IMPLEMENTATION OF INTERNATIONAL AND LEGAL STANDARDS OF JUDICIAL CONTROL OVER THE REALIZATION OF ELECTORAL RIGHTS AS A STEP TOWARDS UKRAINE'S EUROPEAN INTEGRATION

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ABSTRACT

The article is focused on the analysis of international and legal standards of judicial control over the realization of electoral rights. Elections are one of the forms of direct democracy, which are a complex political and legal process for the formation of state and authoritative institutions through the implementation of individual's political rights. The attribution of the latter to the so-called "first generation" in the evolution of individual rights and freedoms, their general constitutional consolidation testifies to the basic importance in a state-organized society. However, these rights have a clear specific feature of the legal nature, which is reflected both in the regulatory consolidation and in the construction of a system of guarantees of their observance and implementation by a person.

The authors of the article have revealed the specifics of international and legal standards of judicial control over the realization of electoral rights. The main attention is focused on the complexity of the electoral process, as well as the involvement of "political players" and politically sensitive issues that "inevitably lead to disputes", as noted by the European Commission for democracy through law, better known as Venice Commission in its Report on the Settlement of Electoral Disputes. Such disputes are a "natural component of a full-fledged political life" in a country that, in turn, is a "natural component of a full-fledged pluralistic system". Therefore, resolving these disputes is a key element of effective and functional "electoral governance" to ensure the confidence in electoral processes.

The authors have concluded that the international and legal practice of judicial control over the realization of electoral rights is diverse and, to some extent, contradictory. The international and legal mechanism for the realization of electoral rights has undergone a certain evolution, due to the ambiguity and specify of each situation, as well as the need to protect one of the key values of modern democracy – the right to elect and to be elected. It has been proved that the practice of international courts, first of all the European Court of Human Rights, also plays an important role. The authors have studied the ways of implementing international standards into the national system of law – legislative, law-enforcement, as well as through their direct application by all subjects of the relevant legal relations.

Keywords: Electoral Rights, Judicial Control over the Realization of Electoral Rights, European Court of Human Rights, Right to Free Elections, Electoral Process, Electoral System

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INTRODUCTION

International and legal standards in the elections sphere are part of the general category of international standards, a clear example of the impact of international and legal regulation on one of the important areas of national law – suffrage. However, international electoral standard as the institution of international law – their significance for national electoral law is still insufficiently studied. There is no single point of view on the legal nature of these standards, their place in the system of suffrage. This justifies the relevance of the research of this problem.

We should admit both the source and certain substantive relationship between international electoral standards and international human rights standards. The vision of the essence of the legal basis of elections as the observance of specific voting rights of citizens is quite common. Surely, democratic elections presuppose the proper realization of citizens' voting rights. Although the first international electoral standards were formulated in international regulatory legal acts on human rights, these provisions also have the content that goes beyond the "human rights" context.

The role of the system of international electoral standards is much broader than provision of voting rights of citizens. Elections should be considered not only as a sphere of realization of human rights and freedoms, but first of all as a socio-political institution that determines the formation of the governing agencies of a democratic state. Elections are the way of realizing the sovereignty of the people, where the main subject is not so much an individual as the people. Therefore, elections should be considered as a basic institution of a democratic state regime.

In Europe the right to free elections is guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. This international document out of all the democratic guarantees against the abuse of political power is one of the most fundamental. The ability of people to express their individuality and make their choices peacefully, through a ballot paper, is the key to stability in any society and to the security of democracy in Europe (Council of Europe, 1950).

Today it becomes topical in Europe to implement a mechanism of protection and exercise of vested rights and freedoms through the mechanism of European Court of Human Rights (hereinafter - ECHR) (Kurylo, Teremetskyi & Duliba, 2020).

The article is focused on studying international electoral standards as a partial case of the general category of international legal standards, where international human rights standards are historically the first example of them. International legal standards are enshrined in two types of acts – international treaties subject to ratification (binding acts) and acts of international organizations ("soft law" acts). The caselaw of international courts, especially the ECHR, also plays an important role. The purpose of the article is to study the ways of implementing international standards in the national legal system – legislative, law-enforcement, as well as through their direct application by all subjects to the relevant legal relations.

