

ПОЛІТИЧНІ НАУКИ

УДК 324(477)

M. Buchyn

CONSTITUTIONAL RESPONSIBILITY DURING ELECTIONS: THE EVOLUTION OF LAW REGULATION IN UKRAINE

In the article is reviewed the constitutional responsibility for violation election law as an essential condition of democratic elections. Analysing Ukrainian electoral law it is shown evolution of forms of constitutional responsibility, such as invalidation of elections, denial of registration, cancellation of registration the candidates and others.

Keywords: *elections, democrac, constitutional responsibility, Ukraine.*

Institute of democratic elections should play an important role in reforming the Ukrainian political system toward democracy. One sign of democratic elections is bringing persons, who committed offense to justice. This is an example for others and helps to reduce the level of frauds and offenses. Therefore the existence of clear mechanism for liability, which should be adequate to the offense is obligatory condition. Legal liability is intended to prevent the violation of law at all stages, and provide penalties for offender. However, analysis of electoral legislation and electoral practice in Ukraine shows there are some problems and omissions in the principle of liability for violation electoral legislation, witch updates selected research theme.

The problem of responsibility for committed violations during the elections was studied by such foreign scholars as L. Alehicheva, E. Korchiho, Alexander Postnikov and others [1; 2]. Among domestic researchers who have paid attention to the issue of liability for violation electoral legislation are M. Ryabtsa and M. Stavniychuk [12; 13]. On the contrast, the researchers, firstly, examined mentioned issues through the perspective of juridical science. In addition, much attention was paid to legal liability in general, or to its special forms, such as criminal or administrative. However, the problem of constitutional responsibility and especially its exploitation in Ukraine has remained largely ignored by Ukrainian and foreign political science.

The purpose of the publication - studying the legal regulation evolution of constitutional responsibility in the country's electoral legislation. An important type of liability is constitutional, which manifests itself in various forms. It can be an individual (refer to a particular individual) and collective (applied to a group of people). It has a political and moral dimension, that threatens the loss of a candidate's reputation.

Refusal to register is one form of constitutional responsibility. It should be noted that the subject may be refused in registration because of the failure to comply with the necessary conditions and requirements of the law, or due to inconsistencies with franchises. In the last case, refusal to register is not a form of legal liability. That it is only when a candidate has violated the valid law.

Another form of constitutional responsibility is canceling a decision on registration. This applies to both candidates in single-seat constituencies and the exclusion of persons from the list of parties (blocs). The peculiarity of cancelling the decision on registration is its use only by court decision and by the application of clearly established audience. According to the Russian researcher E. Korchiho the conditions of usage such form of responsibility, should be re-identified circumstances that are grounds for refusal in registration and violation of the law relating to the candidate's activities after his registration [2, p. 108].

In the case of significant fraud and violation of electoral rights the state should create conditions for challenging election results in terms of declaring the election invalid. Minor electoral rights violations of some citizens or some minor violations of election procedures, in contrast, can not be grounds for declaring the election invalid. Russian researchers L. Alehicheva and A. Postnikov rightly noted: «extra injection of passion to comply with certain formalities during the organization of elections is able to eviscerate the essence of constitutional democracy as a free will citizens institution» [1].

Another form of constitutional responsibility is prevention, which is the moral and legal measure and is typically used for law violation with minor consequences. Sometimes law provides stricter liability in cases where the violation is repeated after warning.

To constitutional forms of responsibility belong dissolution of individual members of Commission or the some electoral bodies, Commission's decisions cancellation; depriving official observers the authority and others. However, the most significant form of constitutional responsibility is the recognition elections invalid. It can apply to elections in a separate district, and to the national election results.

If elections were held in compliance with all democratic principles, the state must recognize them and provide selected persons ability of entrance the positions. Thus, for elections invalidation should be very ponderable reasons. Therefore, as it is noted by scientists: «... facilitated relation to use of procedures for elections invalidation as the next round of the campaign, in which you can, attaching some efforts, correct the will of the voters is an obvious defect of political and legal consciousness as casts question the value of direct elections as the highest expression of the will of people» [1].

