

PROBLEMS OF LEGAL REGULATION OF LOCAL COUNCIL ELECTIONS IN UKRAINE

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INTRODUCTION

Provided by the Electoral Code of Ukraine of 19.12.2019¹ revision of the bases of elections of deputies of local councils in Ukraine significantly contributes to the streamlining of election legislation, updating and modernization of electoral procedures used in local elections. On the other hand, this codification of electoral legislation as a result of long draft work, of taking into account numerous draft amendments and proposals is not without a number of technical and legal shortcomings, gaps and inconsistencies of the regulation of local council elections.

The issues of the current legal basis for the election of deputies to local councils have not yet received a comprehensive study in both the scientific literature and in expert and analytical sources. Thus, some remarks and proposals to the Electoral Code of Ukraine dated 19.12.2019 were set out in the conclusions of the Main Scientific and Expert Department of the Verkhovna Rada of Ukraine², analytical reviews of the International Foundation for Electoral Systems (IFES)^{3, 4}, separate publications of scientists (S. Zakirova⁵, V. Chubirko⁶ and others). This, taking into account the experience of holding regular local elections in Ukraine at the end of 2020, updates the analysis of the current state and problems of legal

¹ Виборчий кодекс України: від 19.12.2019 № 396-IX. *Офіційний вісник України*. 2020. № 4. Т. 1. Ст. 188.

² Висновок Головного науково-експертного управління Верховної Ради України на Пропозиції Президента України до Виборчого кодексу України від 13.09.2019 № 0978: від 26.09.2019. URL: <http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=66849&pf35401=499843>.

³ Короткий огляд основних змін, запропонованих до Виборчого кодексу України 18 травня 2020 р. URL: <https://ifesukraine.org/wp-content/uploads/2020/05/IFES-Draft-Law-3485-analysis-v1-2020-05-19-Ukr.pdf>.

⁴ Дорожня карта реформ у сфері виборів, референдумів та політичного фінансування на 2020 р. URL: <https://ifesukraine.org/wp-content/uploads/2020/04/IFES-Oroga-2020-roadmap-for-electoral-referendum-and-political-finance-reforms-v2-2020-04-01-Ukr-1.pdf>.

⁵ Закірова С. Досягнення і втрачені можливості нового Виборчого кодексу України. *Громадська думка про правотворення*. 2020. № 1 (186). С. 5–15.

⁶ Чубірко В В. Участь політичних партій у формуванні виборчих комісій на місцевих виборах в Україні та окремих країнах ЄС: порівняльний аналіз. *Вчені записки Таврійського національного університету імені В.І. Вернадського. Серія: юридичні науки*. 2020. Т. 31 (70). № 3. С. 37–42.

regulation of local council elections in Ukraine, as well as the preparation of proposals for its improvement.

Legal basis for the organization and conduct of elections of deputies to local councils in Ukraine in addition to the Constitution of Ukraine of 28.06.1996⁷, the Electoral Code of Ukraine of 19.12.2019, the Law of Ukraine “On the State Register of Voters” of 22.02.2007⁸ and other laws also includes a significant number of bylaws. In particular, it is the Resolution of the Cabinet of Ministers of Ukraine “On approval of the Procedure for financing election commissions during the preparation and conduct of local elections” dated 19.08.2020, resolutions of the Central Election Commission dated 25.06.2020, dated 10.08.2020, dated 21.08.2020, etc. The experience of holding regular local elections in Ukraine at the end of 2020 indicates a significant intensification of by-laws, which makes it urgent to ensure its completeness, sufficiency, timeliness and compliance with current election legislation.

Analysis of the state of legal regulation of the bases and procedures of the election process of local council elections in Ukraine allows to identify the following main problems of the legal framework for the organization and conduct of local elections, as well as to formulate proposals for their improvement.

1. General bases and territorial organization of local council elections in Ukraine

According to part 1 of Article 192 of the Electoral code of Ukraine in each multi-member constituency (into which the territory of a territorial community is divided on elections of deputies of village, settlement, city council) not less than two and no more than four deputies can be elected. At the same time, the average approximate number of multi-member constituencies is determined as a fraction from the division of the quantitative composition of the council by three (Part 2 of Article 199), and the quantitative composition of the council is determined according to the number of voters (Part 3 of Article 197). This provides a fairly objective, uniform approach to determining only the number of council members and the number of multi-member constituencies. However, the Electoral Code of Ukraine lacks clear criteria for the specific distribution of all seats among all constituencies in local council elections. In particular, it remains clearly unresolved depending on what should be determined the number of deputies (two, three or four), which will be elected in each constituency. As a result, various abuses and manipulations cannot be ruled out.