RESULTS AND DISCUSSION

The High Contracting Parties referring to the Art. 3 of Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms undertake to hold free elections at reasonable intervals by secret ballot in conditions, which ensure the free expression of the people's opinion in the legislature. The practice of interpreting the provisions of the Convention in the judgments of the ECHR has established the approach of exclusivity of this provision in the system of convention guarantees of the legal status, because this norm determines the obligation to ensure free expression and not a specific right or freedom of the person, unlike other provisions of the Convention and its Protocols. At the same time, taking into account the preparatory work regarding the Art. 3 of Protocol 1 and the interpretation of the provision in the context of the Convention in the whole, the Court concludes that this provision is also applied to individual rights, including the right to vote ("active" aspect of the right) and the right to stand

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for election ("passive" aspect of the right) (ECHR, 1987, Mathieu-Mohin & Clerfayt; ECHR, 2004, Ždanoka, n.d.).

At the same time, the Art. 3 of the Protocol 1 explicitly indicates the priority of the public, even in certain aspects, – political interest – the "expression of the opinion of the people" – while ensuring the fulfillment of the obligations of the High Contracting Parties to the Convention.

An additional confirmation is the approved approach, according to which the issue of protecting a person's voting rights cannot be considered under the Art. 6 of the Convention. It is natural that such rights are political and not "civil" within the meaning of Part 1 of the Art. 6 of the Convention, and therefore disputes concerning the realization of their rights do not fall within the scope of universal guarantees of judicial protection of civil rights (ECHR, 1997, Pierre-Bloch; ECHR, 2009, Geraguyn Khorhurd Patgamavorakan Akumb *vs*. Armenia).

Nevertheless, the legal nature of electoral procedures for the realization of political rights determines the existence of a mechanism for effective control of their substantive and formal legality at the level of general standards. It is logical that the judicial power, which is exercised through the administration of justice, has the highest potential to ensure adequate legal protection of both public interest and rights. freedoms of the participants in the election process in accordance with its status and place in the system of state power (professionalism, political impartiality, guarantees of independence, ensuring equality, etc.).

Undoubtedly, elections are an important institution of a direct form of people's democracy, which ensures the renewal of the composition of state authorities and local self-government agencies. It is a priority to ensure the legitimacy of state power, the development of civil society, the stability of the constitutional form of government and the succession of people's power, the formation of statehood on democratic, legal principles. In other words, the public political reproduction of the state itself is actually carried out due to the institution of elections.

However, all this can be practically realized only if there is an effective electoral system, democratic principles and procedures for the formation of representative agencies of state power and local self-government agencies, proper legislative regulation of the status of all subjects of the electoral process (Teremetskyi & Chudyk, 2021).

The existence of the national system for the effective handling of individual complaints and appeals on issues related to suffrage is one of the main guarantees of free and fair elections. Such a system ensures the effective realization of personal rights to vote and stand as a candidate in elections, maintains the general confidence in the management of the electoral process and is an important mechanism for the state to fulfill its positive obligation under the Art. 3 of Protocol 1 on democratic elections (ECHR, 2016; Uspaskich, (n.d.)).

One of the main acts of "soft" law – is the Code of Good Practice in Voting Rights, adopted by the European Commission for democracy through law, better known as Venice Commission (hereinafter – the Venice Commission) at the 52nd Plenary Session on October 18-19, 2002 (CDL-AD (2002) 023rev2-cor) – it is one of the procedural guarantees for the implementation of the principles. in the field of elections; it is focused on an effective system of appeals. At the same time, the system of building appellate agencies offers two possible options:

- Claims can be heard by ordinary courts, a special court or constitutional court;
- Complaints can be heard by the election commission.

The second option in paragraph 93 of the Code is considered particularly favorably, from the standpoint of forming commissions of highly qualified specialists, while the courts have less experience in matters related to elections.

