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RESTRICTIONS ON THE PRE-ELECTION AGITATION AS A CONDITION OF DEMOCRACY OF THE ELECTORAL PROCESS: EVOLUTION OF LEGAL REGULATION IN UKRAINE

The article deals with the restriction of pre-election campaigning as an important condition for elections' democracy. On the basis of the analysis of Ukrainian electoral legislation, the evolution of such forms of restriction of pre-election campaigning is shown: according to time, place, subjects, finances and methods.

Key words: elections, democracy, pre-election campaigning, restriction of pre-election campaign, legislation, Ukraine.

One of the conditions for the functioning of democracy, the desire to build which Ukraine has declared, is the existence of an institution of democratic elections. Pre-election agitation is the core of the election process, as it is necessary for the candidates to mobilize all resources during this period to ensure victory in the elections. This leads to the conflict-oriented nature of pre-election campaigning, often creates unequal conditions for conducting an election campaign by various candidates and contributes to the increase in the number of delicts, as evidenced by the electoral practice of Ukraine.

Legislation of the democratic countries allows you to freely agitate through all legal means. At the same time, the principle of freedom of agitation does not exclude the existence of certain restrictions on its implementation, which promote equality in the implementation of electoral rights. This makes chosen research topic relevant, since the consideration of the evolution of legal regulation of constraints on pre-election campaigning in Ukraine will help to better understand the aspects of the pre-election campaign, to see the disadvantages of domestic legislation and promote its improvement.

The problem of pre-election campaigning and legal regulation of its limitation was considered by foreign scholars such as N. Bondar and I. Gambashidze [3; 18]. Among the domestic researchers the issue of pre-election campaigning was studied by O. Barabash, O. Bolshakova, A. Maghera and others [1; 2; 17]. The researchers considered issues of the essence and features of pre-election campaigning, legal aspects of its implementation, restrictions that applied to its conduction. At the same time, the imperfection of electoral legislation regarding the legal regulation of constraints on pre-election campaigning requires more comprehensive researches of this aspect of the electoral context.

The **purpose** of the article is to consider the evolution of legal regulation of constraints on pre-election campaigning in Ukraine.

The restriction of pre-election campaigning can be divided into restrictions by time, by subjects, by methods, place and financing. It is important to consider how the domestic legislation regulates and restricts campaigning for all of these parameters. In Ukrainian legislation, the beginning of campaigning was tied to various events. Already since the 1990 election, agitation could take place after the candidate's registration [4]. Such a procedure for the beginning of campaigning existed, including the 1999 presidential election, and was, in our opinion, not entirely optimal, since it placed candidates in an unequal position and could encourage abuses by the commissions on their timely registration.

Therefore, we consider the bind of the beginning of campaigning in 2002 to a specific date as positive: the law provided the launch of an agitation campaign 50 days before the election [4]. However, it has to be noted that already at the 2006 parliamentary elections the legislator again

decided to return to the bind of the commencement of agitation to the date before the registration procedure. This applies to subsequent editions of election laws, as well as the current electoral legislation [6; 9; 14; 15]. Therefore, we see the expediency of changing the terms of agitation and enshrining in the electoral legislation the binding of the commencement of pre-election agitation to a specific date before the election day.

The final date for campaigning is also important for the elections' democracy. It should be noted that in 1990 the legislator banned campaigning on election day [4]. The same applies to the 1991 and 1994 presidential elections, as well as to the 1994 parliamentary elections. In addition, on the elections in 1994 the veto was imposed on attempts to boycott the election in any form [7]. During the parliamentary elections in 1998, the legislator banned campaigning on the election day, but noted that printed agitation materials posted before the election outside the polling station remained in place [8]. This situation, in our opinion, wasn't optimal. This is due to the low timing limiting of campaigning (election day is a short deadline for calmly consideration of the situation and making informed choices), as well as the printed agitation materials' influence on the electorate on the day of the elections that remained in the voter's field of view.

In the 1999 presidential elections, the legislator forbade campaigning not only on election day, but also on the day before it [9]. Finally, in 2002, the legislator ordered the relevant local authorities to remove all agitation materials starting from the 24 hour of the last Friday preceding the election day [5]. During parliamentary elections in 2006, legislation specifies forbidden actions on the elections day and on the eve of the election day. In addition to the prohibition of agitation, it was prohibited: to hold mass actions (meetings, rallies, campaigns, demonstrations, pickets) on behalf of the subject; distribute agitation materials and public announcements about the candidate's support on conducting the concerts, performances, sports competitions, screenings of films and TV programs or other public events [15]. These provisions were also transposed into electoral legislation which regulated the holding of parliamentary elections in 2012 and 2014 [6]. Similar provisions are also included by current presidential election legislation [16].

