

LEGAL POSITIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS ON THE RIGHT TO FREE ELECTIONS AND THEIR INFLUENCE ON THE FORMATION OF A DEMOCRATIC ELECTORAL SYSTEM

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ABSTRACT

The article is devoted to the analysis of the legal positions of the European Court of Human Rights on the protection of human rights, as the establishment and protection of human rights and freedoms is the main duty of the state. To guarantee the possibility of enjoying of all human and civil rights and freedoms, the state must provide a mechanism for exercising the rights and freedoms guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted on November 4, 1950, entered into force on September 3, 1953 and ratified by the Verkhovna Rada of Ukraine on July 17, 1997 (entered into force for Ukraine on September 11, 1997).

The authors of the article revealed the specifics of the Code of Good Practice in Electoral Matters, which is the most important standard document of the Council of Europe for the assessment of elections, which aims to harmonize electoral standards.

The authors focused on the judicial practice of the interpretation of the provisions of Article 3 of Protocol No. 1 to the European Convention on Human Rights and Fundamental Freedoms "Right to Free Elections" by the European Court of Human Rights (hereinafter - the European Court). The authors emphasize that one of the exclusively important, key elements of successful implementation of political will in regard with Ukraine's European integration is to achieve a certain level of harmonization of Ukrainian legislation with the law of the Council of Europe, first of all, it is the formation of a democratic electoral system in Ukraine.

The authors concluded that the judicial practice of the European Court on the interpretation of Art. 3 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms The "right to free elections" is very diverse and, to some extent, contradictory. The understanding of the right to free elections in the judicial practice of the European Court has undergone a certain evolution, due to the ambiguity and peculiarity of each situation, as well as the need to protect one of the key values of modern democracy - the human right to vote and to be elected.

Keywords: European Court of Human Rights, Right to Free Elections, Electoral Process, Electoral System, Suffrage

INTRODUCTION

The democratic order of formation of the legislative representative body of the state is traditionally perceived by the international community as the most favorable for the rule of law

with due respect for human rights and proper management of public affairs. At the same time, a democratic regime, as one that involves bringing political issues into the public domain for nationwide discussion and resolution, which often leads to the polarization of society, destabilization of political processes and escalation of conflicts, must be supported by all possible state mechanisms. Fundamental of these democratic mechanisms are the electoral legislation and the organizational and legal infrastructure developed for its implementation, which includes the procedure for resolving election disputes, designed to ensure the observance of democratic values during the electoral process.

The European Court of Human Rights has long been one of the most effective mechanisms for the protection of human rights, having a significant impact on the formation of legal systems of European countries, and in Ukraine in particular. Therefore, it seems that the Court's practice of interpreting the Convention for the Protection of Human Rights and Fundamental Freedoms may be useful for the national judicial system of Ukraine. Note also that the right to free elections is guaranteed by Article 3 of Protocol No. 1 to the Convention, according to which States Parties are committing to "hold free elections at reasonable intervals by secret voting in conditions which ensure the free expression of the opinion of the people in the choice of the legislature" (Article 3 of Protocol No. 1). On September 11, 1997, Ukraine ratified Protocol No. 1, together with the main text of the Convention, and must therefore guarantee the exercise of the specified right on its territory.

LITERATURE REVIEW

Some aspects of the issue concerning the legal positions of the European Court of Human Rights on elections have been reflected in the works of such domestic and foreign scholars as B. Bauring, S. Golubok, A. Kovler, M. Mazur, P. Rabinovych, M. de Salvia, S. Tagiyev, S. Shevchuk, E. Yuriychuk and others.

The aim of the authors is to clarify controversial issues of the judicial practice of the European Court of Human Rights on the right to free elections. The objectives of the article are to reveal the specifics of the complaint handling by the European Court of Human Rights; clarifying the specifics of the right to free elections in the context of the Convention; establishing the reasons for the evolution of the judicial practice of the European Court of Justice on the right to free elections, as well as its impact on the formation of a democratic electoral system in Ukraine.