Having analyzed such a high assessment of the "extrajudicial" appeal procedure, we should pay attention to the general content of the Code, including recommendations for the formation of election administration agencies (election commissions), which should be

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independent, impartial, qualified, with the participation of a judge or a court official (paragraph 75 of the Code) (Venice Commission, 2002).

Unfortunately, the system of formation of election administration agencies of the district (territorial) and sectional level chosen in Ukraine only declaratively complies with these recommendations. Therefore, it is obviously inappropriate to give additional powers to election commissions on resolving disputes, the activities of which cause these disputes to arise rather than resolve them. Under such conditions, we strongly support suggestions for the professionalization of election commission members, which are actively expressed by leading international organizations in the field of elections (including the International Foundation for Electoral Systems), as well as the vector for the development of electoral legislation (including reflected in the Electoral Code of Ukraine); which constantly narrow the scope of disputes under the jurisdiction of election commissions.

Analysis of the procedural features of election and referendum proceedings, as well as the experience of its application indicates about their compliance with standards and guarantees (universality of the right to go to court, simplicity and avoidance of formalism, subject of appeal, deadlines and forms of hearing, etc.). However, special attention from the standpoint of assessing the effectiveness (efficiency) of judicial protection of electoral rights should be paid to the issue of the powers of the courts while hearing disputes and assessing the correspondence between the powers used and their consequences.

The comprehensive application of the Art. 13 of the Convention and the Art. 3 of Protocol 1 repeatedly gave the Court grounds to find a violation of the Convention's obligations in electoral proceedings, where the national appeal system failed to offer a person a restoration of his or her political rights, despite the level of violation's impact on the overall result of the elections. It is obvious that democracy determines the equal meaning of each vote of every voter for the state, and therefore legal procedures should be concentrated and limited not only to the final result. The ECHR formulated an approach in one of the cases, where the fact of a large difference in the votes between the candidates did not matter, and its use could not justify overly formal grounds for avoiding the consideration of election complaints on the merits, when it came to consider the scope of violations, independently of each other, before determining their consequences for the overall outcome of the elections (ECHR, 2010b, Namat (n.d.)).

The extreme example of interfering powers while hearing electoral disputes – the annulment of election results – is also one of the international standards for the protection of the rights. Such power may be exercised only if the violations identified in the course of the review could have affected the established results, *i.e.,* the distribution of seats. This principle is general, but it should be possible to clarify it, *i.e.,* it is not necessary to cancel the results across the country or in the district: it should be possible to cancel the results only in a single polling station. This avoids two extremes: annulment of election results in general in a situation, when violations affected only a small area, and refusal to cancel on the pretext that the area, where the violations were evident, was quite small (paragraph 101 of the Code) (Commision, 2002).

Decisions to invalidate elections must reflect a genuine failure to establish the wishes of voters (ECHR, 2008, Kovach *vs*. Ukraine). The court in the Case of Kerimova *vs*. Azerbaijan concluded that the falsifications by two election officials did not alter the final outcome of the elections, where the applicant won. Nevertheless, the national authorities declared the election results invalid in violation of national election law and without taking into account the limited consequences of falsifications. In fact, national authorities helped officials in this case to obstruct the elections. Such a decision arbitrarily violated the applicant's voting rights, depriving her of the opportunity to be elected to the Parliament. It also demonstrated a lack of concern about the integrity and efficiency of the electoral process, which could not be considered compatible with the spirit of the right to free elections (ECHR, 2010a; Kerimova (n.d.)).

The role of the courts is not to change the will of the people. The Court In Case of Riza and others v. Bulgaria found that the grounds for non-recognition of the elections in a number of polling stations were purely formal and the circumstances relied on by the court to justify its decision were not provided by national law in a sufficiently clear and accessible manner. There

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was also no evidence that they would change the electorate's choice or distort the outcome of the elections. In addition, the election law did not provide the possibility of holding new elections at polling stations where the elections were declared invalid. Thus, decisions to invalidate elections must be based on a genuine impossibility to establish the will of voters (ECHR, 2015; Riza & Bulgaria, (n.d.)).