This situation indicates the intention of the legislator to create the most favorable conditions for the formation of voters' preferences on the basis of information received without external pressure in a calm atmosphere. In our opinion, one day before the election it's enough for the citizens to analyze the course of the election campaign and make rational expression of will in their interests.

In addition to campaigning, the results of sociological surveys should also be subject to time limits, since they also have a significant impact on the formation of voters' electoral preferences. It should be noted that for a long time in Ukraine the legislator was missing this question from the field of view. Only in the parliamentary elections of 1998 it was noted that in the 15 days before the elections the announcement in the media of the results of sociological surveys, opinion polls and other subjects' ratings forecasts was prohibited [8].

In 2002, the legislator further prohibited publishing of the results of exit polls on election day before the end of voting. However, the norm on the prohibition of promulgation, in addition to the results of sociological surveys, as well as projections was lost [5]. This was a significant disadvantage, as it allowed influence on voters on the eve of the elections using public forecasts of well-known personalities for the results of the expression of will. In the following versions of the law, this nuance was not taken into account, which creates the necessity of its inclusion in the legislation in the future.

At the same time, some changes were made in the current legislation regarding the publication of the results of sociological surveys - they were forbidden to be published during the last two (earlier - fifteen or ten) days before the elections. Also, the legislator regulated the conduction of polls in the polling station on the day of voting: in addition to the prohibition of the promulgation of their results before the end of voting, a demand was made according to

which the methods of conducting such polls should ensure the preservation of the secrecy of voting [6; 13; 16].

It is worth noting that such innovations have different qualitative assessment. On the one hand, time liberalization regarding the promulgation of the results of sociological surveys is, to our minds, somewhat wrong, since the information received by the voter directly on the eve of voting day can disorient him and lead to negative consequences - avoidance of participation in elections or committing the expression of will contrary to his wishes and interests. On the other hand, the legislator's desire to keep the secrecy during the exit polls should be evaluated exclusively positively.

The next is the restriction of agitation by the subjects. At the initial stages of the electoral practice in Ukraine, legislation was characterized by the lack of norms aimed at regulating this type of restriction [4; 7; 10; 12]. Only in 1998, the legislator banned participation in campaigning of officials. A similar ban was also imposed on members of commissions [8]. In 1999, stateless persons were added to the list of subjects who were forbidden to agitate [9]. In 2002, a substantive clarification was made regarding the prohibition on campaigning for members of commissions: the latter was forbidden to agitate only while performing their duties [5].

At the 2006 parliamentary elections, the legislator expanded and detailed the range of persons for who there are restrictions on campaigning. To this list the law enforcement agencies and courts were additionally added. As for foreigners and stateless persons, the legislator clarified the prohibition of campaigning through journalism, as well as participation in concerts, performances, sports competitions, and other public events held in support of candidates [15].

During the parliamentary elections in 2012, the legislator for the first time banned the campaigning of the authors and broadcasters who are candidates for deputies. In addition, the restrictions on the campaigning of the officials and officials of authorities, law enforcement agencies and courts were liberalized: they were forbidden to campaign only during working hours [6]. We see the imperfection of this provision as it contributes to the use of official status and violates the equal conditions for the participation of subjects in agitation. On the eve of the 2014 presidential election, amendments were introduced to the legislation, that fixed, although less detailed, analogical to the current parliamentary legislation list of subjects who are prohibited from campaigning [9; 16]

The above-mentioned clarifications on restricting agitation were a reaction to the disadvantages of Ukraine's electoral practice in the agitation period and were aimed at reaching the widest possible range of people, the campaigning of which violates the principle of freedom of agitation.

For the implementation of the principle of freedom of agitation, the quality of agitation products and agitation actions also plays an important role. Therefore, this principle implies the presence of restrictions on agitation methods. In the parliamentary elections of 1990, the legislator does not attach any value to this problem, and during the presidential election race in 1991, it is limited to the general statement that agitation materials must comply with the requirements of the law and the content has to be agreed with the election commission [4; 10].

