

EXERCISE OF CITIZENS' SUFFRAGE AS ONE OF THE BASIC PRINCIPLES OF THE ELECTION PROCESS IN UKRAINE AND FOREIGN STATES

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ABSTRACT

The article is devoted to the study of the peculiarities of the exercise of citizens' suffrage as one of the main principles of the electoral process in Ukraine and foreign countries. The essence of the exercise of citizens' suffrage is revealed both in its general meaning and in the context of differentiation of suffrage into active and passive. The historical aspects of enshrining suffrage in current international legal instruments are highlighted. The legal bases for the exercise of citizens' suffrage in some foreign countries, in particular Germany, France, Italy, Poland, Spain, and Ireland, have been determined. The content of the relevant norms of the current Ukrainian legislation is highlighted, which determine the basic principles of exercise of suffrage by citizens of Ukraine. The basic requirements of the electoral legislation of most European countries for the implementation of both active and passive suffrage are identified, which include: (1) reaching the appropriate age (age qualification), which is determined by constitutional norms, the Electoral Code or a special election law; (2) citizenship of the respective country; (3) full legal capacity of the person. Particular attention is paid to determining the grounds for deprivation of citizens' suffrage, indicating the impossibility of their implementation.

Keywords: Elections, Suffrage, Electoral Legislation, Electoral Process, Public Authorities, Local Governments.

INTRODUCTION

The effectiveness of the development of the institution of elections and the implementation of the fundamental principles of citizens' suffrage is one of the most important indicators of a modern democratic state governed by the rule of law. The institution of elections is important (fundamental) for the development of civil society, the formation and operation of public authorities on democratic and legal grounds, the stability of the constitutional order, and the legitimacy of state power. At the same time, various legal phenomena and political processes, including those related to the transfer of power, cannot normally take place without the support of the relevant guarantees from the state. Inadequate regulation of the latter and the lack of an effective legal basis for the exercise of suffrage can have a negative impact on external electoral

factors in the electoral process in the country, and thus become a threat to civil society security in particular and national security in general (Reznik et al., 2020). The exercise of citizens' suffrage in any country necessarily has a legislative basis, which is represented by a system of constitutional and legislative norms, of course, which enshrines its legal guarantees. The latter, in particular, should provide not only for the exercise of citizens' suffrage through the right to elect and to be elected but also for equality of suffrage, freedom, and fairness of elections, and so on.

Exercise of citizens' suffrage is one of the fundamental principles of the electoral process in democratic states governed by the rule of law. At the same time, the exercise of citizens' suffrage requires provision and protection by the state, which is reflected in the relevant activities of public authorities, local governments, officials of these bodies, as well as other organizations authorized by national law or international treaties. The main purpose of this activity is to create appropriate conditions under which citizens can exercise the rights provided by current legislation to both elect (active suffrage) and be elected (passive suffrage) to public authorities and local governments. One of the conditions for signing the Association Agreement between Ukraine and the EU was to bring the electoral legislation in line with European standards. To date, it should be noted that significant steps have already been taken in this direction, the most striking of which is the adoption of the Electoral Code of Ukraine, which entered into force on January 1, 2020. Given Ukraine's desire for European integration, it is important to study the foreign experience of the exercise of citizens' suffrage, in particular, the legal regulation of the right to elect and to be elected to public authorities.

LITERATURE REVIEW

In the context of the research topic, it is first and foremost important to determine the essence of the exercise of citizens' suffrage. Thus, Zavorotchenko (2015) defines the exercise of suffrage as a collective and individual use of legal opportunities by citizens to elect and be elected to public authorities and local governments, the result of which is the transfer of powers to representatives of the people (population) for a certain period (Chehabeddine & Tvaronavičienė, 2020).