RESEARCH METHODOLOGY

The methodological basis for studying the legal positions of the European Court of Human Rights on the right to free elections and their impact on the formation of a democratic electoral system in Ukraine is a set of general scientific and special legal methods of scientific cognition, including dialectical, analytical, historical, comparative, legal and theoretical legal forecasting. Thus, with the help of the dialectical method the essence of the right to free, tendencies and regularities of development of the national electoral system of Ukraine is revealed. The method of analysis allowed to study and analyze the legal positions of the European Court of Justice on the right to free elections and to conclude that the judicial practice of the European Court is very diverse and to some extent contradictory. The understanding of the right to free elections in the judicial practice of the European Court has undergone a certain evolution, due to the ambiguity and peculiarity of each situation, as well as the need to protect one of the key values of modern democracy - the human right to vote and to be elected. The comparative-legal method was used in comparing court decisions in cases of the European Court of Justice on the right to free elections. Studying the "evolutionary development" of the legal positions of the European Court on the right to free elections and their impact on the formation of a democratic electoral system in Ukraine, the authors used the historical-legal method, and

when studying the powers of this body the authors used the formal and legal method. The method of theoretical and legal forecasting was used in the formation of recommendations for solving problems in the field of application of the judicial practice of the European Court of Justice on the right to free elections by the judiciary in Ukraine.

RESULTS AND DISCUSSION

The meaning of the proper administration of justice in cases arising from electoral disputes is addressed in all relevant international legal documents, one of the most important of which is the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms. Under the provisions of Article 3 of specified document, the High Contracting Parties undertake to hold free elections at reasonable intervals by secret voting in conditions which ensure the free expression of the opinion of the people in the choice of the legislature (Art. 3 of Protocol No. 1). Revealing the political and philosophical basis of Article 3 of Protocol No. 1 to the Convention, the European Court of Human Rights noted that democracy is a key component of the "social European order" and the only political model provided for and compatible with the Convention, and suffrage is critical to establish and uphold the democratic foundations of a society governed by the rule of law and good governance. The Convention emphasizes the strong link between effective political democracy and the effective functioning of parliament. In view of this, according to the Convention, taking into account the practice of its interpretation and application by the European Court, the electoral part of human rights covers:

1. The right to vote
2. The right of a citizen to run in elections and, in if winning.

To hold the position of People's Deputy (which extends the convention guarantees of free elections to restrictive measures to an already elected parliamentarian, in particular, cases of termination or imposition of fines). At the same time, these rights are not absolute and may be indirectly limited within the discretion of states, provided that all citizens are equal in the exercise of suffrage and free expression of will of the people during the election of the legislature (Case of *Zhdanoka vs. Latvia*). Ref. However, suffrage should not be restricted to such an extent that its very essence is undermined and it is deprived of its effectiveness, which makes it impossible for the people to freely express their will during elections to the legislature. In view of this, it is not allowed to impose restrictions not to achieve legitimate goals or those that are disproportionate, whereas any deviation from the principle of universal suffrage creates a risk of undermining the democratic legitimacy of the legislature thus elected and the laws it adopts (Case of *Kovach vs. Ukraine*).

In addition to the substantive legal requirements, Article 3 of Protocol No. 1 to the Convention defines the need for States Parties to this international legal instrument to ensure compliance with procedural standards designed to ensure a fair and effective settlement of electoral disputes in order to achieve the purpose of conventional provisions on the free expression of the opinion of the people in the choice of the legislature.

First of all, in this context, it is important to note that cases involving electoral disputes are not subject to the provisions of Article 6 of the Convention on the Right to a Fair Trial, because voting rights are political rather than "civil", and Article 6 The Convention in its criminal aspect is also not considered applicable to fines imposed for non-compliance with the rules of elections (Art. 3 of Protocol No. 1).