⁷ Конституція України від 28.06.1996 № 254к/96-ВР. *Відомості Верховної Ради України*. 1996. № 30. Ст. 141.

⁸ Про Державний реєстр виборців : Закон України від 22.02.2007 № 698-V. *Офіційний вісник України*. 2007. № 20. Ст. 789.

In addition, Part 2 of Article 192 of the Electoral Code of Ukraine of 19.12.2019 declares that elections of deputies to the Verkhovna Rada of the Autonomous Republic of Crimea, regional, district, district councils in the city, as well as deputies of city, village, settlement councils (territorial communities with the number of voters 10 thousand and more) are conducted on a system of proportional representation on open lists of local organizations of political parties.

At the same time, Part 2 of Article 259 of the Electoral Code of Ukraine establishes different rules for determining the order of candidates for deputies in each territorial electoral list of each party organization, taking into account the results of voting. In particular, it is established to place at the beginning of the territorial electoral list according to reduce the number of votes only those candidates who received the number of votes in the amount of 25 percent of the electoral quota (although the bill of 18.05.2020 more rightly referred to 5 percent of the electoral quota). While other candidates are placed in the territorial electoral list in the order determined by the party organization when nominating candidates, i.e. without taking into account the votes received by them. This (as well as the guaranteed receipt of deputy mandate by the first candidate on the electoral list in the event of his party's passage to the local council) is characteristic of a proportional electoral system with closed rather than open lists.

According to Part 9 of Article 195 of the Electoral Code of Ukraine of 19.12.2019, in case of inaction of the territorial election commission to call repeat or interim local elections, they may be appointed by the Central Election Commission within five days of such inaction. Proper application of this norm first of all requires legislative specification of the subject, procedure and forms of confirmation of the fact of relevant inaction of the territorial election commission. This issue, including in order to simplify and speed up the election process, can be resolved, for example, by giving the Central Election Commission these powers from the first day of delay by the territorial election commission to call repeat or interim local elections.

Part 3 of Article 198 of the Electoral Code of Ukraine stipulates that territorial constituencies for the election of deputies to the Verkhovna Rada of the Autonomous Republic of Crimea are formed "taking into account, if possible, the system of administrative-territorial organization". We think that the wording of this norm does not comply with the principle of legal certainty and in fact allows not to take into account the system of administrative-territorial organization in the formation of territorial constituencies for the election of deputies to the Verkhovna Rada of the Autonomous Republic of Crimea. The provisions of Part 4 of Article 198 of the Electoral Code of Ukraine, which clearly require compliance with the system of administrative-territorial organization by prohibiting the inclusion of parts of different districts and cities of republic importance to the

boundaries of one territorial constituency, are also not fully consistent with this abstract condition “if possible”.

Not fully meets the principles of legal certainty, clarity and ambiguity as elements of the constitutional principle of the rule of law Part 3 of Article 199 of the Electoral Code of Ukraine of 19.12.2019, according to which “the deviation of the number of voters in a multi-member constituency formed within the territory of the rural, settlement, urban community, if possible, may not exceed 15 percent of the estimated average number of voters in the constituency per one deputy mandate”. Such abstract condition of observance of this norm as “if possible” (without detailing of cases of deviation from its prescriptions) can actually allow its any arbitrary non-observance. Although, for example, according to the Code of Good Practice in Electoral Matters of the Venice Commission^{9,10}, deviation in the number of voters between constituencies should not be more than 10 percent (15 – only as a last resort). This, combined with the above-mentioned final non-regulation of rules for determining the number of deputies in each multi-member constituency, creates additional risks of gerrymandering.

Similar remarks apply to Part 7 of Article 199 of the Electoral Code of Ukraine, according to which when determining the number of seats distributed in each multi-member constituency, “if possible” allow deviation from the estimated average number of voters per mandate, not more than by 15 percent. Note that the lack of legal certainty of this rule causes the risk of violating the principle of equality of votes.

