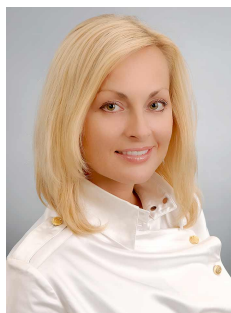


authorities of any democratic state is to ensure their activity based on principles of openness, transparency and publicity. The international treaties and European standards in the field of court activity are analysed. The emphasis is placed on the significance of the decisions of the European Court of Human Rights in the field of ensuring the open activity of the judiciary. Proposals to domestic legislation are formulated in order to increase the effectiveness of interaction between the court and the public.

Keywords: *civil society, judicial authorities, court and public interaction, international standards, European Court of Human Rights.*



Larysa Nalyvaiko
Dr of Law, Prof.,
Deserved Lawyer of Ukraine

Olga Chepik-Tregubenko
Ph.D.



*(the Dnipropetrovsk State University
of Internal Affairs)*

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ENSURING THE ELECTORAL RIGHTS OF INTERNALLY DISPLACED PERSONS AT LOCAL ELECTIONS: PROBLEMS OF THEORY AND PRACTICE

Наливайко Л., Чепік-Трегубенко О. ЗАБЕЗПЕЧЕННЯ ВИБОРЧИХ ПРАВ ВНУТРІШНЬО ПЕРЕМІЩЕНИХ ОСІБ НА МІСЦЕВИХ ВИБОРАХ: ПРОБЛЕМИ ТЕОРІЇ ТА ПРАКТИКИ. У статті розглянуто проблематику реалізації виборчих прав внутрішньо переміщених осіб в Україні на місцевих виборах. Також акцентовано увагу на гарантуванні виборчого права на місцевих виборах інших мобільних груп громадян. Наголошено, що рівність громадян у всіх сферах суспільної діяльності, зокрема і рівність виборчих прав, гарантується як на національному, так і на міжнародному рівнях. Проте, сьогодні в Україні склалася ситуація, коли частина громадян не може реалізувати одне із своїх основних прав – близько 4% громадян позбавлено права на вибори на місцевому рівні, що не відповідає сучасним міжнародним демократичним стандартам. Неузгодженість вітчизняного законодавства та відсутність належного механізму реалізації виборчого права на місцевих виборах виступає нині як дискримінація громадян України, що стали вимушеними переселенцями з Донбасу та Криму, є трудовими мігрантами всередині держави, взагалі не мають реєстрації місця проживання та ін.

Зроблено висновок, що прийняття парламентом України законопроекту № 6240 про внесення змін до деяких законів України (щодо виборчих прав внутрішньо переміщених осіб та інших мобільних всередині країни громадян) з відповідними змінами та доповненнями сприятиме дотриманню конституційних виборчих прав внутрішньо переміщених осіб та інших мобільних груп громадян. Зволікання парламенту із внесенням відповідних змін до чинних нормативно-правових актів стримує процес демократизації. З урахуванням цього, на сучасному етапі практично єдиним шляхом вирішення розглядуваної проблеми є внесення відповідних змін парламентом України до законодавства, й зволікання Верховною Радою стає свідченням про невідповідність міжнародним стандартам у цій сфері та сприяє обмеженню прав громадян.

Ключові слова: *виборче право, внутрішньо переміщені особи, переселенці, мобільні групи, правова держава, міжнародні стандарти.*

Formulation of the problem. Over a four-year period, a large number of citizens (according to the official data of the Ministry of Social Policy as of May 2018 – 1 502 019 people) left their places of permanent residence due to events in the Donbas and Crimea and received the status of internally displaced persons. Unfortunately, some of these people continue to live in difficult social and economic conditions on other territories of Ukraine. This is usually due to the inability to get a job with proper wages and working conditions, lack of own housing and

the inability of the state to provide relocated housing and a number of other reasons.

However, along with these issues, the issue of violation of the political rights of internally displaced persons, namely, the electoral rights at the local level, is equally important. It is about election of deputies of local councils and village, settlement and city mayors. Since the right of choice is one of the fundamental rights of citizens, the consideration of this issue has not only theoretical, but also, first of all, paramount practical importance for ensuring the electoral rights of internally displaced persons in Ukraine.