In addition, the high-quality procedure for the consideration and resolution of electoral cases by administrative courts and its proper observance are required by the general convention on the need for such interpretation and application of national law, which makes convention rights and fundamental freedoms practical and effective rather than theoretical or illusory, which would be the case if during the whole election process specific cases indicating that democratic elections are not ensured could not be appealed by individuals to the competent body of the

country, which is able to effectively consider the case and restore the violated rights (Case of *Kovach vs. Ukraine*). In view of this, Article 3 of Protocol No. 1 to the Convention provides for some positive procedural obligations, including the development of a system for the effective consideration and resolution of cases of violation of suffrage, which will be the main guarantee against arbitrariness in the electoral process, which will exercise the right to vote and run in the elections, and will maintain general trust in the public administration of the electoral process. An analysis of the judicial practice of the European Court shows that administrative courts, as the bodies authorized to finally resolve election disputes, are required to make a fair, objective, well-motivated and effective decision. The main procedural requirements of Article 3 of Protocol No. 1 to the Convention were determined by the international judicial institution as follows:

1) clarification of the legality of the applied restrictive measures, their focus on achieving a legitimate goal and their proportionality;

2) limitation of the discretionary powers of the body resolving the election dispute by law to the extent necessary for law enforcement, which is predictable and sensitive to the special circumstances of the case;

3) substantiation of court decisions solely on legal and factual grounds, and not by any political considerations;

4) the possibility for the parties to election disputes to state their point of view and present any arguments and evidence to substantiate it in the framework of written proceedings or hearings, which ensures the adversarial process;

5) proper consideration of the requirements, objections and evidence of the parties to the election dispute and a reasoned response to all those that are relevant to the resolution of the case;

6) processing with special assiduity complaints about measures that may harm the parliamentary opposition (Case of *Mujemangango v. Belgium*);

7) taking additional measures by the court to clarify all the circumstances of the case in which the materials are submitted, which indicate convincingly enough a high probability of a serious electoral violation;

8) inadmissibility of formalism, in particular, failure to establish election results due to errors or shortcomings in the electoral process, which did not distort the will of voters, or imposing on the applicant unreasonable or excessive procedural burden, given that in public trials the rules of evidence should be more favorable to individuals (Case of *Namat Aliyev v. Azerbaijan*).

At the same time, the European Court recognizes that due to the complexity of the election process and the time frame 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 of 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 of the effectiveness of procedures for judicial appeal of decisions, actions or inaction of election commissions, ensure proper efforts to consider the essence of contradictory individual complaints concerning election irregularities, and to ensure that the respective decisions are sufficiently substantiated (Case of *Namat Aliyev vs. Azerbaijan*).

Summarizing the above, we have grounds to state that in resolving an election dispute, the administrative court must determine the legality, focus on achieving the legitimate goal and proportionality of the contested decisions, actions or inaction of election commissions, refraining from excessive procedural formalism and substantiation of the court decision by political considerations, also providing the parties with an opportunity to present explanations and evidence in support of their claims and objections, duly motivating the conclusions of their assessment and taking all measures for formal clarification of all the circumstances of the case.

The right to free elections does not contradict the existence of monarchies in Europe, as it concerns mostly elections to "legislative bodies" and not the elections of heads of state. Similarly, the right to free elections in the interpretation of the European Court does not cover local and regional elections, if any. For example, in the case of *Xuereb vs. The Malta* applicant complained of possible discrimination because he had been disqualified from the local council elections (the so-called *Naxxar*). In examining the admissibility of the application, the Court found that *Naxxar* was "entrusted with administrative functions in the relevant jurisdictions". Accordingly, "their regulatory powers are defined by the statute and they remain subordinate to the central parliament. Local councils, when working and providing services, can only do what

is directly or implicitly allowed by the statute or delegated legislation. "The Court therefore recalled that, by reason of the subordinate nature of their powers and functions, local authorities could not be considered part of the legislature. Accordingly, the Court concludes that Article 3 of Protocol No. 1 does not apply to the relevant elections. The applicant's complaint under this point was therefore inadmissible *ratione materiae* and was dismissed (Case of *Xuereb vs. Malta*).