It should be noted that the election could be declared invalid only in case of violation the electoral rights of the candidates who have won. The selected candidate must bear responsibility for the actions that made his opponents. Otherwise possible become frauds, as candidates who have no chance to pass to the parliament, deliberately break the law trying to compel recognition the election invalid.

Analyzing the legal aspects of constitutional responsibility during the elections in Ukraine, it should be noted, it has been already mentioned in the Electoral Act 1990, such its form as invalidation of elections. According to the law, the election can be invalidated in cases where during vote counting or determination of voting results were found violating the legislation [3].

Despite the fact that no application possibilities invalidation of elections, it is difficult to talk about democratic elections, but still we have to admit the universality of the above forms of liability, since the legislator did not define any specific conditions under which the election result could be invalidated.

In 1991 made observations were partly implemented. The Law of Ukraine "On elections of President of Ukraine" states that the election may be invalidated in the event of violations that significantly affected the voting results. In addition, the legislator has identified a list of entities that can apply to the Central Election Commission (hereinafter - CEC) on invalidation of elections within ten days of publication of election results, candidates, authorized persons of parties (blocs) that nominated candidates General prosecutor. The decision on the invalidation of elections was taken by the CEC and could be appealed to the Supreme Court of Ukraine (hereinafter – SCU) [7]. But he frace "substantially affected the election results," again, was not completely clear, had general nature and could not be clearly implemented.

On the presidential elections of 1991 were first tested in legislation and other forms of constitutional responsibility. Thus, any committee member may be removed from it by the authority that appointed them in case of gross violation of the law. Candidates also applied a form of constitutional responsibility as the abolition of registration. It could have an effect in violation of Supreme Court candidate of legislation, including violations of requirements for funding or

material support, at the request of the CEC. However, we can again observe the general statement of grounds for cancellation of registration [7].

During parliamentary elections in 1998 the legislator gave the right to commissions at all levels to initiate changes in its structure, if the vote is at least 2/3 [5]. The peculiarity of the law during the presidential election in 1999 was the lack of such a form of constitutional responsibility as invalidation of elections [6]. In our opinion, this was a significant omission of the legislator because it does not put the end result will of citizens dependence on the level of democratic elections.

In addition, another drawback was the absence in many cases of the mechanism responsible for violations of the law. We can not agree with the then head of the CEC M. Ryabets, who describing the legal regulation of the presidential election in 1999, said: «The law, which is talked about, can not be attributed to severe. Judge for yourself: it laid 36 general prohibitions and restrictions on the organization and conduct of elections, but the specific legal liability arises only in 11 of these cases is less than a third» [12, p. 107].

In 2002 were enacted new forms of constitutional responsibility. In particular, the legislation implied that commissions decisions contrary to law or accepted in excess of authority can be revoked higher commission or a court. In this case, higher-level commission had the right to decide on the merits [4].

The Act provided possibility for replacement of the commissioner not only in case of violation the law, but in the case of systematic failure to perform their duties. There was a positive aspect of the legislation detailing the conditions when applied cancellation of registration. According to the law, it was introduced into operation either for individual candidates in multi and single districts either parties(blocs) in the multi-districts in general.

According to the law, the CEC canceled the decision on registration of all candidates in the electoral list when: a court installed bribing voters by parties (blocs), their authorized persons, and at their request or on their behalf - another person; a court installed that the founder, owner or member of the governing body which is a party (bloc) or their authorized person bribed voters exercised; a court installed the fact that a party (bloc), except own funds used during the campaign other means; party (bloc) spent more funds that exceed the established maximum amount of allocations [4].

Conditions for cancellation of registration candidates in multi or single- and multi-member districts, in addition to the above, was identifying the essential unreliability of the data about candidate himself, and candidate's using and attracting to campaign subordinates, office transport, communications, equipment, facilities, and other objects and resources at the place of work [4].