At the same time, the European Court recognizes that due to the complexity of the election process and the time frames of the election procedures, complaints of non-compliance with election law may need to be considered in the short term in order to avoid delaying the election process. For the same practical reasons, States may find it inappropriate to require courts to comply with a set of very strict procedural guarantees or to make very detailed decisions. However, these considerations cannot justify undermining the effectiveness of judicial review procedures, actions or omissions of election commissions; and appropriate efforts must be made to address the merits of conflicting individual complaints concerning election violations and to ensure that the decisions are sufficiently substantiated (Chudyk, 2021).

The Supreme Court, while hearing disputes involving subjects of power, has for a long time used a legal position, according to which the repeal of an act of an administrative agency for purely formal reasons will not ensure the compliance with the principle of legal stability and justice. Thus, the key issue in assessing the procedural violation committed while taking the decision by the subject of power is the correlation of two basic principles of law: "illegal actions do not entail legitimate consequences" and, in contrast, the principle of "formal violation of the procedure cannot have the effect of revoking the essentially correct decision". The boundary that separates a substantial (fundamental) violation from an insignificant one is the establishment of the following circumstance: whether there could have been a different decision of the subject of power in case of the compliance with the lawful procedure for its adoption (The Supreme Court of Ukraine, 2020). Although this provision, in our opinion, is applied by the Supreme Court with a certain degree of conditionality in regard to the "professional" subject of power, the procedures for the activity of election administration agencies in Ukraine formed according to the described system, are completely relevant to the real conditions of their activity, as well as to the actual requirements.

Therefore, the feeling of this "boundary" on the basis of the factual circumstances of the case is crucial for a fair, lawful and reasonable decision. At the same time, given the political nature of the rights and the electoral process, where they are exercised, international experience demonstrates successful examples of judicial creativity in resolving political and legal disputes arising from elections and the inevitability of taking into account political consequences that were not considered in advance by the legislator.

After all, the Ukrainian judicial system has a unique experience – the Decision of the Supreme Court of Ukraine dated from December 3, 2004, which actually changed the course of recent history of the State and laid the legal basis for changing the political and legal system of the state in 2014.

The problems of appealing against violations and resolving disputes related to elections are primarily relevant given the nature of those rights, freedoms and interests that are the direct object of protection. The importance of this was noted by the European Court of Human Rights in the Case of Namat Aliyev *vs*. Azerbaijan (ECHR, 2010b; Namat (n.d.)). Thus, ECHR has emphasized that the existence of national mechanisms for the effective consideration of such cases is one of the most important guarantees of free and fair elections. This ensures "the effective exercise of the right to vote and to stand as a candidate, maintains the general confidence in the proper organization and conduct of the electoral process and forms an important mechanism, which helps the state to achieve its positive obligations under the Art. 3 of Protocol 1 to the Convention on protecting human rights and fundamental freedoms for democratic elections".

It is noteworthy that the mechanisms for appealing "electoral torts" are used in practice both in countries with "transitional democracies" and in states of established ("full") democracy. It will be recalled, for example, that the Austrian Constitutional Court invalidated the results of

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the "second voting" of the Federal Presidential elections in 2016 due to the establishment of a number of violations that could affect the final result. As a result, the Constitutional Court ordered to hold the "second voting" of the Presidential elections (The Constitutional Court of Austria, 2016).