As a general rule, Article 3 of Protocol No. 1 also does not apply to referendums. For example, in the case of *Cumhuriyet Halk Partisi vs. Turkey* The Court has stated that it cannot be inferred from the ordinary meaning of the term "elections" in Article 3 of Protocol No. 1 that a "referendum" falls within the scope of this provision. First, referendums, unlike elections, are not held "at reasonable intervals" because in most cases, if not in all cases, they are a system for determining the opinion of the population on an issue that is not repetitive ... -second, and importantly, referendums are not usually organized as a means of electing citizens to certain positions, in other words, as elections that give the electorate the opportunity to choose a legislature" (§ 33) (Case of *Cumhuriyet Halk Partisi vs. Turkey*). However, the European Court does not completely rule out the application of Article 3 of Protocol No. 1 to the elections of head of state or to referendums if there are serious grounds for doing so due to the constitutional order of a particular state.

The right to free elections, which the European Court divides in its practice into "active" and "passive", is not absolute. The European Court is of the opinion that Article 3 of Protocol No. 1 provides for "implicit restrictions" on the right to free elections, the possibility of which is not explicitly stated in the text, but follows from the very content of the law. Herewith, assessing an interference with the right to free elections, the Court does not use the traditional "three-part test" used for Articles 8 to 11 of the Convention, but offers an original system of criteria for the admissibility of interference. In particular, in the case of *Ždanoka vs. Latvia* The European Court has emphasized that "the rights guaranteed by Article 3 of Protocol No. 1 are crucial for the establishment and maintenance of the foundations of an effective and significant democracy governed by the rule of law. However, these rights are not absolute. There is room for "hidden restrictions", and the Contracting States must have discretion in this area. However, the Court must determine whether the requirements of Article 3 of Protocol No. 1 have been complied with; it must make sure that the conditions imposed on the right to vote do not restrict the exercise of that right to such an extent as to deplete its very essence and deprive it of its effectiveness; that they are imposed to achieve a legitimate goal; and that the means used are not disproportionate" (§ 102-104) (Case of *Ždanoka vs. Latvia*).

In its practice, the European Court has considered various specific cases of implementation of the passive and active aspect of the right to free elections. Among the most common are worth mentioning:

1) Restrictions on the exercise of the right to free elections of persons with limited legal capacity or deprived of legal capacity. In particular, in case of *Strøbye and Rosenlind v. Denmark*, the applicants complained that they did not have the right to vote in the parliamentary elections in accordance with national law, although they were granted the the right to vote in elections to the European Parliament and local elections. The European Court has pointed out that the legitimate goal of such a restriction may be the desire of legislators to ensure that voters have the necessary level of mental development (§ 97). In assessing the proportionality of such measures, the Court took into account the number of persons deprived of the right to vote, the clarity of the criteria for declaring a person incompetent and the historical conditions for the formation of the right to vote in Denmark. All the above allowed the European Court to conclude that there had been no violation of Article 3 (Case of *Strøbye and Rosenlind v. Denmark*).

2) Problems of exercising the right to free elections by persons detained in places of detention. These issues concern both the active (right to vote) and passive (right to run) aspects of Article 3 of Protocol No. 1. In particular, in *Selahattin Demirtaş v. Turkey* the applicant, a Turkish politician from the pro-Kurdish party, was arrested and detained during his term as a member of parliament. The Court emphasized that "the rights guaranteed by Article 3 of Protocol No. 1 would be merely illusory if elected representatives or their constituents could be arbitrarily deprived of them at any time. ... Article 3 of Protocol № 1 guarantees a person the right to run for election and, after his/her election, to be a member of parliament. The rule of parliamentary immunity is therefore decisive for this guarantee" (§ 376) (Case of *Selahattin Demirtaş vs. Turkey*). Finally, the Court found a violation of Article 3 of Protocol No. 1 in this case, as although the applicant maintained his status as a Member of Parliament throughout his term of office, the fact that he was virtually unable to participate in the National Assembly due to his

previous detention unjustified interference in the free expression of people's opinions and in their own right to be elected and to sit in parliament.