Also quite debatable from the standpoint of codification of electoral legislation and its legal certainty is the establishment of paragraph 6 of the Law of Ukraine of 16.07.2020¹¹ separate rules for the formation of territorial constituencies in cities with 2 million or more voters in local elections 25.10.2020. Thus, an approach is proposed to the formation of territorial constituencies in cities with 2 million or more voters “within natural and artificial boundaries, such as railways, natural formations, rivers, lakes, mountains... regardless of administrative-territorial division of the city”. Unlike the general rules set by the Electoral Code of Ukraine, this does not allow to unambiguously determine the number and boundaries of constituencies in the city of Kyiv, thus allowing abuse and manipulation.

⁹ Кодекс належної практики у виборчих справах від 30.10.2002. URL: [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).

¹⁰ Європейський демократичний доробок у галузі виборчого права: матеріали Венеціанської Комісії, Парламентської Асамблеї, Комітету Міністрів, Конгресу місцевих і регіональних влад Ради Європи / пер. з англ. за ред. Ю. Ключковського. Київ : Логос, 2009. 500 с.

¹¹ Про внесення змін до деяких законодавчих актів України щодо вдосконалення виборчого законодавства : Закон України від 16.07.2020 № 805-IX. *Офіційний вісник України*. 2020. № 60. Ст. 1901.

In addition, paragraph 6 of this Law of Ukraine refers to the non-application in cities with 2 million or more voters of the principles of formation of territorial constituencies, which are “defined in the paragraph 5 of part 4 of Article 201 of this Code”, although there is no paragraph 5 part 4 of Article 201 in the Electoral Code of Ukraine from 19.12.2019. It is also impossible to apply the provisions of the Law of Ukraine of 16.07.2020, according to which “Paragraph 11 of the part 1 of Article 202 shall not apply to the formation of territorial election commissions in cities with district division with 2 million or more voters”. Because this norm does not specify about non-application of paragraph 11 part 1 of Article 202 of which legal act is it about.

That is why in order to avoid contradictions in the interpretation and application of the law, we consider it appropriate at least technical and legal revision of paragraph 6 of the Law of Ukraine of 16.07.2020 or its complete withdrawal.

Withdrawal by the Law of Ukraine of 16.07.2020 from the Electoral Code of Ukraine of 19.12.2019 of the procedure for holding elections of the head of a village, settlement generally corresponds to the provisions of Articles 140, 141 of the Constitution of Ukraine, which do not provide for the election of this local government official. Nevertheless, Part 3 of Article 89, Part 3 of Article 146, Part 4 of Article 238, Part 9 of Article 248, Part 1, 2 of Article 287 of the Electoral Code of Ukraine still contain certain provisions relating to elections of the head of the village, settlement, although those elections already are not provided.

2. Election commissions for local council elections in Ukraine

In accordance with Part 1 of Article 71 of the Constitution of Ukraine of 28.06.1996, elections to local self-government bodies are held based on equal suffrage. The principle of equality of suffrage is reflected in Part 4 of Article 12 of the Electoral Code of Ukraine of 19.12.2019, according to which all parties (party organizations) that have acquired the status of the subject of the election process have equal rights and opportunities to participate in the process of relevant local elections in the manner and within the limits established by the Electoral Code of Ukraine.

At the same time, other provisions of the Electoral Code of Ukraine of 19.12.2019 establish significant advantages for “political parties whose formation of deputy factions was announced at the first regular session of the Verkhovna Rada of Ukraine of the current convocation”. In particular, this is the right to nominate candidates to territorial election commissions (Part 2 of Article 203) and precinct election commissions (Part 1 of Article 204), as well as the right to submit proposals for the formation of a control commission to control the production of ballots, compliance with destruction of printing forms, technical waste, printing shortages, erroneously produced ballots (Part 3 of Article 242). The volume of such preferences in order to ensure the equality of the subjects of the electoral process was significantly

reduced compared to various versions of the draft Electoral Code of Ukraine, which, for example, provided for participation of parliamentary political parties in control of the State Register of Voters, participation in control of the process of compiling and updating voter lists, as well as the right to more airtime devoted to such political parties.

