majority (suffrage)
- political rights belong to every citizen equally, i.e. the right to 1 vote in elections or referendums belongs to 1 citizen;
- political rights and freedoms are not related to the legal capacity of citizens but to their dispositive capacity.
- the state ensures the realization and guarantees the observance of the political rights and freedoms of citizens.

Among the political rights, the following fundamental rights should be noted:

- the right to vote (here it should be noted both the right to be elected to state authorities and local self-government and the right to elect representatives to state authorities and local self-government and thereby manage the affairs of the state;
- the right to participate in the referendum;
- the right of citizens to unification, the right to form parties with other citizens and join them (according to this right, citizens unite in trade unions, public associations to protect their interests; citizens dispose of this right voluntarily, forcing anyone to join or stay in an association is not allowed);

- the right of peaceful assembly, organization of rallies and demonstrations, marches and picketing (citizens can use this right only to protect their rights and interests and only in a peaceful form, armed rallies and gatherings of citizens are not allowed).

Political rights and freedoms are guaranteed at the highest legal level and belong exclusively to all citizens, regardless of gender, nationality and race, who have reached the age determined by laws for the exercise of these rights. No one may be deprived of these rights, except in cases established by the Constitution and laws.

It follows from the above that any obstruction to the exercise or realization of political rights can be qualified not only as a crime against the constitutional rights and freedoms of man and citizen but also against the foundations of the constitutional system and the security of the state.

#### Concepts of Crimes Against Political Rights and Political Crimes

Before proceeding to the definition and consideration of the concepts of crimes against political rights and political crimes, it is first necessary to consider the concept of “crimes” in general. As you know, the concepts of “crimes” and “punishments” are fundamental concepts of criminal law in general (Avetisyan & Chuchayev, 2014 ). In the Russian, Armenian and professional literature of other states, “Crime” is defined as a legal concept, the general features of which are defined in the norms of the General Part of the Criminal Codes.

According to Part 1 of Article 18 of the Criminal Code of the Republic of Armenia, it is indicated that a crime is considered to be a culpably committed socially dangerous act, which is provided for by the Criminal Code (The Criminal Code RA Article 18, part 1, adopted on April 18, 2003, 2015). In accordance with Part 1 of Article 14 of the Criminal Code of the Russian Federation, a crime is a culpably committed socially

dangerous act prohibited by the Code under threat of punishment (The Criminal Code RF Article 14, part 1, adopted on June 13, 1996, 2021). It clearly follows from the above that a socially dangerous, illegal and guilty act of a delinquent person, for which criminal punishment is provided, can be considered a crime. Part 1 of Article 28 of the Criminal Code of the Republic of Armenia and Part 1 of Article 28 of the Criminal Code of the Russian Federation, which lists the types of guilt, states that guilt manifests itself both intentionally and by negligence (The Criminal Code RA Article 28, part 1, adopted on April 18, 2003, 2015; The Criminal Code RF Article 24, part 1, adopted on June 13, 1996, 2021).

Crimes directed against political rights, we propose to define as follows: A crime against political rights – (a political crime) is a culpably committed socially dangerous act that is directed against the realization of political rights and is provided for by the criminal code of a particular state. If, in the case of other crimes, guilt can manifest itself both intentionally and through negligence, then in the case of crimes against political rights, there is only direct intent.

The world of politics as a whole, as a subsystem of public life, is the object of criminology research, and in particular, one of the developing branches – political criminology (Zorin, n.d.).

Despite the fact that in modern political science and legal literature, there is no unambiguous approach to the concept of “political crime”, in criminological literature, a political crime is understood as a crime associated with obvious actions/inaction that harm the interests of the state, its government or political system. However, the founder of the term “political criminology”, D. A. Shestakov (1992), suggests dividing political crimes into two groups:

1. crimes against the State and its officials;
2. crimes of the State and its representatives against the population.

From the logic of the presented approach, it can be concluded that the first group of political crimes includes crimes against the foundations of

the constitutional system and the security of the state, which manifest themselves in the form of acts encroaching upon public relations, ensuring the inviolability of the foundations of the constitutional system and the security of the state, the normal functioning of state bodies belonging to various branches of government, as well as the interests of public service and service in local self-government bodies. Crimes against the order of governance, which are defined as socially dangerous acts that encroach upon the normal management activities of public authorities and local self-government bodies, can certainly be attributed to this group (Tsagikyan, 2017).

The second group of crimes includes crimes against the constitutional rights and freedoms of man and citizen, which are provided for by a special part of the Criminal Code and are defined as socially dangerous acts that infringe on the rights and freedoms of man and citizen documented by the state enshrined in the Constitution. Among the crimes that affect the political rights and freedoms of citizens, first of all, it should be noted the obstruction of the exercise of the electoral right, the work of electoral commissions or the exercise of their powers by a person participating in elections (the Criminal Code of RA, article 149), obstruction of the exercise of electoral rights or the work of election commissions (the Criminal Code of RF, article 141), falsification of election documents, referendum documents (the Criminal Code of RF, article 142) falsification of election results or voting (the Criminal Code of RA, article 150); voting more than once or instead of another person (the Criminal Code of RA, article 153).

Despite the fact that Shestakov's concept is acceptable to many scientists dealing with this problem with certain reservations (Gilinsky, 2002; Ward, 2005), however, there are also opposing opinions. For example, V. S. Ustinov considers political crime as a set of crimes that are committed with the aim of forcibly seizing state power only by armed means. And as the fundamental types of political crimes, he notes

parties, movements for the forcible seizure of power, the forcible creation of a new state, the annexation of the territory of another state (military coup) and the unconstitutional displacement of the legitimately elected government (coup d'état) (Ustinov, 1993).