During the parliamentary elections in 1994, the legislator made an attempt to prevent agitation with the use of "dirty" technologies, obliging the media a week before the vote refrain from the release of unverified data that compromise a particular candidate. Otherwise, the media was obliged within a week, but not later than the day before the election, to give the candidate the opportunity to refute the compromise [7]. This provision, as we see, was characterized by universality and did not determine the conditions in which compromise requires refutation, nor the characteristics of the process of refutation itself.

At the presidential election in 1994, the legislator specifies the requirements for the content of campaign materials. Such materials, in particular, shouldn't contain secret and false

information, calls for violent acts or commercial advertising [12]. During the parliamentary elections of 1998, the legislator imposed additional restrictions on the methods of conducting campaigning. In particular, anonymous agitation was banned. To this end, the law required that printed agitation materials had to contain information about the organization, institution, persons responsible for their issue, the original data of the institution that issued the print, a total circulation of copies. In addition, candidates were obliged to submit one copy of each type of printed material to the election commission with a personal signature, not later than three days after making [8].

Also, the legislator has banned the inclusion of agitation materials and political advertising in information programs. The latter should have been separated and designated as such. In addition, it was forbidden to interrupt the agitation with commercial advertising or other messages. Finally, the agitation, which was accompanied by the provision of voters free of charge or on preferential terms of goods and securities were prohibited. A positive aspect of the 1998 law was also the anticipation of possible actions by the authorities on condition of violation of the restrictions on campaigning by the methods: "In the case of the distribution of anonymous agitation materials or agitation materials under the pseudonym or materials calling for violent overthrow of the constitutional order, violation of the territorial integrity of the state, to the national, linguistic, racial, religious intolerance the election commissions after receiving such information are obliged to apply to the law enforcement agencies in order to terminate illegally campaigning and taking measures stipulated by the legislation of Ukraine" [8].

From the above we can conclude that in the 1998 elections, the legislator regulated the restriction of campaigning by methods only in print media. Therefore, in 2002, the use of such restrictions for sociological surveys was also positive. Legislation imposed a requirement to the mass media in case of publicizing the results of the public opinion poll, to indicate the organization that conducted the survey, time of its conducting, the number of respondents, the method of gathering information, the exact formulation of questions and the statistical estimation of the possible error [5].

Measures to avoid the anonymity of political advertising in electronic media in 2002 could also be characterized positively: "During the demonstration of political advertising, the full name of its customer must be displayed in the form of a text message, which should occupy not less than fifteen percent of the screen area and be executed with the contrasting color to the background and be perceptible for the viewer" [15].

In the parliamentary elections of 2006, the prohibition of campaigning accompanied by bribe was also detailed. The provision of free of charge goods to voters containing visual representations of the name, symbolism, flag of the candidate of the process provided that the value of such goods does not exceed 3% of the minimum wage, the legislator didn't count as a bribe [15].

In 2012, a number of provisions were introduced to promote elections' democracy and transparency. The legislator has introduced a requirement that, by publishing the results of public opinion polls, in addition to those mentioned in the previous versions of the laws of information, it is necessary to indicate information about the customer of the survey [6]. Such a norm will enable the voter, in our opinion, to have a clearer idea of the nature and reliability of such a survey.

Another improvement in the 2012 elections was the legal regulation of the promulgation by TV and radio organizations of the results of interactive polls related to the election: "... the participants in the broadcast are not allowed to comment the results of such surveys or otherwise refer to them. During the entire time of promulgation of the results of an interactive poll of the audience, must be accompanied with the text message. "This poll reflects the opinion of this audience only," which should be shown on the screen (for TV programs) in a form acceptable to the viewer, whether to be sounded (for radio programs) with a clear text of a announcer or a

presenter of the program immediately before and after the promulgation of the indicated results" [6]. During the parliamentary elections of 2012, the legislator also banned the dissemination of knowingly false or defamatory data on candidates only if it was established in court [6].

On the eve of the 2014 parliamentary elections, an addendum was added to the law, which prohibited the placement of political advertising in a single block with commercial or social ones. In addition, it was forbidden to use in social or commercial advertising the names or portraits of candidates, as well as the names and symbols of parties that run for parliament [13]. Similar restrictions on campaigning include the current presidential legislation. However, it should be noted that it is somewhat more declarative if to compare with the parliamentary ones. This applies, in particular, to the lack of detailed requirements for social and commercial advertising during the election, as well as bribery-free agitation [9; 16].