With regard to the obstacles to exercise passive suffrage by persons in places of detention, in the case of *Hirst vs. the United Kingdom* The European Court of Justice has ruled that an automatic ban on voting for all prisoners, regardless of the length of their sentence and regardless of the nature or gravity of their crime and their individual circumstances, must be considered beyond any reasonable discretion, however broad it may be, as incompatible with Article 3 of Protocol No. 1 (§ 82) (Case of *Hirst vs. the United Kingdom*).

3) Prohibitions for certain categories of citizens to run in elections. These included, for example, representatives of Roma and Jews as non-state-building peoples in various states (*Sejdić and Finci vs. BosniaHerzegovina* case), former members of political parties who attempted a coup d'état (cited above case of *Ždanoka vs. Latvia*) or former officers of punitive bodies such as the KGB (*Case of Ādamsons vs. Latvia*). In such cases, in assessing the proportionality of this prohibition, the European Court considers it necessary to also take into account the historical context and current threats to democracy in a given state.

4) Voting organizations for citizens abroad. As a general rule, the government is not obliged to create conditions for voting for citizens who are outside the territory of the state. In particular, in the case of *Sitaropoulos and Giakoumopoulos vs. Greece* The Court did not recognize the existence of a violation of Article 3 of Protocol No. 1 in a situation where applicants who were Council of Europe officials were not given the opportunity to vote at their place of employment in France (*Case of Sitaropoulos and Giakoumopoulos vs. Greece*).

In conclusion, in addition to the above aspects, the European Court of Justice has in its judicial practice also addressed the organization of elections, the functioning of electoral systems, the election bail, the registration of a party or candidate, the conduct of an election campaign and effective legal measures to protect the individual's right to free elections, the detailed coverage of which is hindered by the limited scope of this work. In all these cases, the European Court considered it necessary to emphasize that the state in this area has a wide discretion, which is determined by its constitutional tradition and the current conditions of state formation. Nonetheless, even taking these factors into account, the measures taken by the State must be proportionate, eliminate arbitrariness and not undermine the very content of the right guaranteed by Article 3 of Protocol No. 1.

According to the position of the European Court of Human Rights, ensuring the functioning of an effective judicial system for the protection of voting rights is the main guarantee of ensuring free and fair elections. It is a question of active and passive suffrage of citizens.

This requires the judiciary to objectively and quickly resolve legal issues that arise in this area, as quite often the credibility of the electoral process in general, and hence the perception and recognition of election results in the state and beyond its borders depends on even the consideration of individual disputes.

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. It is a priority to ensure the legitimacy of state power, the development of civil society, the stability of the constitutional order and the continuity of power of the people, the formation of statehood on a democratic, legal basis. In other words, thanks to the institution of elections, the public political reproduction of the state itself is actually carried out.

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

The European Commission for Democracy through Law (hereinafter referred to as the Venice Commission), established by Resolution (90) 6 of the Committee of Ministers of the Council of Europe (1990) 6, is an independent advisory body cooperating with Council of Europe member states and those who are not its members, and with interested international organizations and structures (Art. 1 of Statute). The Commission currently has independent experts from 62 member countries.

The Venice Commission plays a key role in shaping the standards of the European constitutional and, in particular, electoral heritage. Its contribution to the systematization and spread of suffrage standards in Europe is widely recognized, in particular through the

development of a Code of Good Practice in Electoral Matters (hereinafter the Code) (Code, 2002).

