

ELECTORAL QUALIFICATIONS AS THE ATTRIBUTE OF DEMOCRATIC ELECTIONS

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(стаття надійшла до редколегії – 18. 03. 2019 р., стаття прийнята до друку – 20. 04. 2019 р.)

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This article examines voter eligibility/electoral qualifications as a fundamental part of universal suffrage. The authors use as a basis the typology of electoral qualifications, which provides for their division into 3 major groups: technical, protective and discriminative. In this study we made a detailed analysis of the electoral limitations belonging to each of these three groups. In particular, among technical qualifications special attention is paid to the analysis of age, citizenship, capacity, and residency requirements. Among protective limitations morality, service, military and bankruptcy qualifications have been reviewed. A considerable part of the paper is dedicated to investigating of discriminative restrictions of electoral rights, specifically, gender, property, race, religion and other electoral requirements.

The restriction of the electoral rights is viewed through the prism of their transformation within the context of global democratization process in socio-political systems.

Scientists convincingly demonstrate that the approach to assessment and necessity of applying of electoral limitations has been modified: discriminative qualifications are mostly removed, a large part of protective and technical electoral limitations is also eliminated, another part is strictly constrained by precise conditions for using, which significantly expand electorate and contribute to more comprehensive implementation of citizens electoral rights in comparison with past periods. Researchers of the electoral process emphasize the reasonableness of such electoral qualifications as age, citizenship, residency and capacity requirements concerning active electoral rights. At the same time more ridged application of electoral limitations is acceptable with regard to passive electoral rights. In this context service, morality, literacy etc. qualifications must be mentioned.

Key words: electoral qualifications, voter eligibility, electoral limitations, elections, democracy, suffrage, electorate legislation.

ВИБОРЧІ ЦЕНЗИ ЯК АТРИБУТ ДЕМОКРАТИЧНИХ ВИБОРІВ

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Проаналізовано суть виборчих цензів як однієї із складових загального виборчого права. Автори взяли за основу типологію виборчих цензів, яка передбачає їхній поділ на три основні групи: технічні, охоронні та дискримінаційні. Здійснено детальний аналіз виборчих цензів, які входять до кожної з трьох груп.

Автори, аналізуючи виборчі цензи, розглядають обмеження виборчих прав громадян крізь призму проблеми їхньої трансформації у контексті демократизації суспільно-політичного ладу країн світу. Щодо активного виборчого права автори доводять доцільність застосування таких виборчих цензів, як віковий, громадянства, осіlostі та діездатності.

Водночас щодо пасивного виборчого права допустимим, на думку дослідників, є більш жорстке застосування виборчих обмежень, зокрема, службового, морального цензів, цензу освіченості та ін.

Ключові слова: виборчий ценз, вибори, демократія, виборче право, виборче законодавство.

Electoral qualifications perform the role of an important structural element in the electoral system. In the circumstances of the democratization of the electoral process, electoral constraints may be regarded as destructive factors of the institute of human rights and freedoms. The importance of understanding the essence, features and conditions of the use of electoral limitations as a regulator of the principle of universal suffrage is of particular relevance to the present.

Ukraine needs an adequate understanding of the role and significance of electoral qualifications. Currently Ukraine lacks such an understanding and is going through significant electoral reforms. In particular, the excessive expansion of the electorate and candidates does not always have a positive effect on election results, since fateful decisions for the state may find themselves in the hands of an incompetent majority. Instead, applying ungrounded electoral limitations violates democratic election principles and turns them into exclusive activities of privileged groups that do not allow real majority interests to be represented. The regulation of the universal suffrage principle with the help of electoral qualifications must be found a rational expression in the electoral legislation of Ukraine.

Research on the issue of electoral limitations is most thoroughly represented by Buchyn's works. He analyzed the legal aspects of foreign and domestic experience of applying electoral constraints. Among other national scientists, we should recognize Derevianko (explored age limitation of the electoral participants), Kliuchkovskyi (highlighted the problem of usage of electoral qualifications at local elections); Kovalchuk (conducted a legal analysis of election qualifications in international regulations). A historical aspect of the analysis of electoral qualifications is found in Martseliak's researches. Russian scientists Aranovskiy and Lysenko made a significant contribution to the study of electoral legislation. Despite considerable attention to the study of electoral qualifications, we should emphasize that in the Ukrainian political science the problem of the correlation of democratic principle of universal suffrage and electoral limitations is not presented by complex studies, and therefore requires further study.

The purpose of the study is to carry out a comprehensive political analysis of election qualifications as an institution of democratic elections.

One of the conditions for democratic elections is to involve the maximum number of citizens in the election process. However, civil legal capacity does not automatically imply the right to vote because a potential voter must meet many criteria. Under the electoral qualification the authors understand the whole set of conditions officially enshrined by the legislation of the country that limit the electoral rights of citizens. It is worth noting that electoral qualifications are generally applied somewhat differently in relation to active and passive electoral rights.