The next is the restriction of campaigning by the place of implementation. It was first recorded in 1991 and envisaged the possibility of local authorities to decide to ban the placement of agitation materials on individual buildings, which are architectural monuments, as well as for the purpose of road safety [10]. But the lack of imperative norm made it declarative and difficult to apply.

In parliamentary elections in 1994, the legislator additionally applied restrictions on campaigning in military units. Organization of meetings of candidates with military personnel was relied on the AAU with the obligatory invitation of all candidates. In other cases, visits to military units by candidates, as well as their trustees, agitators and representatives of parties, blocs and movements were prohibited [7]. In the 2002 parliamentary elections, the aforementioned restrictions on campaigning began to apply to the institutions of the criminal-executive system. In addition, the legislator has prohibited campaigning in foreign media operating in Ukraine [5].

In 2006, the following restrictions on campaigning by the place were added: "The placement of political advertisement carriers, as well as the distribution of political advertising through radio broadcasting or other networks for the notification of passengers, in public transport vehicles, metro stations, train stations, ports and airports is prohibited" [15].

In the elections of deputies of 2012, certain changes were made regarding restrictions on campaigning by the place: "Placing of bearers of political advertising on the outside and inside public transport vehicles, including taxis, placing political advertisements in premises and at the buildings of metro stations, bus and railway stations, ports and airports, as well as the distribution of agitation materials, including political advertising, through broadcasting or other information networks and information boards in the premises of stations and underground carriages, bus and train stations, ports and airports, in public transport vehicles is prohibited" [6].

In addition, it was forbidden to place propaganda materials and political advertising not only at buildings and in the premises of government bodies, but also at the houses of enterprises, institutions and organizations of state and communal property [6]. During the 2014 parliamentary elections, the election law was supplemented by a provision prohibiting campaigning during events organized by authorities, state and communal enterprises, institutions and organizations [13]. Such a provision and its positive character in terms of freedom of agitation are evident. However, it would be reasonable to include the aforementioned norms to the current presidential election legislation.

The last type of the restriction of agitation is the restriction by funding. Already, the 1991 law provided for the financing of agitation from two sources: the State Budget and the funds of the candidate's election fund, however, there were no restrictions on the campaigning depending on the funding [10]. However, in the presidential election in 1994, the legislator restricts campaigning by a financial factor: "It is prohibited for a candidate, his trustees and authorized person to receive from anyone and spend his own funds for election campaign outside the

personal election fund of a candidate" [12]. Such a rule facilitated the arrangement of agitation, control over the financial component of the election and created a level playing field for candidates in the election campaign.

However, the law gave citizens the opportunity for volunteering participation in elections through both private work and the use of their own means on a voluntary basis in free from work or service time [12]. Such a general nature of the provision has contributed to the abuse of office and created unequal conditions for campaigning by different candidates. This provision was also retained during the 1999 presidential election [9].

In the 2002 elections, the legislator detailed the restrictions on agitation by the financial factor in the media. According to the regulatory act, airtime or print space was provided to the candidate on the basis of an agreement that was concluded between him and the appropriate television, radio companies or print media. Without the conclusion of such an agreement and the receipt of funds to the account of the relevant media, agitation was prohibited [5]. The expediency of such a norm was obvious, since it didn't allow for free campaigning, having implemented fictitious (or symbolic) payment, or campaigning on much more convenient terms from its opponents.

In 2004, the legislation contained a norm according to which a candidate or a party (bloc) who had nominated him could produce printed agitation materials using their own property [11]. This, in our opinion, created unequal conditions for the campaigning of various candidates and made it difficult to control the observance of the rules of campaigning by the participants of the election race.

In 2006, the legislator enacted an important norm that regulated the financial constraint on the implementation of public agitation measures: financial support of concerts, performances, sports events, demonstration of films, television programs and other events could be carried out by the candidate only at the expense of the election fund [15]. The aforementioned provision was maintained in the current parliamentary legislation and was a reaction to Ukraine's electoral practices, which previously enabled certain actors, through financial support for public events, to create their own support and better conditions for victory.

In addition, the current parliamentary election legislation contains an additional rule aimed at regulating the restriction of campaigning for finances: agitation in the media of all forms of ownership at the expense of the election fund can be made only after payment of print space or airtime from the relevant fund [13]. The expediency of introducing this norm, taking into account domestic electoral practices, seems to be quite feasible. At the same time, it is necessary to state the need to consolidate such norms in the current presidential legislation.