This author's definition is general. It is important to take into account that in legal science there are active and passive suffrages. Therefore, there are scientific approaches to determining the features of the exercise of both active suffrage and passive suffrage. Yehorova (2020) notes that the exercise of citizens' active suffrage is manifested in voting (the right to elect) and that the age for granting active suffrage is usually set by the constitution. With regard to the exercise of citizens' passive suffrage, Son (2019) identifies a number of relevant criteria for this, namely the presence of:

1. Formal equality of subjects of passive suffrage, which means the possibility of each candidate to vote in only one constituency (in cases of electoral systems with a complex electoral formula of compensatory type-in an equal number of constituencies of different levels) and nomination of a candidate by only one subject of nomination;
2. Equal conditions for registration of all candidates;
3. Electoral and procedural equality of candidates, i.e. equal opportunities for registered candidates in the electoral process.

METHODOLOGY

The methodological basis of the study of the peculiarities of the exercise of citizens' suffrage in Ukraine and foreign countries is a set of historical, dialectical, comparative law, formal law and structural-functional methods. In particular, the historical method was used to highlight the historical aspects of enshrining the electoral right in existing international legal instruments. The dialectical method is used to establish the essence of the concept of exercise of citizens' suffrage both in its general meaning and in the context of the division of suffrage into active and passive. Using the comparative legal method, the legal principles of exercise of citizens' suffrage in some foreign countries (Germany, France, Italy, Poland, Spain and Ireland) are determined. The formal-legal method allowed finding out the content of the relevant norms of the current Ukrainian legislation, which define the basic principles of exercise of suffrage by citizens of Ukraine. Using the system-structural method, the basic requirements of the electoral legislation of most European countries for the implementation of both active and passive suffrage are identified, as well as the grounds for deprivation of citizenship, which indicate the impossibility of their implementation.

FINDINGS AND DISCUSSIONS

Considering the historical aspects of enshrining the citizen's suffrage in existing international legal instruments, it is important to note that for the first time the general principles of suffrage were proclaimed in 1948 in the Universal Declaration of Human Rights, according to Part 1 of Article 21 of which everyone has the right to participate in the government of its country directly or through freely elected representatives (Universal Declaration of Human Rights, 1948). The right to free elections is guaranteed by Article 3 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, which obliges the parties to hold free elections at reasonable intervals by secret ballot in conditions that ensure the free expression of people's opinion in the choice of the legislative body (Council of Europe, 1952). In accordance with paragraph b) of Article 25 of the International Covenant on Civil and Political Rights of 1966, every citizen should have, without any discrimination and without unreasonable restrictions, the right and opportunity to elect and to be elected in genuine periodic elections, which shall be by universal and equal suffrage by secret ballot and shall ensure the freedom of voters' expression (United Nations General Assembly, 1966). Similar rights to elect and to be elected in respect of elections to the European Parliament and municipal elections are enshrined in Articles 39 and 40 of the Charter of Fundamental Rights of the European Union (European Union, 2000).

Another important legal document, which enshrines the principles of active (right to elect) and passive (right to be elected) suffrage, is also the Convention on standards of democratic elections, the suffrage and freedoms in the State Parties of the Commonwealth of Independent States, 2002. In particular, in Article 1 of the Convention among the standards of democratic elections are defined: the right of a citizen to elect and be elected to public authorities, local governments, other bodies of people's (national) representation; the principles of periodicity and obligation, fairness, validity, and freedom of election on the basis of universal equal suffrage in a secret ballot, which ensure the freedom of expression of voters; open and public nature of elections; judicial and other protection of suffrage and freedoms of man and

citizen, public and international election observation; guarantees of exercise of suffrage and freedoms of participants in the electoral process (European Commission, 2002).

In Germany, suffrage is guaranteed at the constitutional level, namely in the Basic Law of the Federal Republic of Germany of 1949. The main legal act containing the rules on elections in Germany is the Federal Election Act of 1993-Bundeswahlgesetz (BWG). §12 of this Law establish three main requirements for persons who can exercise their voting rights, namely:

1. Reaching 18 years of age;
2. Permanent residence in the state;
3. Are not excluded from the suffrage.

The latter condition states that the current German legislation provides for a special ground on which a person is deprived of the right to vote in elections, namely, a relevant court decision (Federal Election Act, 1993). Speaking of the exercise of active suffrage, according to §14 of the Law, only those who are entered in the voter register or have a ballot paper may vote, and only in that constituency in which they are located. The principles of passive suffrage are provided for in § 15 of the Act: a person must have reached the age of 18 and must have German citizenship. If a person is convicted or deprived of the opportunity to hold public office by a court judgment, he or she is deprived of the right to be elected (Federal Election Act, 1993).