In addition, legislation was first assigned to a form of legal constitutional responsibility as a warning. It was used in the case of «... violations of other provisions of this law» [4]. Abstraction of rules contributed to abuse and prejudice to liability. However, we should positively estimate the situation, according to which in case of repeated offense it was taken a decision to cancel registration of the subject [4].

A further improvement of the legislation in 2002 was detailed conditions of declaring the election invalid. In particular, local election commission (hereinafter - PEC) could declare the vote at the polling station in single and (or) multi-member districts invalid if it has established violations of the law which made accurate tabulation impossible, such as:

- illegal voting (ballot stuffing ballot boxes to the voter by another person, unless voter can not do this alone with objective circumstances; voting by persons who have no right to vote; the will of the people who are not included to the list at the polling station or put there arbitrarily; multiple voting) in amount that excess 10% of the number of voters who participated in voting in the respective polling station;

- identification in ballot boxes papers amount of which excess more than 10% number of people who voted at the polling station;

- the destruction or damage of ballot boxes (box), making it impossible to establish the content of ballots if their number exceeds 10% of the citizens who made the will in this section [4].

Also legislator has provided the possibility of invalidation elections in the whole single-member district. This decision was taken by CEC on the proposal of DEC when:

- during the election took place violation of the law, which makes it difficult to determine with certainty the will;

- the number of stations where voting in the single-member district was invalid, is not less than 25% of polling stations, which were established in the district.

In this case, the legislator gave a right to the district election commissions (hereinafter – OIC) to initiate a submission to the CEC invalidation of elections only in case when a decision is made by 2/3 of the commission. In addition, the law provides possibility for CEC on its own initiative to recognize the elections in single-member district invalid in accordance to all above mentioned circumstances or in accordance to a court decision [4].

It should also be emphasized that the legislator separately identified conditions that could not be the basis for declaring election in single-member district invalid. This primarily relates to offenses which were intended to induce or encourage voters to vote for subjects who did not win. Besides, offenses that occurred in the election of deputies in the multi-member district were not reason for invalidation of elections violations [4]. Although the lack of opportunities to invalidate elections in the multi-member district we consider to be a certain omission of the legislator, however it should be noted that in 2002 the principle of responsibility for violating the law (especially concerning constitutional responsibility) was significantly more regulated comparing with the previous legislation. This also applies to bringing guilty to responsibility for the restrictions and prohibitions imposed by law.

On the presidential election in 2004 candidate was warned in such cases as: vote-buying; using in campaign money out of the fund; violation of the restrictions on campaigning; using of official position and so on. Disadvantages of this situation is obvious: rather gross violations involving very mild sanction; lack of strict legal consequences and repeated warnings. We believe that the warning should be applied for minor offenses. The above mentioned offenses should result in tougher responsibility.

During the second round on the 16 of December, 2004 reasons for elections invalidation were slightly changed and introduced additional. In particular, the elections at the polling station deemed invalid in case quantity of ballots in the ballot boxes exceed more than 5% number of people who received ballots. In addition, reasons for elections invalidation was creation obstacles to carry out the authority of commissioners or implementation of official observers and media representatives the right to be present at polling stations during voting and counting votes as well – improper prevent these persons to the voting room [11]. The feasibility of these amendments is obvious.

It should be noted that in 2007 the legislator has provided the possibility of elections invalidation only in some districts: commissions were contracted to establish the result of voting process in the territorial district and in the foreign district, and within in the whole country regardless of the number of stations where election results were announced as invalid [9]. It is difficult to understand the logic that guided the legislator while introducing the aforementioned rules. We consider it inappropriate, such that do not meet generally accepted election standards.

Lack of recognition election results invalid exists in current legislation. The result of voting process may be recognized invalid only at individual polling stations. In districts where elections at all polling stations failed or were invalid, it is made a decision that the election within the territorial district failed. The legislator ordered the commission to establish election results in nationwide district regardless the number of districts where elections did not take place [8; 10].