We should also note the judgment of the European Court of Human Rights in the Case of Mugemangango *vs*. Belgium (ECHR, 2020; Mugemangango, (n.d.)), which found a violation of the rights guaranteed by the Art. 13 of the Convention and the Art. 3 of Protocol 1 to the Convention. In particular, the ECHR noted that the applicant's complaint had been tried by the agency, which "had not provided sufficient guarantees of impartiality". In addition, the ECHR studied the effectiveness of the applicant's method of protection through the prism of whether such a method could have prevented or continued the violation or ensured the proper the elimination of the consequences of the previous violation. According to some researchers, the judgment in the Case of Mugemangango *vs*. Belgium is indicative given the application of uniform approaches to assessing the mechanisms for protecting violated voting rights by the ECHR that operate in different states, the so-called "old" and "new democracies". It should be noted that according to the caselaw of the ECHR, it is necessary to establish whether any requirements have been violated at the stages of: ensuring such a right (availability and application of precautionary measures), realization of the right (obstacles to achieve a certain benefit by an individual) and protection of human rights (taking sufficient and effective measures to restore the status of the person) (ECHR, 2020, Mugemangango, (n.d.); Karpachova, 2021).

We should also note the involvement of the Venice Commission in this case as a third party, taking into account the position and reference in the judgment to a number of documents of this institution. This stresses the author's earlier idea of the need to comprehensively consider all standards for appealing violations and resolving election disputes as legal principles, requirements, norms that have binding legal force or recommendatory character, which are enshrined in international treaties, recognized by authoritative international organizations or formulated in decisions of international jurisdictional agencies. Such standards should be taken into account and applied both at the stage of rule-making activity – development and adoption of laws and by-laws – and in the process of law-enforcement – consideration and resolution of disputes by jurisdictional agencies, including courts.

One of the sources of established European standards in this area is the documents of the Venice Commission, which refer to the acts of so-called "soft law". In particular, a significant array of relevant standards in this area is set out in the above-mentioned Report adopted in 2020. This document summarized the long-term expert activity of the Commission and other international institutions in the assessment of legislative acts of certain states. It also takes into account the legal positions formulated by the ECHR in cases involving election violations.

In our opinion, the procedural legislation of Ukraine, which regulates the procedure and terms of appealing against election violations, consideration of cases of this category by administrative courts meets the established European standards in most respects. However, we note some aspects that may be of great practical importance in the direct consideration of cases. Thus, the Venice Commission emphasizes in the Report that the requirement of "effective review", as follows from the caselaw of the ECHR, indicates that the grounds to appeal cannot be provided by law or interpreted too "narrowly", which would prevent effective consideration of claims or complaints. The Report also emphasizes that the relevant rules, in order to guarantee all voting rights, should not impede the submission of complaints/claims (Venice Commission, 2020). The procedure should not be too complicated, "cumbersome" and aimed at eliminating the possibility of filing a complaint/claim that will be considered on the merits. In our opinion, this conclusion necessitates a qualitative reform, first of all, of the mechanisms of out-of-court procedure for appealing violations and consideration of complaints by election commissions. We believe that the current state of legislative regulation of these relations is not in line with European standards.

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Another important point, which is highlighted in the Report, is the proper substantiation of the decision made as a result of resolving the election dispute. According to the Venice Commission, the substantiation is a guarantee of "controllability", "possibility" to verify the decision in terms of the applicant's arguments. Of course, given the ephemerality of the election process, the need for immediate consideration of cases of individual violations (for example, on election day), the need for prompt resolution of the dispute to some extent prevails over the requirement of reasonableness of the decision. However, according to the Venice Commission, at least a brief substantiation of the circumstances of the case and the application of the law must be provided.

The Report states that national law, in order to protect and guarantee the integrity of the electoral process, should empower the agency, competent to hear the dispute, to annul the election results in the whole or partially. At the same time, according to established standards, the key criterion for the annulment of the results is the question: whether the violations could have affected the outcome of the election. The Venice Commission indicates that in case of the annulment of the results, new elections/voting must be held in the relevant territory. At the same time, the Venice Commission warns that the annulment of the results due to minor irregularities that did not affect the outcome of the elections will make the election process "vulnerable"/"defenseless" or lead to distrust of the judicial protection mechanism. According to the Venice Commission, given the extreme effect of a decision to cancel the results, such a decision should be taken only in exceptional circumstances, when the facts of "illegality, dishonesty, injustice, abuse or other violation" are clearly established and when the wrongful conduct distorted the election results. The Report emphasizes that the role of judges in such a sensitive issue is crucial, since they are responsible for ultimately deciding on the "purity" of the electoral process. Therefore, the Venice Commission recommends to enshrine the institution of partial or complete annulment of election results (Venice Commission, 2020).