The Code is the Council of Europe's most important reference document for election assessment and aims to harmonize electoral standards. This document sets out generally accepted principles of suffrage: universal, equal, free and direct suffrage, secret voting and the frequency of elections, sets the framework conditions for their application, and identifies best electoral practices.

In 2004, the Committee of Ministers of the Council of Europe called on the governments, parliaments and other relevant authorities of the member states to take into account the Code of Good Practice in Electoral Matters, to take it into account within their democratic traditions when drafting and applying electoral legislation and make constant efforts to distribute it in relevant circles (Declaration, 2004).

The European Court of Human Rights has consistently argued that it must take into account relevant international documents and reports, and in particular those of other Council of Europe bodies, in order to interpret the guarantees of the Convention and to determine whether there is a common European standard in this area. The court must decide which international documents and reports it considers appropriate and how much weight to give them. Where there is a general standard which the defendant State has not complied with, this may be brought to the Court's attention when it is interpreting the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms in specific cases (Case of Tanase *vs.* Moldova).

The provisions of the Code have been repeatedly taken into account and cited by the European Court of Human Rights in cases involving violations of the right to free elections, in particular:

- In the case of *Hirst v. the United Kingdom (No.2)* (§ 24) considered the issue of deprivation of the right to vote of convicts, the Grand Chamber of the Court in the decision, among relevant international documents, also cites a section of the Code on deprivation of the right to vote and be elected;
- In the case of *Yumak and Sadak vs. Turkey* (§ 54) on the 10% barrier, the Grand Chamber referred not only to the provisions of the Code but also to the report of the Venice Commission "On Electoral Legislation and Active Measures to Ensure the Participation of National Minorities in European Decision-Making" (2005) and *On Electoral Legislation and the Electoral Administration in Europe* (2006);
- In the case of *Communist Party of Russia and Others vs. Russia* (§ 51) The Court cites the Code, in particular, the provisions on the stability of electoral law, and refers to the Explanatory Report to the Code, which emphasizes equality of opportunity and the requirement of neutrality with regard to the state media;
- In the case of *Georgian Labor Party vs. Georgia*, regarding members of electoral commissions, the Court cites, among other international instruments, the Code in connection with the organization of elections by an impartial body;
- In the case of *Sukhovetsky vs. Ukraine* (§ 38) with regard to the bail required to run for election, the Court cites the Code in respect of the amount of bail and the percentage of votes required for its return, which should not be excessive;
- In the case of *Petkov and Others vs. Bulgaria* (§§ 52, 63) concerning the legislative provision adopted on the eve of the elections on the possibility of excluding from the elections persons who cooperate with former state security bodies, the Court cites the Code in detail, in particular the provisions on the stability of electoral legislation;
- In the cases of *Namat Aliyev vs. Azerbaijan* (§ 54), *Grosaru vs. Romania* (§§ 22, 56), *Etxeberria and Others vs. Spain* (§§ 7, 79) The Court cited the Guidelines of the Code in terms of an effective appeal system;
- In the case of *Tanase vs. Moldova* (§ 86) The Court referred to the Explanatory Report to the Code regarding equal suffrage in dual citizenship;
- In *Alajos Kiss vs. Hungary* (§ 16) The Court cites the provisions of the Code in connection with the categorical prohibition of voting for any person under partial custody, regardless of his or her actual abilities;
- In the case of *Sitaropoulos and Giakoumopoulos vs. Greece* (§ 22) - on the protection of the right to vote for expatriates and in other cases.
- The Unified Register of Judgments contains decisions of the Supreme Court, which are also grounded on a reference to the provisions of the Code:

- Resolution in case № 640/5921/19 of April 12, 2019 on the claim of an official observer in regard with illegal election campaigning (Law of Ukraine, 2019); The Supreme Court cited the provisions of the Code regarding the observation and existence of an effective system for appealing election offenses to election commissions or to the court as procedural guarantees of compliance with the basic principles of suffrage;
- Resolution in case № 855/85/19 of March 25, 2019 on failure to establish the procedure for calculating the equal distribution of leadership positions in precinct election commissions for the election of the President of Ukraine (Law of Ukraine, 2019); The Supreme Court referred to the Explanatory Declaration on the Stability of Electoral Legislation, which is based on the principle of stability of electoral legislation proclaimed in the Code of Good Practice in Electoral Matters;
- Resolution in case № 855/111/20 of 12 November 2020 on recognizing elections in a multi-member constituency from local elections as failed; The Supreme Court referred to the Code regarding the appeal of election results (Law of Ukraine, 2020);
- Dissenting opinion of the judges of the Grand Chamber of the Supreme Court in case № 9901/437/19 of August 15, 2019 on declaring illegal the decision of the Central Election Commission to establish the results of elections of people's deputies of Ukraine in a single-mandate constituency (Law of Ukraine, 2019); Judges referred to the Code regarding the powers of the complaints body to annul election results in cases where violation may affect their results.

Supernational and national judicial practice in electoral cases show that the Code of Good Practice in Electoral Cases has an important place among other international recommendations in this area. The reference to it strengthens the reasoning of court decisions, helps to interpret equally the provisions of European electoral standards and to consider the Convention for the Protection of Fundamental Human Rights and Freedoms and its protocols in their light, and contributes to the formation of the European electoral heritage.

CONCLUSION & RECOMMENDATION

The Convention and the judicial practice of the European Court of Human Rights on electoral matters have become an indisputable legal instrument in Ukraine, which has significantly influenced the formation of a democratic electoral system, electoral law, national electoral legislature and judicial practice.

Ukraine has taken significant steps to implement European standards for democratic elections by implementing relevant norms in domestic election legislation, although this process is not yet complete. At the same time, there are significantly more warnings about compliance with these standards in the application of the law during elections, as evidenced, in particular, by reports from international observation missions. In Ukraine, there are still 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 ignoring these standards, which has signs of legal nihilism.

Analyzing the modern state-building processes, it can be asserted that the electoral legislation of Ukraine is at the stage of formation, as it is in constant dynamics and change. The institution of elections is an integral part of democracy, and its transparency and protection are necessary for the establishment of legitimate state power. This requires finding the optimal electoral system, which is not possible without a doctrinal understanding of the latter.

It should be noted that the issue of protection of the right to free elections is promising for further research. First, it is necessary to closely monitor the development of the judicial practice of the European Court. Secondly, it is expedient to carry out scientific developments to improve the electoral legislation of Ukraine in order to establish such an electoral system that would best guarantee the free will of the people. Third, a comprehensive analysis of the state of the judiciary in Ukraine in cases of protection of citizens' voting rights should be conducted, which will facilitate to improve quality of protection of these rights in court.