Analysis of the latest publications that initiated the solution to this problem. Issues of guaranteeing and realizing the electoral rights of citizens were studied by such scholars as V. Bukach, T. Zavorotchenko, V. Lemak, V. Marchenko, O. Martshliak, A. Oliinyk, N. Onischenko, O. Petryshyn, V. Pogorilko, P. Rabinovich, O. Todyka, V. Shapoval, Yu. Shemshuchenko and others. Problems of electoral rights of internally displaced persons in Ukraine were considered in scientific, monitoring and other works by D. Kovryzhenko, Y. Lenger, K. Pavshuk, N. Pashkova, S. Savelii and others.

Objective. Due to the fact that today this problem has not received proper scientific support, although it has a fundamental applied value, it is expedient to carry out a theoretical and legal review of the implementation of the electoral rights of internally displaced persons in Ukraine at local elections.

Basic content. One of the most important signs of a democratic state is the presence of a certain list of human rights in a citizen, among which, in addition to personal rights – life and protection, freedom and personal integrity, non-interference in private life – political rights are the victory of human rights activists since the 20th century. [1, p. 4]. Equality of citizens in all spheres of social activity, in particular the equality of electoral rights, is guaranteed at the national level – the Constitution and other normative legal acts of Ukraine, as well as at the international level – the Universal Declaration of Human Rights of 1948, the Convention for the Protection of Human Rights and the Fundamental Freedoms of 1950, the International Covenant on Civil and Political Rights of 1968, etc.

In the aspect of the issue under consideration, it should be noted that international standards in the area of ensuring the rights and freedoms of internally displaced persons directly prohibit discrimination or other forms of restriction of the rights and freedoms of internally displaced persons [2, p. 48]. At the same time, today in our state there is a situation when some Ukrainian citizens can not realise one of their basic rights – about 4% of Ukrainian citizens are deprived of the right to vote at the local level.

The National Monitoring System Report on the Situation of Internally Displaced Persons, released in April 2017, noted that only 6% of internally displaced persons indicated that they voted in local elections in the territory of displacement in 2015. The main reason why forced migrants were not able to vote in local elections in 2015 was the lack of local registration [1, p. 4]. The indicated problem, on the one hand, is strongly confirmed by the inability to determine the terms of the end of the military conflict in the Donbas and the de-occupation of the Crimea, on the other hand, according to sociological surveys, most of the settlers are no longer going to return to their places of registration, even after Ukraine returns their legal territories.

For example, in Transcarpathia, more than 3,600 internally displaced persons are registered, and the total is about 5,000 people. Of these, 80% do not want to return to their regions and are potential residents of the united territorial communities. But they remain outside the electoral process of the local communities in which they have been living for more than three years [3].

According to the current legislation of Ukraine, IDPs can exercise their right to vote during local elections, but for this purpose, the place of registration must be changed, which will entail the loss of these persons' status as an internally displaced person.

A sociological survey (1700 internally displaced persons interviewed in Ukraine) gave an opportunity to find out that 75% of IDPs do not want to lose their status for election rights [4]. Thus, the state forces its citizens to choose between their fundamental rights: the right to choose and the right to social protection, which does not meet current international democratic standards.

In accordance with the United Nations Principles on Internal Displacement, IDPs, whether they are in camps for internally displaced persons or outside of such camps, should not be subjected to discrimination as a result of their movement in the exercise of the right to freedom of thought and conscience, expressions and beliefs, the right to conduct business, the right

to work, the right to freedom of association, to participate in the management of local affairs, the right to vote and the right to participate in management of governmental and public affairs, etc. [5]. If to turn to the analysis of the national legislation, then according to Article 8 of the Law of Ukraine «On Ensuring Rights and Freedoms of Internally Displaced Persons» of March 27, 2015: internally displaced person exercises his right to vote at the elections of the President of Ukraine, people's deputies of Ukraine, local elections and referendums by changing the place of voting without changing the election address according to Part 3 of Article 7 of the Law of Ukraine «On the State Register of Voters» [6].