Summing up, it should be noted that most of the problems connected with restrictions on election campaigning are properly regulated in Ukrainian electoral legislation. It allows elections to be held in accordance with international democratic standards. At the same time, certain aspects of legal regulation of constraints on election campaigning require revision and correction to ensure equal conditions for conducting an election campaign. It is also clear that, in addition to legislative regulation, the democracy of pre-election campaigning depends on the level of political consciousness and culture of the participants of the electoral race and their desire to adhere to the existing rules of the game. Given the lack of sufficient respect for Ukrainian legislation by both voters and candidates, the study of the problems of forming a democratic electoral culture of citizens may be a promising direction for further research.

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ОБМЕЖЕННЯ ПЕРЕДВИБОРНОЇ АГІТАЦІЇ ЯК УМОВА ДЕМОКРАТИЧНОСТІ ВИБОРЧОГО ПРОЦЕСУ: ЕВОЛЮЦІЯ ПРАВОВОГО РЕГУЛЮВАННЯ В УКРАЇНІ

У статті розглядаються обмеження передвиборної агітації як важлива умова демократичності виборів. На основі аналізу українського виборчого законодавства показано еволюцію різних форм обмежень передвиборної агітації в Україні від початку 1990-х років і до сьогодні.

Проаналізовано правову регламентацію обмеження передвиборної агітації за часом, зокрема, питання початку та закінчення агітаційних дій, оприлюднення результатів соціологічних опитувань та прогнозів під час виборів в Україні. З'ясовано позицію вітчизняного законодавця щодо обмеження агітації за суб'єктами та визначеного законом переліку осіб, участь яких у агітації є забороненою чи обмеженою. Дослідження обмеження агітації за методами дало змогу визначити заборонені способи агітації в Україні. Крім того, проаналізовано правові аспекти регулювання обмеження агітації за місцем та за фінансами.

Показано недоліки вітчизняного виборчого законодавства щодо правового регулювання обмежень передвиборної агітації: прив'язка початку передвиборної агітації до дня реєстрації кандидатів, що може ставити останніх у нерівне становище та сприяти зловживанням з боку комісій щодо їх вчасної реєстрації; заборона законодавця на оприлюднення результатів соціологічних опитувань лише за два останні дні до голосування, що може дезорієнтувати виборця; лібералізація обмеження щодо здійснення агітації посадовим і службовим особам органів влади, правоохоронних органів та судів, що може сприяти використанню службового становища та порушувати рівні умови участі кандидатів в передвиборній агітації; необхідність врахування та перенесення певних позитивних правових аспектів регулювання обмежень передвиборчої агітації, які містяться у чинному парламентському виборчому законодавстві, у закон, що регулює проведення виборів глави держави в Україні.

Наголошено на тому, що демократичність передвиборної агітації також значною мірою залежить від рівня політичної свідомості та культури учасників виборчих перегонів, їхнього бажання дотримуватись наявних правил гри.

Ключові слова: вибори, демократія, передвиборна агітація, обмеження передвиборної агітації, законодавство, Україна.

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ЛАТИНОАМЕРИКАНСЬКИЙ ВЕКТОР ЗОВНІШНЬОЇ ПОЛІТИКИ КИТАЮ: ЦІЛІ, ЗАВДАННЯ, МЕХАНІЗМИ РЕАЛІЗАЦІЇ

Розглянуто основні фактори що вплинули на формування латиноамериканського вектору зовнішньої політики Китаю. Основні інструменти «м'якої сили», що дозволили Піднебесній затвердитись на континенті. Окреслено основні напрямки співробітництва.

Ключові слова: Китай, Латинська Америка, зовнішня політика, «м'яка сила», співробітництво, інвестиції, сировина.

Особливістю розвитку сучасної системи міжнародних відносин є її перехідний характер. На думку ряду дослідників в майбутньому буде сформована біполярна система з двома центрами США та Китаєм [1, с. 7]. Не залежно від того, чи буде новий світовий порядок багатополярним чи біполярним, Китай обов'язково буде одним з його полюсів. Отже, зовнішня політика Китаю є однією з актуальних проблем для дослідників, бо сьогодні вона в багато чому визначає хід та тенденції розвитку сучасної системи міжнародних відносин.