REFERENCES

- Case of Cumhuriyet Halk Partisi *vs.* Turkey. Judgment. European Court of Human Rights of November 21, 2017 (Application No 17634/93). Strasbourg. Retrieved July 11, 2021, from <http://hudoc.echr.coe.int/eng?i=001-179280>
- Case of Hirst *vs.* The United Kingdom. Judgment. European Court of Human Rights of October 6, 2005 (Application No 12974/29). Strasbourg. Retrieved July 15, 2021, from <http://hudoc.echr.coe.int/eng?i=001-70442>
- Case of Kovacs *vs.* Ukraine. Judgment. European Court of Human Rights of February 7, 2008 (Application No 39424/02). Strasbourg. Retrieved July 15, 2021, from https://zakon.rada.gov.ua/laws/show/974_452
- Case of Namat Aliyev V. Azerbaijan. Judgment. European Court of Human Rights of April 8, 2010 (Application No 18705/06). Strasbourg. Retrieved July 9, 2021, from <http://hudoc.echr.coe.int/eng?i=001-98187>
- Case of Tanase *vs.* Moldova. Judgment. European Court of Human Rights of April 27, 2010 (Application No 7/08). Strasbourg. Retrieved July 8, 2021, from <http://hudoc.echr.coe.int/eng?i=001-98428>
- Case of Selahattin Demirtaş *vs.* Turkey. Judgment. European Court of Human Rights of December 22, 2020 (Application No 15297/30). Strasbourg. Retrieved July 15, 2021, from <http://hudoc.echr.coe.int/eng?i=001-207173>
- Case of Sitaropoulos and Giakoumopoulos *vs.* Greece. Judgment. European Court of Human Rights of March 15, 2012 (Application No 19634/63). Strasbourg. Retrieved July 15, 2021, from <http://hudoc.echr.coe.int/eng?i=001-109579>
- Case of Strobye and Rosenlind *vs.* Denmark. Judgment. European Court of Human Rights of February 2, 2021 (Application No 18639/26). Strasbourg. Retrieved July 15, 2021, from <http://hudoc.echr.coe.int/eng?i=001-207667>
- Case of Xuereb *vs.* Malta. Judgment. European Court of Human Rights of June 15, 2000 (Application No 18365/09). Strasbourg. Retrieved July 15, 2021, from <http://hudoc.echr.coe.int/eng?i=001-5350>
- Case of Zhdanoka *vs.* Latvia. Judgment. European Court of Human Rights of June 17, 2004 (Application No 58278/00). Strasbourg. Retrieved July 9, 2021, from https://zakon.rada.gov.ua/laws/show/980_345
- Charter of the European Commission for Democracy through Law. Resolution Res (2002). Retrieved July 18, 2021, from https://www.venice.coe.int/WebForms/pages/?p=01_01_Statute
- Code of Good Practice in Electoral Matters. Guidelines and Explanatory Report adopted by the Venice Commission at its 52nd session (2002). Retrieved July 7, 2021 from [https://www.venice.coe.int/webforms/documents/default.aspx?PdfFile=CDL-AD\(2002\)023rev2-cor-ukr](https://www.venice.coe.int/webforms/documents/default.aspx?PdfFile=CDL-AD(2002)023rev2-cor-ukr)
- Declaration of the Committee of Ministers of the Council of Europe "On the Code of Good Practice in Electoral Matters" (2004) Retrieved July 3, 2021 from <https://www.venice.coe.int/files/CDL-elecopinions-UKR.pdf>
- European Convention on Human Rights. Council of Europe. Rome of November 4, 1950. Retrieved July 10, 2021, from https://www.echr.coe.int/documents/convention_eng.pdf
- Judgment of the Supreme Court in case No 855/85/19. Judgment. Supreme Court of March 25, 2019. Kiev. Retrieved June 27, 2021, from <https://reyestr.court.gov.ua/Review/80699324>
- Judgment of the Supreme Court in case No 640/5921/19. Judgment. Supreme Court of April 12, 2019. Kiev. Retrieved July 25, 2021, from <https://reyestr.court.gov.ua/Review/81136713>
- Judgment of the Supreme Court in case No 855/111/20. Judgment. Supreme Court of November 12, 2020. Kiev. Retrieved June 25, 2021, from <https://reyestr.court.gov.ua/Review/92842041>
- Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms. (1952). Retrieved July 10, 2021, from https://zakon.rada.gov.ua/laws/show/994_535
- Resolution of the Committee of Ministers of the Council of Europe (90) 6 on the Partial Agreement on the European Commission "For Democracy through Law" Retrieved July 9, 2021, from https://zakon.rada.gov.ua/laws/show/994_244
- Separate opinion of the judges of the Grand Chamber of the Supreme Court in the case No 9901/437/19. Judgment. Supreme Court of August 15, 2019. Kiev. Retrieved June 21, 2021, from <https://reyestr.court.gov.ua/Review/83775485>
- Teremetskyi, V. & Chudyk N. (2021). Judicial practice on resolution of election disputes. Scientific notes. series: Law, 10, 15-19.