However, in practice there was an absolutely opposite situation, since according to the provisions of the Law of Ukraine «On Local Elections», which was adopted on July 14, 2015, the right of internally displaced persons to take part in elections is not provided, because the right to vote in the elections of deputies of rural, village, city council, elections of village, settlement, city mayor have citizens of Ukraine belonging to the respective territorial community and living within the constituency [7]. In the above example, one can observe, first of all, the inconsistency of domestic legislation, which indicates the superficial attitude of the authorities to their duties. As a result, this leads to a violation of the rights of citizens and provokes disputes between the authorities and the public.

In this context, it should be noted that States which, at certain stages of their development, faced with the need to ensure the right to vote in elections for internally displaced persons, resolved the issue and brought their own legislation in line with the principles of Guidance, providing IDPs with the possibility of participation in public life at the national and local levels [2, p. 50]. Such states include Georgia, Moldova, and others. However, in Ukraine, taking into account the activity of scientists, public activists, and international organizations, there have still been no proper changes in this direction, with the exception of the submitted draft laws for consideration by the Parliament of Ukraine. Among them: 2501-a of August 12, 2015, on amendments to the Law of Ukraine «On Local Elections» (concerning the ensuring the right to vote for internally displaced persons), 2501a-1 of August 21, 2015, on amendments to certain legislative acts concerning ensuring the electoral rights of internally displaced persons, 2501a-2 of August 26, 2015, on amendments to some laws of Ukraine on ensuring electoral rights of internally displaced persons. All listed bills are sent at revision for one or another reason.

Currently working in the profile committee of the Verkhovna Rada of Ukraine there are two bills:

- 1) Draft Law No. 4471 dated April 19, 2016, on amendments to certain laws of Ukraine on ensuring the electoral rights of internally displaced persons [8];
- 2) Draft Law No. 6240 dated March 27, 2017, on amendments to certain laws of Ukraine (concerning the electoral rights of internally displaced persons and other mobile citizens within the country) [9].

As for the first draft, the Main Research and Expert Department expressed a number of critical remarks, although positive norms were noted [10]. The general conclusion was that according to the results of the consideration in the first reading, it is advisable to return the bill to the revision.

One of the key shortcomings of this draft law is that internally displaced persons are allowed to change their voting address shortly before the day of voting, which may increase the risk of abuse during registration of voters, the difficulty of exercising the right to vote in individual cases involving IDPs, and also increases the likelihood of multiple voting [2, p. 52-53].

In its turn, Draft Law No. 6240 meets the most up-to-date European standards and will promote proper protection not only of the electoral rights of internally displaced persons, but also of other mobile citizens within the country. So, the urgency of ensuring the electoral rights of internally displaced persons has raised the issue of ensuring the electoral rights of labour migrants within the country, people without registration due to lack of housing and those who have been living in one community for many years but registered in another, and so on. Therefore, it is positive that the bill will provide the opportunity to exercise the right to vote in local elections to a much wider range of voters.

The most important thing in Draft Law No. 6240 is that the place of voting, the election address, is changing. It is proposed to provide that, upon a motivated voter's request, the registry authority may determine another electoral address of the voter than the one according to which the voter's place of residence is registered in accordance with the Law of Ukraine «On Freedom of Movement and Free Choice of Place of Residence in Ukraine». The authors of the bill determine the list of documents confirming the actual residence of the voter at the address

indicated in the application: 1) a rental agreement for a residence at the address that the voter requests to identify him at a new election address; 2) a document issued by a state authority or a local self-government body, which certifies the voter making an entrepreneurial activity at the address of the home that the voter requests to determine at the new election address; 3) a document confirming the right to own a home at the address the voter requests to identify with his new election address; 4) a certificate of registration of the internally displaced person; 5) a document certifying that the voter carries out the caring of a person whose place of residence is registered in accordance with the Law of Ukraine «On Freedom of Movement and Free Choice of Residence in Ukraine» at the address that the voter requests to determine at a new election address; 6) a document certifying the voter's stay in marriage or in a family relationship with a person whose place of residence is registered in accordance with the Law of Ukraine «On Freedom of Movement and Free Choice of Residence in Ukraine» at the address, which the voter asks to identify him at a new election address.