We recognize that the problem of annulment of election results is indeed extremely sensitive and has been discussed in Ukraine for a long time. Undoubtedly, there are significant risks of abusing such mechanisms, if initiated by law. At the same time, the analysis of the practice of holding, in particular, local elections shows that there are many cases, when the annulment of election results (recognition of elections as invalid or failed) may be the only possible effective way to protect the violated right. Thus, this may be applied in cases when the relevant election commission has not decided to register a candidate or conduct a ballot paper that contains significant inaccurate information about the candidates, contrary to a court decision. Unfortunately, the caselaw shows such violations. Therefore, the further discussion of this problem is relevant.

The constitutional and legal aspect of the organization, holding and announcement of results is of special importance within the framework of the referendum as a legal institution. It should be borne in mind that each national legal system has unique constitutional and legal traditions, and therefore the regulation of issues related to the consolidation of the powers of constitutional jurisdiction agencies differs in foreign countries. Accordingly, the generalization of the approaches of the European constitutional courts in resolving the studied category of cases is impossible without determining the specifics of consolidating certain aspects of the institution of referendum both at the level of the basic law and within special legislation.

In general, European constitutions enshrine the various powers conferred on the constitutional court in the field of suffrage. Most basic laws of European countries set out two main tasks for constitutional courts: preparing for elections and referendums and monitoring the actual conduct and announcement of results. Thus, the Art. 60 of the French Constitution stipulates that the Constitutional Council (French: Conseil constitutionnel) ensures the proper conduct of referendum procedures, as provided in the Articles 11 and 89 and in Chapter XV of the Constitution, and announces the results of the referendum (Law of France, 1791). Among other things, one of the forms of participation of the Constitutional Council in the referendum process is, in particular, the provision of an opinion by the Council on the compliance of the issue submitted to the referendum with the Constitution of France. For example, the

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Constitutional Council formulated the following position in its Decision No. 87-226 dated from July 2, 1987:

«7. Whereas the question posed to the public concerned must meet the double requirement of loyalty and clarity of consultations; if state authorities can provide the population concerned with predictable guidelines within their powers, the question posed to voters should not be ambiguous, especially in regard to the scope of such guidelines" (Ricci, 2010).

European countries also have a practice of legal regulation, according to which the powers of the constitutional court of the country in terms of elections and referendums are not clearly regulated at the level of the Basic Law (The Italian Constitutional Court, 2019). Besides, the indicated range of issues is not detailed at the level of special legislation that determines the legal status of the constitutional court. For example, the Italian Constitution and the relevant legislation regulating referendums do not provide clear guidance to the Constitutional Court (Italian – "Corte costituzionale della Repubblica Italiana") regarding the implementation of tasks related to the admissibility of propositions that may be submitted to an abrogative referendum (Italian – "referendum abrogativo"). At the same time, the legislator once recognized that the powers related to determining the constitutionality of an issue submitted to national referendum should be naturally derived from the provisions of the Art. 75 of the Italian Constitution. In addition, the Constitutional Law No. 1/1953 (the Art. 2) set out the procedure for holding and canceling a referendum, as well as the relevant procedural requirements (The Italian Constitutional Court, 2019). According to the latter, another agency involved in the referendum procedure is the Central Office for Referendum at the Italian Court of Cassation (Italian – "Palazzo di Giustizia"), which verifies the legality of a request for a referendum and its compliance with procedural requirements before such a request will be referred to the Constitutional Court for direct consideration of its constitutional admissibility (Krunke, Baumbach, 2019).

Despite a meaningful evolution, some European constitutions do not contain any issues related to the standardization of the referendum.

