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Concept and Forms of Exercise of Citizens' Electoral Rights in Local Elections

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Abstract

The purpose of the study is to examine the concept and forms of implementation of citizens' electoral rights in local elections in Ukraine for understanding the legal category and further improving of the electoral legislation of Ukraine. During the research, general and special legal methods were used: system analysis, comparative-legal, dialectical approach, and system-structural, scientific methods were applied in accordance with the purpose and objectives of the study. The originality of the study lies in a comprehensive analysis of the concept and forms of implementation of citizens' electoral rights at local elections. The study assessed the concept of exercising the electoral rights of citizens in local elections, considering theoretical scientific approaches to understanding the implementation of the right. Based on the analysis of the laws of Ukraine that regulate the issues of citizens' electoral rights in local elections, it was determined that the implementation of citizens' electoral rights is the most influential form of democracy in the state. It was proved that it is the legal forms of exercising the electoral rights of citizens in local elections that have practical consequences, which in turn provide for the implementation of the will of the people and are generally binding on the implementation of state authorities. It was noted that residency qualification is one of the most substantial obstacles to the exercise of citizens' electoral rights in local elections. The realisation of citizens' electoral rights in local elections is a process during which the subject of electoral law, aware of their own actions (inaction), guided by regulatory requirements, enters into legal relations that are the legal expression of political relations. The legislative requirement that a person belongs to a certain territorial community as a condition for the exercise of the right to vote in local elections is the most substantial obstacle to the exercise of the right to vote. The main forms of exercise of the right to vote by citizens in local elections are the implementation, use, and observance, through which the direct right to vote is realised

Keywords:

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Introduction

According to the provisions of the Constitution of Ukraine, the right to vote is one of the priority political rights of citizens, the implementation of which is an indicator of the development and establishment of human rights and freedoms in a democratic state. Ukraine, which positions itself as a democratic country, is called upon to protect the rights and freedoms of its citizens, and the right to vote belongs to those, as evidenced by a number of international treaties in the field of electoral law, which were ratified by the Verkhovna Rada of Ukraine and implemented in the national legislation of Ukraine.

In turn, the inclusion of electoral international legal provisions in the national legal system is not enough to assess the real state of democracy in the state, because, without real implementation, these norms can be purely declarative in nature.

Analysing the electoral legislation of Ukraine during the years of independence, unsystematic and systemic changes that do not always correspond to the principles of democracy, thereby making it impossible for citizens to actually exercise their right to vote are observed.

The implementation of the constitutional right of citizens to vote in local elections is a legal form of democracy in Ukraine, and ensuring the implementation of this right is one of the factors that allows asserting the movement of our state in this direction. The legality of local elections and the legitimacy of their results depend on an effective mechanism for implementing citizens' electoral rights, which would remove obstacles to ensuring democracy in the state.

The following legal scholars have considered the problems of implementing citizens' electoral rights in local elections in a broad context: Yu. Bilousov, S. Honcharenko, S. Kalchenko, S. Kivalov, Yu. Kliuchkovskiy, M. Koziubra, V. Kravchenko, O. Lavrynovych, V. Mialovytska, V. Pogorelko, M. Riabets, L. Smokovych, M. Stavniichuk, O. Todyka, B. Futei, K. Hraskhof, and others. Therewith, the issues of forms of realisation of citizens' electoral rights in local elections, considering the political challenges of the present time, require a long and thorough examination to improve the electoral legislation of Ukraine in the context of local elections, and to prevent violations of citizens' political rights by state authorities and officials.

The purpose of the study is a regulatory analysis of the concept and forms of implementation of citizens' electoral rights in local elections in Ukraine, considering the experience of European countries to improve national electoral legislation.

Results and Discussion

The legal norms enshrined in laws and other normative regulations can become non-declarative only if they are actually implemented in life, in the conscious

and volitional behaviour of a person. Without the implementation of the rule of law, they lose their social purpose and remain "dead", that is, they have a purely informational meaning.

The term "realisation" comes from the Latin word "realis", it is interpreted as embodiment [1]. Among lawyers, the term "realisation" is most often defined as the implementation of something, the execution of ideas by an individual or a group of people into reality. That is, any idea must be implemented in practice.

In turn, the term "exercise of the right" has a similar meaning, consisting of actions, active behaviour of a person. However, the term "realisation" does not require mandatory guarantees from the state for the real implementation of human ideas (for example, the realisation of one's potential), in contrast to the term "realisation of the right", which without proper guarantees of ensuring state power will lose any content and essential purpose.