Without distinguishing state crimes from political crimes, it should be noted that they relate as part and whole. If a State crime means the criminal activity of States and representatives of the ruling authorities, in the process of which both domestic criminal laws and norms of international law are violated, then both the State and the population can be the subject of political crimes. In this context, a political crime is broader than a state crime. Moreover, from this point of view, State crime is only an integral part of political crimes. In addition, we propose to expand the range of subjects of political crimes, stating that the subjects of political crimes can be not only the state, the population and representatives of the ruling elite, but also all political forces and figures. In this context, the approaches to the definition of political crimes by G. N. Gorshenkov (1999) are more acceptable, according to which political crime is considered as a set of criminally punishable acts chosen as means to achieve political goals and V. V. Luneev (2004), who believes that political crime is a socially dangerous struggle of the ruling or opposition political elites for power or for its illegal retention. According to Gorshenkov's definition, a political crime should be understood as all those criminally punishable acts that are aimed at both the arrival and retention of political power. And Luneev, unlike Gorshenkov, puts purely political motives at the root of political crimes, believing that this is the criminal activity of the ruling elite and/or those claiming power, whose goal is to obtain or retain political power. As for the expansion of the range of subjects of political crimes, this proposal is conditioned by modern realities and, in particular, the political realities of transitional States. In our deep conviction, it is far from accidental that the intellectual qualifica-



tion of rulers, and in the case of Aristotle, political knowledge and education of citizens were fundamental requirements for both rulers and citizens, that is, voters. This problem is more acute, especially in modern times, but considering the fact that in modern conditions democratic, legal states cannot deprive politically undeveloped citizens of the right to vote or the right to run for one or another electoral post, modern states must find appropriate solutions in order to avoid irreversible consequences after political elections.

It is no secret that in countries in a transitional period and in developing countries where there is no stable middle class, most citizens have low political, civil and legal consciousness. If we add to this the possibility of using radical political technologies and manipulative tools during the election race, then the fact of political illiteracy of citizens often serves as a tidbit for unscrupulous political forces and political figures who, during election campaigns and during government, often make unrealistic, unrealizable, sometimes anti-state promises, receiving votes.

Undoubtedly, the above-mentioned way of coming to power and retaining power is both unconstitutional and undemocratic. Consequently, the rule of law must prevent all possible political crimes. In order to prevent taking advantage of the politically underdeveloped citizens of transitional states during their coming to power and abuse of political power, the manifestation of political negligence in the process of government, we propose to equate evasion from the election program with political crimes. The solution can only be the legislative consolidation and criminalization of the evasion of a political force or a political figure from the election program and pre-election political promises. Moreover, if, as a result of the bias of election promises, great damage has been done to the state and society (for example, as a result of a sharp change in defence policy or a radical change in foreign policy), then it is necessary to provide for constitutional responsibility for a political force that may

be banned in this country.

A slightly different manifestation of political criminality is political corruption, the specifics of which require radical political reforms (Amundsen, 1999). If Corruption is defined as a socio-legal, political, economic and moral phenomenon, expressed in the use by a civil servant or employees of commercial and other organizations of official powers and opportunities of their official status for selfish purposes in personal, group and corporate interests, or the provision of such benefits and advantages to these persons by individuals and legal entities (Tsagikyan, 2006) hence "Political corruption is the use by a person holding a public office of the state powers and rights entrusted to him, official position and status in the system of state power, the status of the public authority he represents, for the purpose of illegally extracting personal and (or) group, including for the benefit of third parties, political benefits (political enrichment)" (Nisnevich, n.d.). It should be noted here that, unlike other types of political crimes, political corruption is latent and often remains invisible (Kwon, 2015). It follows from the definition of political corruption that the ultimate goal of political corruption is also political gain, that is, coming to political power. That is why we face political corruption more vividly in the process of coming to power, which can be conditionally called electoral corruption. Electoral corruption takes place especially during political elections when certain politicians (mainly politicians of the ruling power) suppress their political competitors and distort the free will of citizens. Politically corrupt actions are accompanied by violations of legal acts, sometimes laws and the Constitution. Political corruption also takes place when politicians in every possible way abuse the laws that they have adopted themselves, ignore and circumvent them, and in the future, such laws and decisions that express their private political and not only interests are adopted under their protectorate. Ultimately, political corruption is constantly increasing and eventually leads to a complete deformation of the elec-

toral process, turning it into an imitation of free elections, and corrupt politicians, those who came to power in an “unfair” way, prevent the further realization of the remaining political rights of citizens already at the stage of using power. This, in turn, as a rule, leads to an authoritarian regime, which tempts the existence of any political rights, and the opposition turns into a political prop or, as they say, into a pocket opposition.

### Conclusion

Summarizing the above, it is difficult to state that political crimes, unlike other types of crimes, are distinguished by their complexity and multi-layer nature – this is a collective phenomenon that penetrates into all spheres of society’s life with a domino effect, destroying all stable mechanisms of peaceful cohabitation. In order to warn and prevent political crimes, modern legal, democratic countries at the highest legislative level should consolidate those political forces: political parties, political blocs, interest groups, individual political figures, after coming to political power, in addition to functional obligations, should bear programmatic responsibility. This requirement may, on the one hand, keep political figures from irresponsible political promises; on the other hand, ensure a guaranteed calm pre-election and post-election state.

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