In France, the legal basis for citizens' suffrage is contained in the French Electoral Code of 2019-Code electoral. Chapter I of Section I of Book I set out the requirements for voters, which are as follows:

1. Suffrage is direct and universal;
2. Citizens of France who have reached the age of 18 may exercise the right to vote (both to elect and to be elected).

The requirement of deprivation of the suffrage is fixed in the French electoral law: persons who are incapable and who are prohibited by a court from electing and being elected are deprived of the suffrage (Election code, 2019).

Italian electoral law is represented by the Electoral Law of 1948 (The electoral law). Interestingly, the exercise of active suffrage by Italian citizens has different age qualifications: the general age qualification is 18 years, as well as the achievement of 25 years for voters who participate in the election of senators. The grounds for depriving a citizen of the suffrage are the incapacity of the voter, as well as conviction for committing a crime with serving a sentence in places of imprisonment, the presence of a criminal record (Law, 1948).

The main legal act of the Polish election legislation is the Electoral Code of 2011-Kodeks wyborczy. Article 10 of the Code stipulates that the right to elect (active suffrage) can be exercised by:

1. In elections to the Sejm and Senate and in elections of the President of the Republic-a citizen of Poland who has reached 18 years of age on election day;
2. In elections to the European Parliament in the Republic of Poland-a citizen of Poland who has reached the age of 18 on election day, and a citizen of the European Union who is not a citizen of Poland who has reached the age of 18 on election day;
3. In elections to bodies that are members of local self-government bodies: (1) the commune council-a Polish citizen or a citizen of the European Union who is not a Polish citizen has reached the age of 18 on election day and who permanently resides in the area of this commune, (2) the district council and the voivodship

- council-a Polish citizen who has reached the age of 18 on election day and who permanently resides in the area of this county and voivodeship, respectively;
4. In the election of the head of a commune in a given commune - a person who has the right to elect to the council of this commune (Kodeks, 2011).

With regard to passive suffrage, i.e. the right to be elected, according to the Electoral Code of Poland, the following age qualifications are applied:

1. 21 years-in elections to the Sejm and the European Parliament in the Republic of Poland;
2. 25 years-in the election of the head of the community;
3. 30 years-in elections to the Senate;
4. 35 years-in the election of the President of the Republic.

Restrictions on the exercise of suffrage are applied to persons who:

1. Are deprived of public rights by a final court decision;
2. Deprived of the right to vote by a final decision of the State Tribunal;
3. Declared incapable by a final court decision (Kodeks, 2011).

From the analysis of the norms of the Electoral Code, foreign citizens do not have the right to vote in national elections but these norms show that they are not deprived of the right to vote in local elections.

The electoral legislation of most European countries does not provide for the exercise of suffrage in national elections for foreigners. However, the exceptions are the laws of countries such as Spain and Ireland. The 2016 Electoral Code is in force in Spain. The age qualification for active suffrage presupposes that the voter reaches the age of 18, as in most countries. Exceptions to the exercise of suffrage are related to the presence of a court sentence depriving a person of the suffrage or being in military service. However, in contrast to the electoral legislation of many foreign countries, which does not provide for the right to vote for foreigners in national elections, in Spain, they are not deprived of such a right (Law, 2016). As well, the Electoral Act, 1992 also is applied in Ireland. To exercise active suffrage, a person must be 18 years old on Election Day. At the same time, the right to exercise suffrage in national elections is granted not only to citizens of the country but also to foreigners (Electoral Act, 1992).

In Ukraine, the basic principles for the implementation and priority of protection of citizens' suffrage are guaranteed by the provisions of the 1996 Constitution. Article 38 of the Constitution, citizens of Ukraine have the right to participate in the management of state affairs, in all-Ukrainian and local referendums, to freely elect and be elected to public authorities and local governments. The constitutional and legal framework for elections and referendums is contained in Section III of the Constitution.