For example, O.F. Skakun in the paper considers the implementation of legal provisions as the embodiment of the prescriptions of those in the legitimate behaviour of legal entities, in their practical activities, which can be considered as a process and as an end result [2]. This position is shared by P.M. Rabinovych, who notes that the implementation of the right consists primarily of the implementation by subjects of practical actions or inactions in accordance with the requirements, focusing on the actions (inaction) of the subject, which provide for the satisfaction of public needs by all permitted means declared by the state. Category "implementation of legal provisions" A.M. Kolodiy interprets as the embodiment of legal provisions in the actual behaviour (activity) of legal entities [3].

The exercise of a right can be associated with both the implementation of lawful actions and lawful inaction. The result of the realisation of the law is the achievement of full compliance between the requirements of the legal norms regarding certain behaviour of subjects and their actions (inaction) [4].

The realisation of law is legal provisions that are implemented by the legitimate behaviour of subjects of public legal relations and are provided with state power. The realisation of law involves a process that can be considered in two aspects – from the subjective and objective sides. The objective side of the realisation of law consists of the implementation of actions by the subject of legal relations, which are provided for by the legal norms. The subjective side is the direct attitude and will of the subject of law to the requirements established by the legal norms, which are implemented during legal actions or inaction.

In turn, V.S. Nersesiants in the paper considers the problem of the realisation of law considering the subjects of law: on the one hand, the realisation of law consists in following the law on the part of state

bodies and officials; and on the other – in the implementation of the right, which consists in the actions of citizens, the activities of their organisations and associations [5]. This perfectly characterises the implementation of electoral (political) rights of citizens in local elections, where on the one hand there are citizens who exercise their electoral rights in local elections, and on the other – state bodies and officials whose powers are to guarantee the implementation of electoral rights. The main purpose of implementing the right to vote is to form state and local government bodies in accordance with legal regulations.

At the time of realisation of the right of the subject of legal relations, they are given the right of legal action or inaction, which consists in expressing the will of the subject to exercise its right, which is provided for by certain normative regulations authorised by the state. Therewith, the actions or inactions of the subject of legal relations, which is endowed with legal personality, must be within the legal framework, that is, legal actions or inactions must comply with legal requirements. Ultimately, the process of implementing a right is the process of turning an abstract norm into a material one, which requires legitimate actions from the subject, since they provide for the occurrence of specific consequences both for the subject and for all participants in legal relations.

Thus, the implementation of the right in general form implies lawful behaviour (action or inaction) of the subject of legal relations, which must be within the limits of legal prescriptions or be such that it is not prohibited by law. Both active and passive behaviour of the subject of legal relations should be such that it does not infringe or violate the rights of other subjects of the exercise of the right. That is, such behaviour of subjects, on the one hand, provides an opportunity for other subjects of the right to exercise their rights, and on the other – provides for the fulfilment of obligations that are provided for by legal regulations. The exercise of a right in accordance with legal regulations is an act of conscious, voluntary action that is optional and does not entail legal liability. In contrast to the exercise of the right, the performance of duties is mandatory and is ensured by the coercion of the state.

Aspects of the implementation of human and civil electoral rights have been considered at various times by such legal researchers as B.V. Kalynovskiy, T.O. Kulik, which were later reflected in the electoral legislation of Ukraine [6; 7].

The legal provisions formulated in laws and other normative regulations only fulfil their social purpose, when they are implemented in the conscious and volitional actions of subjects. The implementation of legal provisions by their addressees completes the process of legal regulation, thereby embodying a certain result of this type of organisational influence on public life [8].

The implementation of constitutional and legal norms provides for the practical implementation of all democratic principles to ensure human and civil rights and freedoms. This is a system of institutional elements that are auxiliary to the practical implementation of constitutional prescriptions.

This primarily concerns the implementation of the political rights of citizens, namely electoral rights in local elections. The realisation of citizens' electoral rights in local elections is a process during which the subject of electoral law, aware of their actions (inaction), guided by regulatory requirements, enters into legal relations that are the legal expression of political relations. The result of the implementation of citizens' electoral rights in local elections is the establishment of local self-government bodies.

Violation of the electoral legislation entails legal liability established by law and is an important guarantee of the exercise of citizens' electoral rights in local elections. The Basic Laws of Ukraine in its provisions establishes the institution of responsibility for the violation of the electoral right of citizens. A stricter type of liability for electoral violations was introduced after the 2004 presidential election, during which there were massive violations of electoral rights and falsified results.

The issue of investigation of violations of citizens' electoral rights in local elections was considered in the works of various researchers to improve the current legislation of Ukraine. For Example, V.A. Stukalenko examines the issues of electoral disputes [9]. The main laws on bringing to justice for violation of citizens' electoral rights are the Constitution of Ukraine, the Criminal Code of Ukraine and the Code of Ukraine on Administrative Offences. In particular, the Code of Ukraine on Administrative Offences contains 14, and the Criminal Code – 7 elements of offences against electoral rights.