For example, the Norwegian Constitution of 1814 is one of the oldest constitutions in the world (being inferior only to the Constitution of the United States of America). Moreover, the country's Supreme Court (Norwegian – "Norges Hoyesterett") in 1822 became the second national court in the world to have the power to review the constitutionality of legislation. However, the institution of referendum is not institutionalized in the Norwegian constitution (Bjorklund, 1982), although many attempts have been made to introduce it at the level of the Basic Law. This issue has been considered in the Storting (Norwegian – "Stortinget", Norway's unicameral parliament) twenty times, but the relevant legislative initiative did not receive the required two-thirds majority to adopt constitutional amendments. On this basis, Norwegian scholars in the field of constitutional law, having analyzed the relevant practice, generally consider two types of referendums that have taken place in practice in Norway. Such types include: 1) general referendum and 2) specific issue referendum. Suggestions for mandatory referendums were made in connection with constitutional changes and mainly in the form of the so-called conservative "guarantee". It is noteworthy that a direct people's initiative (when the voters themselves receive legislative powers) has never been offered and implemented in the Norwegian Parliament. Thus, the lack of constitutional enshrinement of the institution of a referendum has determined that the only possible option for its application is to hold a consultative referendum. For example, two referendums were held in Norway in 1905 at once: the first concerned the resolution of the dissolution of the Swedish-Norwegian union ("Norwegian union dissolution referendum"), and the second referendum declared Norway as a monarchy.

Thus, the absence of any legislative enshrinement of the institution of a referendum in Norway served as a kind of "counter-narrative" of constitutional control. The latter is carried out by the Supreme Court of Norway, and the analysis of relevant caselaw in recent decades has shown that the Court did not exercise constitutional control over the issues of exercising consultative referendums.

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It should be noted that the countries of the "Nordic Union" do not have constitutional courts, and the functions of constitutional control are mostly exercised by certain Chambers established within the Supreme Courts. At the same time, such a model of constitutional control in the Scandinavian countries uses a "restrained approach" to the revision of legislation to ensure its constitutionality. Only one law lost its validity due to its unconstitutionality in Denmark between 1990 and 2015. It is believed that the Danish concept of democracy is based on a strong Parliament and "reluctant to political debate" courts (Langford, Berge, 2019). Due to the above comparative analysis, it is safe to say that the model of constitutional control in referendum cases differs in European countries.

Therefore, as a conclusion, we will try to provide our own systematization of substantive aspects of the practice of reviewing referendum cases by European agencies of constitutional jurisdiction:

– bringing the issue up to a referendum (including the constitutionality of the issues submitted to the referendum and adherence to the principle of legality while formulating the issue to be brought up to a referendum);

– Constitutional aspects of realizing the right to vote during a referendum (legality of agitation and voting);

– Validity of referendum results (reliability of results);

– Constitutional control over the referendum procedure in the manner prescribed by the constitution.

CONCLUSION & RECOMMENDATIONS

International legal standards serve as the determining means of achieving the legal unity of states that share common values and deep legal principles. The gradual formation of the European legal space is carried out in such a way. It is based on the unification of the national law of the Council of Europe Member States through the recognition and implementation of European legal standards. A new legal phenomenon is being formed in this context – branches of domestic law without national attribution. That is why we can talk, for example, about the "European electoral legacy" – a branch of electoral law, which, as a holistic system of norms, is common to many European national legal systems.

Ukraine has taken significant steps towards implementation of European standards for democratic elections by implementing the relevant norms into domestic suffrage, although this process has not been complete yet. At the same time, there are significantly more reservations about the compliance with these standards in the process of applying the law during elections, as evidenced, in particular, by reports from international monitoring missions. Ukraine still has problems with a proper understanding of the nature, content and status of European electoral standards, and hence the principles of suffrage, and the dubious practice of certain disregard for these standards, which has features of legal nihilism.

Thus, international electoral standards are mainly sectoral principles of objective suffrage and contain both a statement of the mandatory content of the relevant fundamental requirements and recommendations for their implementation. Such standards should constitute the system of minimum requirements both for national electoral law and the law-enforcement practice of conducting elections. There is no sense to talk about the existence of democratic elections without the compliance with them.

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