The granting of preferences to parliamentary political parties in the elections was the subject of repeated remarks by the Main Scientific and Expert Department of 26.09.2019¹² and the Main Legal Department of the Verkhovna Rada of Ukraine of 05.06.2019¹³. In our opinion, granting the above-mentioned advantages in the election of deputies to local councils to political parties whose formation of parliamentary factions was announced at the first regular session of the Verkhovna Rada of Ukraine can indeed be considered a deviation from the principle of equality of suffrage. It seems all the more illogical retain the considered benefits for parliamentary political parties to, even in the absence of registered candidates from their local organizations for deputies to the relevant local councils. This approach is inconsistent with a multi-party political system based on the constitutional principle of ideological pluralism, as well as the relatively frequent variability of political forces represented in parliament of different convocations. In addition, the fact that the political party formed a parliamentary faction in the Verkhovna Rada of Ukraine in the context of diverse political geography and dynamic change of electoral sympathies certainly does not indicate the expected support of parliamentary political parties in elections of specific regional, district, city, district in cities councils, village councils.

The same generally applies to granting the right to nominate candidates to territorial election commissions (Part 2 of Article 203) and precinct election commissions (Part 1 of Article 204) to a local organization of a political party that has “concluded an agreement on political cooperation at the relevant local elections with a group of deputies, the formation of which was announced at the session of the Verkhovna Rada of Ukraine not later than January 1 of the year in which the elections take place”. A parliamentary group is a purely internal parliamentary entity, and therefore should not have rights not directly related to its parliamentary functions and powers, and be considered as a subject of the election process in local council elections. As the International Foundation for Electoral Systems (IFES) rightly points out, the practice of concluding an agreement

¹² Висновок Головного науково-експертного управління Верховної Ради України на Пропозиції Президента України до Виборчого кодексу України від 13.09.2019 № 0978: від 26.09.2019. URL: <http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=66849&pf35401=499843>.

¹³ Зауваження Головного юридичного управління Верховної Ради України до проекту Виборчого кодексу України від 02.10.2015 № 3112-1 від 05.06.2019. URL: <http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=66849&pf35401=499847>.

by parliamentary forces with a political party on representation in election commissions is not applied to elections in other European countries and aims at the actual consolidation of temporary political agreements¹⁴.

Also, the condition regarding the possibility of concluding this agreement only with the parliamentary group that was formed no later than January 1 of the election year is not properly justified. This norm does not take into account the cases of holding extraordinary, intermediate, first, additional local elections on the last Sunday of March (Part 1 of Article 5 of the Electoral Code of Ukraine of 19.12.2019). After all, taking into account the need to notify the Verkhovna Rada of Ukraine of the relevant agreement no later than ninety-five days before the voting day, an agreement on political cooperation in local council elections will not be able to be concluded with a deputy group formed at the end of December of the year preceding the election year.

In addition, we note the contradiction and unfoundedness of the differentiated approach set out in Part 3 of Article 203, Part 1 of Article 204 of the Electoral Code of Ukraine. In particular, a local organization of a political party that has formed a faction in the Verkhovna Rada of Ukraine has the right to nominate two candidates to the relevant election commission. Whereas a local organization of a political party that has concluded an agreement with a parliamentary group has only one candidate.

Note the duplication of the rules of Part 2 of Article 203 and Part 1 of Article 204 of the Electoral Code of Ukraine, which enshrine the same rules for concluding an agreement on political cooperation in the relevant local elections. At the same time, a number of other issues remained unresolved, namely the possibility, procedure and consequences of changing and terminating such political agreements.

Draws attention to the ambiguity of the wording of Part 16 of Article 203 of the Electoral Code of Ukraine of 19.12.2019, according to which if the nominations for the territorial election commission were not received within the prescribed time or were proposed less than nine people, “composition territorial election commission is formed... on the proposal of the chairman of the relevant election commission on the proposals of the commission members”. The existing wording of this norm in the occurrence of these circumstances actually provides for the formation of the entire composition of the territorial election commission only on the proposal of the chairman of the relevant election commission. At the same time, if less than nine people were nominated, the issue of mandatory appointment to the territorial election commission of those candidates who were nominated in the usual manner remains unresolved. In our opinion, in this situation they must be

¹⁴ Верховна Рада України ухвалила ключові зміни до виборчого законодавства.
URL: <https://ifesukraine.org/news/verhovna-rada-ukrayiny-uhvalyla-klyuchovi-zminy-do-vyborchogo-zakonodavstva>.

included in the territorial election commission, and the remaining candidates (for the formation of the minimum composition of the territorial election commission) should be appointed on the proposal of the chairman of the relevant election commission.