In the above context, our position at first glance it seems that the legislator, eliminating the possibility of declaring the election invalid, essentially ignored the principle of responsibility. However, we must consider the application of the electoral law always in a socio-political context. Taking into consideration the importance of electing a legitimate government after the Revolution of dignity and threats to disrupt the elections or non-availability to held elections in the south-eastern regions, for Ukraine guarantee of elections performance was extremely important. Therefore, in the context of events such legislation was justified. However, if the situation in Ukraine is normalized, it is essential to bring in effective legislation and relevant amendments allowing elections invalidation in cases of significant violations.

The current parliamentary law the list of grounds for declaring subject the entity card was also expanded. In addition to the pre-existing reason, it declared candidate or party in such cases: violating the terms of his fund account opening; violating the terms of the submission to commission the interim and final reports on the receipt and use of the funds; including to the financial report false information [8]. Expanding the grounds for a warning should be evaluated positively. However, all above disadvantages of such a mechanism for constitutional responsibility (instead of using it to commit minor offenses rather significant violations of law, lack of repeated warnings and sanctions for it) are still valid. So it is obvious future introduction of appropriate changes in existing legislation.

To sum up, we want to note that the constitutional responsibility for violation election laws is essential to ensure the realization of democracy and democratic elections institute. The analysis of national legislation shows the existence of significant omissions and deficiencies related to the constitutional responsibility during elections (some of which is a necessary response to the military action taking place in the east of Ukraine). Ukraine election practice also shows the existence of significant problems on bringing guilty for committed offenses to justice. In the context of mentioned facts it becomes clear necessity of implementing appropriate changes to the electoral law of Ukraine, which will depend on the will of the legislators, and on the situation in eastern Ukraine. However, only the electoral practice in the future will show the effectiveness and feasibility of mentioned actions, that will guide a promising direction of our further researches.

Reference

1. Алехичева Л. Признание недействительными итогов голосования и результатов выборов: правовые проблемы [Электронный ресурс] / Л. Алехичева, А. Постников // Журнал российского права. – 2001. – № 6. – С. 25–36. – Режим доступа : http://www.juristlib.ru / book_2597.html ; Alekhicheva L. Priznanie nedeystvitelnymi itogov golosovaniya i rezultatov vyborov: pravovye problemy [Yelektronniy resurs] / L. Alekhicheva, A. Postnikov // Zhurnal rossiyskogo prava. – 2001. – № 6. – S. 25–36. – Rezhim dostupu : http://www.juristlib.ru / book_2597.html

2. Корчиго Е. В. Актуальные вопросы теории избирательного процесса в России : дис. ... канд. юр. наук : спец. 12.00.02 / Екатерина Всеволодовна Корчиго. – М., 2002. – 186 с. ; Korchigo Ye. V. Aktualnye voprosy teorii izbiratel'nogo protsessa v Rossii : dis. ... kand. yur. nauk : spets. 12.00.02 / Yekaterina Vsevolodovna Korchigo. – M., 2002. – 186 s.

3. Про вибори народних депутатів Української РСР [Електронний ресурс] : Закон Української Радянської Соціалістичної Республіки від 27.10.1989 № 8304-XI . – Режим доступу : <http://zakon0.rada.gov.ua/laws/show/8304-11> ; Pro vybory narodnykh deputativ Ukrainskoi RSR [Elektronnyi resurs] : Zakon Ukrainskoi Radianskoi Sotsialistychnoi Respubliki vid 27.10.1989 № 8304-XI . – Rezhym dostupu : <http://zakon0.rada.gov.ua/laws/show/8304-111>

4. Про вибори народних депутатів України : Закон України від 18.10.2001 № 2766-III // Відомості Верховної Ради. – 2001. – № 51–52. – С. 1058–1112 ; Pro vybory narodnykh deputativ Ukrainy : Zakon Ukrainy vid 18.10.2001 № 2766-III // Vidomosti Verkhovnoi Rady. – 2001. – № 51–52. – S. 1058–1112

5. Про вибори народних депутатів України : Закон України від 24.09.1997 № 541/97-ВР // Відомості Верховної Ради. – 1997. – № 43. – С. 787–822 ; Pro vybory narodnykh deputativ Ukrainy : Zakon Ukrainy vid 24.09.1997 № 541/97-VR // Vidomosti Verkhovnoi Rady. – 1997. – № 43. – S. 787–822