For example, Art. 157 of the Criminal Code of Ukraine [10] provides for criminal liability in the form of a fine of three hundred to five hundred non-taxable minimum incomes of citizens or restraint for up to two years, or imprisonment for the same term, with deprivation of the right to hold certain positions or engage in certain activities for a period of one to three years, for obstructing the exercise of the right to vote or the right to take part in a referendum, the work of an election or a referendum commission, or the activities of an official observer [10]. For comparison, the Criminal Code of the Republic of Poland contains a more severe penalty for violating the electoral legislation in the form of imprisonment from three months to five years, without providing for the imposition of fines on offenders [11]. A more severe type of punishment for violation of citizens' electoral rights in Ukraine would contribute to more stable guarantees of electoral rights since the public danger

of crimes against electoral rights directly encroaches on the constitutional rights and freedoms of people related to the principles of democracy in the state. Any illegal behaviour of a subject of electoral legal relations in local elections simultaneously affects the exercise of electoral rights by other subjects of legal relations and has a causal relationship.

According to the Constitution of Ukraine, the general active right to vote is granted to all citizens of Ukraine who have reached the age of 18 on election day and are legally capable [12]. In accordance with the provisions of Art. 70 of the Basic Law, the exercise of active voting is almost unlimited. With regard to passive voting, the legislator sets qualifications in accordance with the types of elections. For example, the exercise of passive voting in presidential elections is limited by citizenship, age, residency, language qualifications, and legal personality. The exercise of passive voting in parliamentary elections also provides for certain restrictions on candidates: age, residency, citizenship, legal personality qualifications, and restrictions on the exercise of passive voting in the presence of a criminal record.

Unlike general active and passive voting, the exercise of voting in local elections involves a wider range of substantial restrictions. Among other qualifications provided by the legislator for the exercise of the right to vote in local elections, the residency qualification should be highlighted. The legislative requirement that a person belongs to a certain territorial community is the biggest obstacle to the exercise of the right to vote in local elections for: conscripts, persons who are abroad, persons who are in prison, alcoholics and drug addicts who are undergoing compulsory medical treatment. All these persons, in accordance with the general electoral legislation, are subjects of electoral rights and are endowed with legal personality. Therewith, special electoral laws, the provisions of which regulate the exercise of citizens' electoral rights in local elections, establish restrictions for such persons, depriving them of the right to active voting in local elections, which contradicts the general electoral right in accordance with the provisions of the Constitution of Ukraine.

For a more thorough study of the concept of "implementation of electoral law", it is necessary to analyse in more detail the forms of implementation of legal provisions through the prism of theory. Among theorists, the largest is the number of supporters of the position, according to which there are three forms of direct implementation of legal provisions in accordance with the behaviour of legal implementing entities. Thus, there are the following forms of direct realisation of the legal norms: compliance is a form of implementation of the law, which provides for the implementation of prohibitive legal norms and which consists in keeping a person from actions prohibited

by the requirements of the law; use is a form of implementation of the legal norms, which provides for active volitional behaviour of a person, in accordance with the requirements of the law, to satisfy their interests and needs; execution is a form of direct implementation of the legal norms, which imposes binding legal norms on a person, the implementation of which consists in the active, conscious actions of a person that they commit in accordance with the requirements of the law, regardless of their desire.

Compliance as a form of exercising the electoral rights of citizens in local elections provides for such behaviour of subjects of the electoral process, which is prohibited by the requirements of the law, that is, it deliberately evades illegal behaviour. During a conscious and volitional action (inaction), the subject of electoral law implements the prohibiting legal norms. The norms of prohibition in the electoral legislation may be fixed indirectly, not directly prohibit certain behaviour, indicating undesirable behaviour of subjects of electoral law, which follows from the content of the rule of law and has an effect. Compliance as a form of exercise of the right to vote in local elections consists mainly in refraining from actions that violate the rights and freedoms of other participants in the electoral process.

For example, the legislator in part 5 of Art. 12 of the Electoral Code of Ukraine establishes an equal and impartial attitude to the subjects of the electoral process on the part of state authorities, authorities of the Autonomous Republic of Crimea, local self-government bodies, state and municipal enterprises, institutions, organisations, their officials, which consists in refraining from illegal actions that encroach on equal voting [13].

Use as one of the forms of exercise of the electoral right of citizens in local elections provides for the exercise of their subjective right, which is provided for by legal regulations and requires conscious action (inaction) from the subject of the electoral process to exercise the electoral right. This form of exercise of the right to vote in local elections is characterised by both action and inaction, which in turn does not entail legal liability. That is, it is a manifestation of the will of the subject of electoral law, who, according to their own beliefs and interests, uses the right granted to them in accordance with the requirements of the legal norms.