In this context, Part 5 of Article 208 of the Electoral Code of Ukraine in a similar case clearly states that in the case of premature termination the powers of members of the election commission and timely failure submission a sufficient number of new candidates, the commission must be formed at the request of the chairman of the election commission, but “taking into account the submitted candidates for its membership”. Similarly, the mandatory inclusion in the precinct election commission of candidates from the subjects of submission is provided for Part 8 of Article 204 of the Electoral Code of Ukraine.

According to Part 2 of Article 206 of the Electoral Code of Ukraine of 19.12.2019, the relevant territorial election commission must organize training for members of lower-level commissions about the organization of the election process. At the same time, the disadvantage is the lack in the Electoral Code of Ukraine the real mechanisms of improving the professionalism of election commissions, for example, through mandatory prior training (certification) of candidates for election commissions. On the one hand, it was hardly realistic to carry out proper professional training of a significant number of future members of election commissions in a very short time on the eve of the regular local elections on 25.10.2020, given the quarantine measures to prevent the spread of COVID-19 in Ukraine. On the other hand, unprepared composition of election commissions due to significant changes in election legislation (on the electoral system, certain election procedures, etc.) less than one year before the date of the regular local elections (which is not recommended by the Venice Commission’s Code of Good Practice in Electoral Matters), creates risks of significant irregularities in the organization and conduct of local elections.

Although the establishment of a requirement for professional training of members of election commissions will not restrict the constitutional rights of citizens, as, for example, states the Main Scientific and Expert Department of the Verkhovna Rada of Ukraine from 16.03.2017¹⁵. Because this is about the introduction of an objectively determined condition for citizens to exercise the right to be members of election commissions, namely the qualification requirements for carrying out this professional activity.

In our opinion, need clarification the provisions of Part 3 and 4 of Article 208 of the Electoral Code of Ukraine, which provide early termination of the powers of the entire composition or an individual member

¹⁵ Висновок Головного науково-експертного управління Верховної Ради України на проєкт Виборчого кодексу України від 02.10.2015 № 3112-1 від 16.03.2017. URL: <http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=56671&pf35401=418091>.

of the territorial, precinct election commission in case of “one-time gross violation or systematic violation” by the commission (its member) the legislation of Ukraine on local elections.

As this is one of the fundamental issues of organizing local council elections, in order to ensure uniform implementation of law and guarantee the rights of election commission members, as well as to prevent possible abuses, the Electoral Code of Ukraine should detail criteria indicating the gross nature of violations or their regularity. Obviously, the systematic nature of the relevant violations should be understood as their repeatedly nature (committed at least twice).

At the same time, there is a need to differentiate the content of the above grounds for early termination of powers of a member of the relevant territorial, precinct election commission from another ground – “violation of the oath of an election commission member”. This ground according to Paragraph 8 Part 4 of Article 208 of the Electoral Code is also manifested in the systematic failure of powers of a member of the election commission. At present, these grounds differ primarily only in the subject of recording a systematic failure of powers of a member of the election commission, which, in our opinion, makes it possible to consider all such cases as violation of the oath of a member of the election commission.

In addition, the goals of ensuring legal certainty are met by legislative specification or clarification by the Central Election Commission about the application of such ground for early termination of powers of a member of the relevant territorial, precinct election commission as withdrawal for the period before election day outside the relevant administrative-territorial unit, which makes it impossible to perform the duties of a member of the commission.

The terms of re-election of the election commission as a result of early termination of its powers also need some clarification. Thus, according to Part 5 of Article 208 of the Electoral Code of Ukraine of 19.12.2019, the election commission no later than the next day after the early termination of the powers of the relevant election commission shall notify the subjects who must submit new candidates to its membership no later than the next day “from the date of receipt” of such notice. In this case, the new composition of the relevant election commission must be approved no later than the third day from the date of termination of its powers. However, these deadlines do not take into account the probability of receipt of the said notification by the subjects of submission of new candidates, for example, only on the second or third day from the date of termination of the powers of the relevant election commission. As a result, the deadline for such subjects to submit new candidates may in fact be longer than the deadline for approving the new composition of the election commission.

According to Part 7 of Article 208 of the Electoral Code of Ukraine of 19.12.2019, relevant election commission may apply with a reasoned request

to replace the chairman, deputy chairman or secretary of the election commission in case of systematic failure of performing their duties. But established mechanism for replacing the leadership of election commission is incomplete, because features of appointing a new chairman, deputy chairman or secretary of election commission are not disclosed.