The Main Research and Expert Department supported the proposed approach in the Draft Law on the possibility of determining the voters' electoral address by their actual place of residence, as this will facilitate the exercise of the electoral rights of a large part of citizens. Given that the administration of the state register of voters is carried out on a permanent basis by separate structural subdivisions of the state apparatus, organizational obstacles to the implementation of the tasks specified in the project are also not seen [11]. According to the results of consideration in the first reading, Draft Law No. 6240, according to the specialists of the Main Department, may be adopted in the first reading on the basis of the comments made.

It should be noted that, like any other document, the project 6240 also has some disadvantages. Thus, according to experts, if the project is aimed at improving the conditions for citizens to vote in the elections for their actual place of residence (although it conflicts with the special legislation on registration of place of residence, including the military), then the practical side of the project seems less convincing. It is not clear how the identity of such citizens should be confirmed during the voting procedure, because simple coincidence of the surname, name and patronymic, perhaps, will not be enough. Accordingly, the voter will have to file the documents on the basis of which he was registered at the appropriate address. However, it is unknown whether this will be enough [12]. The provisions of the draft law require other revisions. Thus, it would be advisable to extend the term for voters' access to the Registry bodies during the electoral process, without limiting it to the fifth day since the beginning of the election process [11]. Therefore, part 3 of Article 20 of the Law of Ukraine «On the State Register of Voters» in accordance with the Draft Law No. 6240 is proposed as follows: an application for changing the electoral address may be submitted by the voter to the registry authority whose authority extends to the territory to which the election address is assigned, which will change the current election address of the voter, not later than on the fifth day from the day of the beginning of the election process or the referendum process, held in the territory within which the voter requests to determine his election address.

Conclusion. Thus, summarising the situation regarding the above-mentioned issues, it is appropriate to emphasise that the inconsistency of domestic legislation and the lack of an adequate mechanism for the exercise of electoral law in local elections today serves as discrimination against Ukrainian citizens who became forced migrants from the Donbas and Crimea as labour migrants within the state, in general do not have a residence registration, etc. Ensuring the electoral rights of these individuals is crucial for solving a wider range of tasks: the legitimacy of the electoral process in Ukraine. In addition, voting for internally displaced persons is one of the key elements of their integration into the local community. Adoption of the Draft Law 6240 by the Verkhovna Rada of Ukraine on amendments to certain laws of Ukraine (regarding the electoral rights of internally displaced persons and other mobile citizens within the country), with appropriate changes and additions, will contribute to the observance of the constitutional rights of the electorate of internally displaced persons and other mobile groups. Delaying the parliament with the appropriate changes to the current normative legal acts constrains the process of democratization. The next local elections in Ukraine will take place in 2020, but the process of decentralization and association of territorial communities in different regions of the country calls for local elections and in other terms: in 2017, 201 elections were held in the united territorial community, located in all districts where more than 116 thousand internally displaced persons of Ukraine were not able to vote (according to the estimation of the Public holding «Impact Group»). In addition, in Ukraine there are now millions of labour migrants and about 800 thousand Ukrainian citizens who do not have registration at all. With

this in mind, at present, virtually the only solution to the problem under consideration is to make appropriate changes to the legislation of Ukraine by the Parliament, and the delay by the Verkhovna Rada is evidence of non-compliance with international standards in this field and contributes to the restriction of the rights of citizens.

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Summary

The article deals with the problems of implementing the electoral rights of internally displaced persons in Ukraine at local elections. The emphasis is also placed on guaranteeing the right to vote in local elections of other mobile groups. It is stressed that equality of citizens in all spheres of social activity, in particular equality of electoral rights, is guaranteed both on the national and international levels. However, the inconsistency of domestic legislation is now discriminating against those citizens of Ukraine who have become forced migrants from the Donbas and Crimea, who are labour migrants within the state, or who do not have registration at all, and so on. It is concluded that the adoption by the Parliament of Ukraine of Draft Law 6240 with the corresponding changes and additions will contribute to the observance of the constitutional right to vote of internally displaced persons and other mobile groups.

Keywords: *electoral law, internally displaced persons, settlers, mobile groups, rule of law, international standards.*