For example, part 1 of Art. 7 of the Electoral Code of Ukraine [13] establishes universal voting, which is granted to all subjects of electoral law in accordance with Art. 70 of the Constitution of Ukraine, considering additional restrictions on subjects of electoral law under this Law, that is, in relation to persons who have the right to vote. A rule of law that establishes universal voting provides the subject of voting with the opportunity to freely (voluntarily),

without being forced to exercise their voting, which can manifest itself in the action or inaction of a person, without the occurrence of illegal consequences.

Implementation of legal provisions is a form of exercise of the right to vote in local elections, which provides for the commission of actions by the subject of electoral law that are clearly provided for by the legal norms. Binding norms are partly related to compliance standards. However, in contrast to the norms of compliance, which consist in undisturbed legal norms, which may not provide for direct action, but only fix the behaviour of the person from whom they should refrain, the norms of implementation require active, direct actions from the subject of electoral law to implement the legal norms. Failure to comply, whether conscious or unconscious, will always entail the use of state coercion.

Art. 18 of the Electoral Code of Ukraine in its provisions on the use of innovative technologies in the electoral process in part 5 obliges the Central Election Commission to ensure the implementation and protection of the electoral rights of Ukrainian citizens who vote at polling stations where experiments or pilot projects are conducted, without narrowing their volume [13].

The originality of the study lies in a comprehensive analysis of the concept and forms of implementation of citizens' electoral rights at local elections. The study assessed the concept of exercising the electoral rights of citizens in local elections, considering theoretical scientific approaches to understanding the

implementation of the right. Based on the analysis of the laws of Ukraine that regulate the issues of citizens' electoral rights in local elections, it was determined that the implementation of citizens' electoral rights is the most influential form of democracy in the state. It was proved that it is the legal forms of exercising the electoral rights of citizens in local elections that have practical consequences, which in turn provide for the implementation of the will of the people and are generally binding on the implementation of state authorities. It was noted that residency qualification is one of the most substantial obstacles to the exercise of citizens' electoral rights in local elections.

Conclusions

As a result of the study, the author's vision of the concept of exercising the electoral rights of citizens in local elections was provided. The realisation of citizens' electoral rights in local elections is a process during which the subject of electoral law, aware of their own actions (inaction), guided by regulatory requirements, enters into legal relations that are the legal expression of political relations.

The legislative requirement that a person belongs to a certain territorial community as a condition for the exercise of the right to vote in local elections is the most substantial obstacle to the exercise of the right to vote. The main forms of exercise of the right to vote by citizens in local elections are the implementation, use, and observance, through which the direct right to vote is realised.

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Поняття та форми реалізації виборчих прав громадян на місцевих виборах

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Анотація

Метою публікації є дослідження поняття та форм реалізації виборчих прав громадян на місцевих виборах в Україні задля розуміння правової категорії та подальшого вдосконалення виборчого законодавства України. Методологія. Під час дослідження проблематики наукової статті було використано загальні та спеціально-правові методи: системного аналізу, порівняльно-правовий, діалектичний підхід, системно-структурний, застосовано прийоми наукового пізнання відповідно до мети й завдань наукового дослідження. Наукова новизна. Новизна дослідження полягає в комплексному аналізі поняття та форм реалізації виборчих прав громадян на місцевих виборах. У статті розглянуто поняття реалізації виборчих прав громадян на місцевих виборах, з огляду на теоретичні наукові підходи до розуміння реалізації права. На підставі аналізу законів України, які врегульовують питання виборчого права громадян на місцевих виборах, визначено, що реалізація виборчих прав громадян є найбільш впливовою формою демократії в державі. Доведено, що саме правові форми реалізації виборчих прав громадян на місцевих виборах мають практичні наслідки, які своєю чергою передбачають реалізацію волі народу та є загальнообов'язковими до виконання органами державної влади. Зазначено, що ценз осілості є однією з найістотніших перепон у реалізації виборчих прав громадян на місцевих виборах. Висновки. Реалізація виборчих прав громадян на місцевих виборах – це процес, під час якого суб'єкт виборчого права, усвідомлюючи власні дії (бездіяльність), керуючись нормативними приписами, вступає у правовідносини, які є юридичним вираженням політичних відносин. Законодавча вимога щодо належності особи до певної територіальної громади як умова реалізації виборчого права на місцевих виборах є найістотнішою перепорою в реалізації виборчого права. Основними формами реалізації виборчого права громадянами на місцевих виборах є виконання, використання та дотримання, за допомогою яких реалізують безпосереднє виборче право

Ключові слова:

виборче право; місцеві вибори; форма реалізації виборчого права; виборче законодавство