Since the replacement of the chairman, deputy chairman or secretary of the election commission does not terminate their powers as members of the relevant election commission (Part 7 of Article 208 of the Electoral Code of Ukraine), the status of such persons may be considered dual (both as a member and as chairman, deputy chairman or secretary of the election commission). Therefore, it should be clarified that Part 8 of Article 208 of the Electoral Code of Ukraine refers to the early termination not only of the powers of the chairman, deputy chairman or secretary of the election commission, but in general of their membership in such election commission.

3. Nomination and registration of candidates, holding of local council elections in Ukraine

According to Part 9 of Article 219 of the Electoral Code of Ukraine, during the formation of a single and territorial electoral lists, the party organization must ensure the presence of men and women among each five candidates of each electoral list (at least two candidates of each sex).

Currently, there is still relevant the remark set forth in the Proposals of the President of Ukraine to the Electoral Code of Ukraine dated 13.09.2019¹⁶ regarding the lack of a mechanism to replace a candidate in case of cancellation of his registration by a candidate of the same sex. After all, in practice, the mechanism of cancellation of registration of candidates allows to circumvent the principle of gender equality, change their electoral lists into the needed by party organizations kind, which initially formed in compliance with Part 9 of Article 219 of the Electoral Code of Ukraine.

In addition, agreeing with the importance of ensuring gender equality in the voter lists for local council elections, it is more optimal to achieve it not so much through directive regulations, but primarily through encouraging political activity of citizens, stimulating political parties and more. Moreover, compliance with the existing requirements for gender balance can be objectively complicated when forming voter lists for local council elections in small towns and villages.

¹⁶ Пропозиції Президента України до Виборчого кодексу України: від 13.09.2019 № 0978. URL: <http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=66849&pf35401=499945>.

To the amendments made by the Law of Ukraine dated 15.09.2020¹⁷ one of the conditions of registration of candidates for deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, regional, district, district councils in the city, as well as city, village, settlement councils (territorial communities with voters of 10 and more thousand) in accordance with Part 1 of Article 222 of the Electoral Code of Ukraine of 19.12.2019 was the receipt of the relevant election commission “certificate of presence or absence of a criminal record issued by an authorized body after the election process”.

At the same time, the issuance of this certificate was not required by the election legislation for registration of candidates for deputies of village, settlement, city council (territorial community with up to 10 thousand voters), for the position of village, settlement, city mayor. Such differentiated approach, in the absence of proper justification, can be seen as violation of the principles equality of suffrage and justice.

Provided by the Order of the Ministry of Internal Affairs of Ukraine dated 29.11.2016 30-day period for passing a certificate of presence or absence of a criminal record could significantly complicate the process of registration of candidates for local councils and generally realization their passive suffrage. In view of this, we consider it reasonable to ensure a unified approach to the conditions of registration of candidates for different local councils, which was facilitated by (albeit somewhat untimely) withdrawal by the Law of Ukraine of 15.09.2020 of the requirement enshrined in Part 1 of Article 222 of the Electoral Code of Ukraine for providing a certificate of the presence or absence of a criminal record.

Quite controversial seen the need for filing on purpose of registration of candidates for deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, regional, district, district councils in the city and city, village, settlement councils (local communities with the number of voters more than 10 thousand) “statement of presence (absence) arrears of child support..., by each candidate for deputy”. In itself, the presence or absence of arrears of alimony does not affect the legal personality of a person in the election process, nor can (unlike the presence or absence of a criminal record) prevent the registration of candidates for the relevant local councils. Thus, we do not see a justified need to submit for registration of candidates for local councils this information, which is not directly related to the election process.

Provided by Part 8 of Article 227 of the Electoral Code of Ukraine the publication on the official website of the Central Election Commission among the information on the registration of candidates facts about the presence or absence of their arrears of child support, in our opinion, is also not justified purely goals election process. Because such publication is

¹⁷ Про внесення зміни до статті 222 Виборчого кодексу України щодо спрощення умов реєстрації кандидатів у депутати на місцевих виборах : Закон України від 15.09.2020 № 884-IX. *Офіційний вісник України*. 2020. № 77. Ст. 2452.

intended, first of all, to inform the public about registered candidates, and not to give them a certain description. Moreover, the dissemination of information about a person's arrears of child support can be considered as a kind of incentive for voters not to vote for such a candidate.