Thus, in Article 69 the legislator determined that the people's will is carried out through elections, referendums, and other forms of direct democracy. Article 70 stipulates that the right to vote in elections and referendums is granted to citizens of Ukraine who have reached the age of eighteen on Election Day (Constitution of Ukraine, 1996). It should be noted that the provisions of the Constitution of Ukraine on citizens' suffrage are specified in the relevant legislation. In particular, in: the Law of Ukraine "*On Civil Service*", under Article 4 of which one of the principles of the civil service defines the principle of ensuring equal access to the civil service-the prohibition of all forms and manifestations of discrimination, the absence of

unjustified restrictions or unjustified benefits to certain categories of citizens when entering and passing the civil service (Law, 2015); Law of Ukraine “*On Service in Local Self-Government Bodies*”, under Article 5 of which citizens are entitled to serve in local governments regardless of race, colour, political, religious and other beliefs, sex, ethnic and social origin, property status, and length of residence in the relevant territory (Law, 2001).

The main legal act, the norms of which define the guarantees of the right of citizens to participate in elections, is the Electoral Code of Ukraine of 2019. In accordance with Art. 7 of the Code, citizens of Ukraine who have reached the age of 18 on Election Day have the right to vote. Citizens of Ukraine who have the right to vote are voters. The basis for a voter to exercise his or her right to vote in an election is to include him or her in the voter list at the polling station in accordance with the Code. The reason for depriving a citizen of the right to vote is the recognition of his (her) incapacity by the court (Electoral Code of Ukraine, 2019). The analysis of the norms of the Electoral Code of Ukraine makes it possible to state that foreign citizens are not endowed with the right to vote, and this applies to both national and local elections. The territorial affiliation of persons is also important for the right to vote in certain elections. For example, voters whose election address is assigned to the territory of the respective territorial community have the right to exercise their right to vote in the elections of deputies of a village, settlement, city council, village, settlement, city mayor. Or voters whose electoral address is assigned to the territory of one of the territorial communities of the respective district, etc. have the right to vote in the elections of deputies of the district council.

RECOMMENDATIONS

A study of foreign experience in the legal regulation of the exercise of suffrage suggests that the electoral law of most European countries does not provide for the exercise of suffrage in national elections for foreigners (with the exception of the laws of countries such as Spain and Ireland). At the same time, if we talk about the exercise of suffrage in local elections, then under the laws of many foreign countries, foreigners can exercise it to the same extent as citizens. This is evidenced by the widespread practice of EU countries to grant the right to vote to foreign citizens in local elections, provided they reside in the country. In contrast, Ukrainian election law does not provide such suffrage to foreigners in both national and local elections. Therefore, it is possible that with the accession to the EU, the consolidation of the suffrage of foreign citizens will become relevant and will require appropriate changes to the electoral legislation of the country. It is also important to note that in many countries, one of the grounds for deprivation of the suffrage is a court verdict on sentencing a person to imprisonment. Ukrainian law does not contain such a ban, as only a person who has been declared incompetent by a court does not have the right to vote. The exercise by such persons of their right to vote in prisons is in practice a rather difficult issue and therefore requires proper legal regulation at the legislative level.

CONCLUSION

According to the results of the study of the legal regulation of the exercise of citizens' suffrage in some foreign countries, in particular, Germany, France, Italy, Poland, Spain, and Ireland, as well as the current Ukrainian legislation, it is important to note the following. The analysis of legal documents, the norms of which regulate the exercise of citizens' suffrage, gives grounds to

conclude that in most European countries the basic requirements for the exercise of both active and passive suffrage are:

1. Reaching the appropriate age (age qualification), which is determined by constitutional norms, norms of the Electoral Code or a special election law;
2. Citizenship of the respective country;
3. Full legal capacity of the person.

In this case, the grounds for deprivation of the right to vote of citizens are usually such as: the presence of a court decision declaring a person incompetent; the presence of a court sentence for imprisonment; deprivation by the court of the opportunity for a person to hold public office, etc.

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