6. Про вибори Президента України : Закон України від 05.03.1999 № 474-XIV // Відомості Верховної Ради. – 1999. – № 14. – С. 274–304 ; Pro vybory Prezydenta Ukrainy : Zakon Ukrainy vid 05.03.1999 № 474-XIV // Vidomosti Verkhovnoi Rady. – 1999. – № 14. – S. 274–304

7. Про вибори Президента України [Електронний ресурс] : Закон України від 05.07.1991 № 1297-XII. – Режим доступу : <http://zakon0.rada.gov.ua/laws/show/1297-12> ; Pro vybory Prezydenta Ukrainy [Elektronnyi resurs] : Zakon Ukrainy vid 05.07.1991 № 1297-XII. – Rezhym dostupu : <http://zakon0.rada.gov.ua/laws/show/1297-12>

8. Про внесення змін до деяких законодавчих актів України щодо вдосконалення законодавства з питань проведення виборів [Електронний ресурс] : Закон України від 21.11.2013 № 709-VII. – Режим доступу : <http://zakon2.rada.gov.ua/laws/show/709-18> ; Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo vdoskonalennia zakonodavstva z pytan provedennia vyboriv [Elektronnyi resurs] : Zakon Ukrainy vid 21.11.2013 № 709-VII. – Rezhym dostupu : <http://zakon2.rada.gov.ua/laws/show/709-18>

9. Про внесення змін до Закону України «Про вибори народних депутатів України» та деяких інших законодавчих актів України (щодо порядку проведення позачергових виборів до Верховної Ради України та заміщення народних депутатів України, повноваження яких були достроково припинені) [Електронний ресурс] : Закон України від 01.06.2007 № 1114-V. – Режим доступу : <http://www.zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1114-16> ; Pro vnesennia zmin do Zakonu Ukrainy «Pro vybory narodnykh deputativ Ukrainy» ta deiakykh inshykh zakonodavchykh aktiv Ukrainy (shchodo poriadku provedennia pozacherhovyykh vyboriv do Verkhovnoi Rady Ukrainy ta zamishchennia narodnykh deputativ Ukrainy, povnovazhennia yakykh byly dostrokovy prypyneni) [Elektronnyi resurs] : Zakon Ukrainy vid 01.06.2007 № 1114-V. – Rezhym dostupu : <http://www.zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1114-16>

10. Про внесення змін до Закону України «Про вибори Президента України» та деяких інших законодавчих актів України щодо техніко-юридичного вдосконалення виборчого процесу [Електронний ресурс] : Закон України від 13.03.2014 № 879-VII. – Режим доступу : <http://zakon2.rada.gov.ua/laws/show/879-18> ; Pro vnesennia zmin do Zakonu Ukrainy «Pro vybory Prezydenta Ukrainy» ta deiakykh inshykh zakonodavchykh aktiv Ukrainy shchodo tekhniko-yurydychnoho vdoskonalennia vyborchoho protsesu [Elektronnyi resurs] : Zakon Ukrainy vid 13.03.2014 № 879-VII. – Rezhym dostupu : <http://zakon2.rada.gov.ua/laws/show/879-18>

11. Про особливості застосування Закону України «Про вибори Президента України» при повторному голосуванні 26 грудня 2004 року : Закон України 08.12.2004 № 2221-IV // Відомості Верховної Ради. – 2004. – № 52. – С. 2076–2087 ; Pro osoblyvosti zastosuvannia Zakonu Ukrainy «Pro vybory Prezydenta Ukrainy» pry povtornomu holosuvanni 26 hrudnia 2004 roku : Zakon Ukrainy 08.12.2004 № 2221-IV // Vidomosti Verkhovnoi Rady. – 2004. – № 52. – S. 2076–2087

12. Рябець М. М. Центральна виборча комісія: віхи становлення та розвитку: статті, доповіді, виступи, інтерв'ю / М. М. Рябець. – Київ : Альтернативи, АртЕк, 2003. – 600 с. ; Riabets M. M. Tsentralna vyborcha komisiia: vikhy stanovlennia ta rozvytku: statti, dopovidi, vystupy, interv'iu / M. M. Riabets. – Kyiv : Alternatyvy, ArtEk, 2003. – 600 s.