Part 7, 8 of Article 248 of the Electoral Code of Ukraine of 19.12.2019 sets out the rules for filling in the ballot paper, which at the same time are formulated in a fairly general form and do not take into account all really possible options for filling in ballots. As a result, it may not allow the election commission to unambiguously establish the true will of the voter. The urgency of more detailed legal regulating the rules for filling in the ballot is primarily due to the use of different types of electoral systems in different local elections, and thus novelty and relatively greater complexity rules for filling in the ballot for the average voter.

In particular, the following cases are subject to legal certainty: if a voter has correctly made a mark indicating the number of the candidate he/she supports, but has not made a mark for expressing his/her will regarding the organization of the party; if the voter in the square to indicate the number of the candidate for deputies entered a non-existent number of the candidate; if the voter has confused the marks for expressing the will regarding the organization of the party and for indicating the number of the candidate; etc. It is also important to agree with the International Foundation for Electoral Systems (IFES) that the form of a ballot paper can mislead voters as to the content of their will and encourage voters to vote for party lists rather than individual candidates on those lists¹⁸.

According to Part 1 of Article 255 of the Electoral Code of Ukraine, it is determined which territorial election commissions establish the results of voting by drawing up a protocol on the relevant local elections based on the protocols of the relevant election commissions. At the same time, this norm leaves unresolved the issue of drawing up a protocol by the district election commission on the results of voting in the election of deputies to the district council. Such a significant gap in the election legislation makes it in fact impossible to establish the results of voting and the next stages of the election process in the election of deputies to district councils.

In addition, the Electoral Code of Ukraine, as amended by the Law of Ukraine of 16.07.2020, (compared to its first version) significantly reduced the list of data should be entered in the relevant protocols of election commissions (primarily on the counting of votes and the results of voting). On the one hand, this approach simplifies and speeds up the documentation of the counting of votes and the establishment of voting results, somewhat reduces the likelihood of errors in the protocols. On the other hand, we have

¹⁸ Дорожня карта реформ у сфері виборів, референдумів та політичного фінансування на 2020 рік. URL: <https://ifesukraine.org/wp-content/uploads/2020/04/IFES-Opora-2020-roadmap-for-electoral-referendum-and-political-finance-reforms-v2-2020-04-01-Ukr-1.pdf>.

to agree with the International Foundation for Electoral Systems (IFES)¹⁹ that “reducing the requirements for protocols may reduce the transparency of the counting of votes and the establishment of voting results, as well as increase the risks of manipulation and falsification of the results”.

In accordance with Part 8 of Article 281 of the Electoral Code of Ukraine, precinct election commissions in the same composition that conducted voting in the relevant elections shall carry out the preparation and conduct of repeat voting. Taking into account the possibility of early termination of the powers of the entire composition or a member of the precinct election commission, the implementation of this rule may in fact be impossible. In this regard, in order to ensure proper preparation and conduct of repeat voting, we have to agree with the clarification proposed in the draft law dated 10.08.2020²⁰ on the subject, procedure and terms of approval of the new composition of precinct election commission or its new member. Although this bill also does not take into account all the peculiarities of the procedure for updating the composition of the precinct election commission, for example, cases of non-submission by candidates included in the re-voting ballot the nominations to the precinct election commission.

And according to Part 1 of Article 283 of the Electoral Code of Ukraine of 19.12.2019, if a person elected a deputy of the Verkhovna Rada of the Autonomous Republic of Crimea, regional, district, city, district in the city, village, settlement council, village, settlement, city mayor, has another representative mandate for the purpose of registration of such person, he is obliged to submit a copy of the registered application for termination of another representative mandate.

Nevertheless, this applies only to situations when a person elected as a deputy already has another representative mandate, but does not cover cases of election of a person as a deputy to two local councils at the same time. To eliminate this gap, we consider it appropriate to further stipulate that such person should apply to the relevant election commission for registration him as a deputy of one of the local councils.

Note also the ambiguity of the possibility of simultaneous running for office in different local councils. If such a person is elected a deputy of two local councils at once, there will be a risk of political corruption during her rejection from one of the mandates. In addition, as a result of a person’s withdrawal from one of the mandates, such mandate will move to a candidate who received a smaller (perhaps even much smaller) number of votes, which will to some extent distort the election results.

¹⁹ Короткий огляд основних змін, запропонованих до Виборчого кодексу України 18 травня 2020 р. URL: <https://ifesukraine.org/wp-content/uploads/2020/05/IFES-Draft-Law-3485-analysis-v1-2020-05-19-Ukr.pdf>.

²⁰ Про внесення змін до деяких законодавчих актів України щодо уточнення окремих виборчих процедур: проект Закону України від 10.08.2020 № 3971. URL: <http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=69659&pf35401=533384>.

Also according to Part 1 of Article 284 of the Electoral Code of Ukraine in case of early termination of powers of the deputy of the relevant local council (territorial community with number of voters 10 thousand and more), the next candidate from the relevant electoral list of this party organization will be recognized as the deputy. However, this algorithm for replacing deputies whose powers have been prematurely terminated does not take into account cases of impossibility of such replacement due to the absence of candidates in the electoral list of the relevant political party.

Certain provisions of the Electoral Code of Ukraine of 19.12.2019 on the organization and conduct of local council elections need technical and legal refinement to eliminate duplication, internal contradictions and inconsistencies with other laws. In particular, Part 6 of Article 57 of the Electoral Code of Ukraine prohibits provision of election campaign materials to voters, the cost of which exceeds “6 percent of the non-taxable minimum income of citizens”, i.e. only UAH 1.02. Today, such an approach in fact prevents the dissemination of almost any campaign materials, which highlights the need for a certain increase in their marginal value. Also the title of Article 193 of the Electoral Code of Ukraine, namely “The right to be a candidate in local elections”, is incorrect. After all, the Law of Ukraine of 16.07.2020 changed in Part 2 of Article 6 of the Electoral Code of Ukraine the wording of one of the basic voting rights of citizens from “right to be a candidate in elections” to “right to be elected”.

CONCLUSIONS

The state of legal regulation of local council elections in Ukraine is characterized by significant unification of electoral legislation and introduction of certain standards for democratic elections. At the same time, the Electoral Code of Ukraine has a number of significant and technical shortcomings that allow cases of heterogeneous enforcement of law, electoral abuses and violations by the subjects of election process.

In this regard, we consider the priority: 1) establishing clear criteria for the distribution of all mandates among all constituencies in local council elections; 2) elimination signs of closedness in formally “open” electoral lists; 3) ensuring greater legal certainty of various election procedures; 4) reducing the possibility of deviations in the number of voters between constituencies; 5) removal of own rules for the formation of territorial constituencies in cities with a number of voters of 2 million or more; 6) deprivation of preferences of parties that have a parliamentary faction or have concluded an agreement on cooperation with a parliamentary deputy group; 7) introduction mechanisms of improving the professionalism of election commissions; 8) ensuring gender equality in the electoral lists not by mandatory inclusion in them a certain number of men and women, but by encouraging political activity of citizens and stimulating political parties; 9) abolition of the obligation to submit an application on purpose of

registration of candidates for deputies of local councils about the presence (absence) of arrears of alimony; 10) specification the rules for forming the composition of the election commission, the grounds for early termination of its powers, the procedure for updating the leadership of the election commission.

Eliminating the existing problems of constitutional and legal regulation of local council elections in Ukraine by making appropriate amendments to the Electoral Code of Ukraine will help improve the organization and conduct of local and other elections in Ukraine. The legal bases for organizing and conducting local elections in Ukraine should also incorporate the international standards for democratic elections proposed by the Venice Commission (primarily the Code of Good Practice in Electoral Matters of 30.10.2002), the OSCE/ODIHR, IFES and other international institutions.

SUMMARY

It was established that the current state of constitutional and legal regulation of local council elections in Ukraine is characterized by significant unification of electoral legislation and the introduction of some democratic standards for elections. The Electoral Code of Ukraine of 19.12.2019 contributes to the streamlining of election legislation and modernization of electoral procedures used in local elections.

However, this codification of legislation as a result of long draft work, of taking into account numerous draft amendments is not without a number of shortcomings and gaps that allow cases of heterogeneous enforcement of law and electoral abuses. This, taking into account the experience of holding local elections at the end of 2020, updates the analysis of the problems of legal regulation of local council elections in Ukraine.

Within the framework of the characterization of the state and problems of legal regulation of local council elections in Ukraine, there were considered the general bases and territorial organization of local council elections, issues of organization of election commissions, as well as features of nomination and registration of candidates, holding of local council elections in Ukraine. It was proved that eliminating the existing problems of constitutional and legal regulation of local council elections in Ukraine by making appropriate amendments to the Electoral Code of Ukraine will help improve the organization and conduct of local and other elections in Ukraine.

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