13. Ставнійчук М. І. Законодавство про вибори народних депутатів України: актуальні проблеми теорії і практики / М. І. Ставнійчук. – Київ : Факт, 2001. – 156 с. ; Stavniichuk M. I. Zakonodavstvo pro vybory narodnykh deputativ Ukrainy: aktualni problemy teorii i praktyky / M. I. Stavniichuk. – Kyiv : Fakt, 2001. – 156 s.

Стаття надійшла до редакції 09.05.2017 р.

М. Бучин

КОНСТИТУЦІЙНА ВІДПОВІДАЛЬНІСТЬ ПІД ЧАС ВИБОРІВ: ЕВОЛЮЦІЯ ПРАВОВОГО РЕГУЛЮВАННЯ В УКРАЇНІ

У статті розглядається конституційна відповідальність за порушення виборчого законодавства як важлива умова демократичності виборів. Автор аналізує такі форми конституційної відповідальності під час виборів, як відмова у реєстрації кандидата чи політичної партії, скасування рішення про їхню реєстрацію, попередження, дострокове припинення повноважень виборчих комісій чи окремих їхніх членів, визнання виборів недійсними та ін.

На основі аналізу українського виборчого законодавства показано еволюцію правової регламентації форм конституційної відповідальності в Україні від початку 1990-х років і до сьогодні. Показано недоліки вітчизняного виборчого законодавства щодо правового регулювання конституційної відповідальності: відсутність можливості визнання результатів виборів недійсними в масштабах цілої країни; недоліки такого механізму конституційної відповідальності, як попередження (застосування його замість незначних правопорушень до вчинення доволі суттєвих порушень закону; відсутність повторного попередження та санкцій за нього); практика неналежного притягнення винних у порушенні виборчого законодавства до відповідальності та ін.

Наголошено, що при якісній оцінці правового регулювання конституційної відповідальності в Україні необхідно враховувати суспільно-політичну ситуацію (російсько-український конфлікт), яка змушує вносити певні корективи у виборче законодавство задля забезпечення стабільності та результативності виборів. Підкреслено, що перспективи вдосконалення українського виборчого законодавства щодо регулювання конституційної відповідальності залежатиме як від волі політичної еліти, так і від розвитку ситуації на сході України.

Ключові слова: вибори, демократія, конституційна відповідальність, Україна.

УДК 327.56:061.1Рада Безпеки(045)

А.В. Гедьо, В.А. Шевченко

РОЛЬ РАДИ БЕЗПЕКИ ООН У ВРЕГУЛЮВАННІ СУЧАСНИХ РЕГІОНАЛЬНИХ КОНФЛІКТІВ

Стаття присвячена аналізу діяльності Ради Безпеки ООН у питаннях попередження, врегулювання та вирішення регіональних конфліктів гібридного характеру, зокрема конфлікту на Півдні та Сході України. Наголошується на неспроможності Ради Безпеки своєчасно та ефективно реагувати на загрози міжнародному миру та безпеці, а також неефективності існуючих методів та процедур врегулювання регіональних конфліктів.

Ключові слова: регіональний конфлікт, ООН, Рада Безпеки ООН, конфлікт в Україні, гібридна війна.

Проблема сучасних політичних викликів по всьому Світу, таких, як регіональні конфлікти і загрози глобальній безпеці вже сьогодні стали тенденцією в міжнародних відносинах та являють собою систему складних, зі структурної точки зору, питань, що мають вирішальне значення для більшості регіонів планети.

У цілому регіональний конфлікт являє собою результат конкурентної взаємодії двох і більше політичних акторів, що оспорюють один у одного розподіл владних повноважень,