In the opinion of the German state-scientist Meier, "...election restrictions always have a degree of arbitrariness, since they strictly define the necessary qualification border, and

those who are close to this limit, but cannot cross it, feel themselves offended..." [Майер, 2005]. Consequently, it is extremely difficult to establish a threshold of qualifications that would, on the one hand, avoid the shortcomings of the general vote and, on the other, ensure preservation of the suffrage for the majority of citizenry [Майер, 2006].

An important component of the study of electoral qualifications is their classification. In this context, Russian scientist Aranovskiy distinguishes three groups of electoral limitations, namely: technical, protective and discriminative. Let us dwell on a more detailed description of each of them [Арановский, 1998].

I. Technical qualifications include restrictions, the purpose of which is to streamline the procedure and the outcome of the election. For the most part, these qualifications are not absolute and, in theory, each citizen may be exempted from them [Арановский, 1998].

Technical qualifications include:

- Citizenship limitation. Citizenship, which involves a legal relationship between a person and a state, has historically been the main requirement for participation in the electoral process. Citizenship qualification may require being a citizen of a particular state at least the statutory period or contain the very statement of the fact of current citizenship. In some cases, individual countries allow foreigners to take part in elections (mostly on the basis of agreements between states on the mutual granting of electoral rights to their citizens). Here it is worth mentioning the possibility for citizens of the Republic of Ireland and citizens of the member states of the British Commonwealth of Nations to be elected to the House of Commons in the United Kingdom [Марцеляк, 2015; Правовая, 2012].

- Capacity limitation. Since voting occurs individually, it involves the ability of a citizen to independently form and express his/her opinion in the elections. Currently, most legal systems of the world take into account the possibility of recognizing a citizen incapacitated because of mental illness, dementia or other similar causes. However, the honesty and democratic nature of the electoral process determines the need for a decision on the person's inability to be adjudicated by the court or other body with sufficient jurisdiction and the possibility of cancelling such conclusion in the event of his/her recovery. Often deprivation of capacity in non-democratic regimes acquires a political colouring and has nothing to do with problems with physical or mental health [Арановский, 1998].

- Age limitation. Providing citizens with active and passive electoral rights is accompanied by the achievement of a certain age. Until recently, in many countries, the age limit of active electoral right was set at the level of 21–25 years. In particular, in the United States during the Vietnam War, young people called for military service did not have the right to participate in the political life of the country: "Too young for the elections, just in time for the war" [Мишин, 2010: 297].

However, the emancipation of young people, world trends in reducing the age of capacity, and the political struggle of citizens led to a decrease of age restrictions. The use of the age qualification is due to the fact that the voter can make an adequate choice only if he/she has some kind of life experience, has established political convictions and is already a personality. The level of age qualification depends on the political structure of the country, the activities of parties interested in expanding electorate or, conversely and the influence of youth movements [Бостан, 2005: 264–265; Дерев'янко, 2008].

As of now, the age limitation of most countries is 18 years and achieved with adulthood. Nevertheless, some foreign constitutions cannot clearly establish the age of 18, using the definition of “citizens of age” (Italy, France, Hungary, Japan) or “adult citizen/person” (Australia) instead. According to the data of the Inter-Parliamentary Union in 1992, in 109 countries of the 186 respondents, 18-years-olds were given active electoral rights [Страшун, 2000: 328–329]. That is, we can monitor the tendency of active involvement of young people in the electoral process.

Considering the passive electoral right, there is typical phenomenon of higher age criteria for the candidates for the effective realization of state affairs. For the most part, citizens who have reached the age of 21 may be candidates for the position of member of a national representative body (MP). Moreover, in the presence of a bicameral parliament, the age requirement is higher for representatives of the upper chamber, preferably in the range of 30–40 years, while the 23–25-year-old age may be sufficient to obtain the mandate of the lower house of parliament [Ковалчук, 2013].

According to the Inter-Parliamentary Union in 1993, only one country of 133 has set the age limitation of passive suffrage within 17 years; most countries (52) grant access to “the right of candidates” from the age of 21, in 39 countries – from 25 years, another 4 – from 30 years, and two countries (Iran from 26 to 75 years old and Equatorial Guinea – from 45 to 60) have a “fork” of age qualifications for candidates [Маклаков, 2001: 66]. However, it should be noted that, in the context of the global trend of “aging of nations”, the establishment of an upper threshold for age qualification may cause a wave of indignation by critics of ageism, on the basis that this restriction discriminates the elderly, making it impossible for them to directly influence on the political life of the country.

• Residency limitation. This qualification means that person who has a stable connection with the territory where the elections are held is provided with the voting right. A permanent place of residence on the territory of the respective constituency during a specified time, the presence of a real estate or a place of employment and business activity allow a citizen to realize his/her right to vote. Moreover, the residency limitation provides organizers of the elections with the time and opportunity to fix a circle of people who are empowered to give their voice, warns about the completion of voters` registration and arranges their registration. Particularly important role residency limitation plays in countries with a large number of emigrants. Negative aspects of this qualification are felt for seasonal workers, as well as for those who often change their place of residence [Бостан, 2005: 263–264].

A more strict character has residence qualification for candidates. The application of the residence qualification is

justified by the fact that ignoring the interests of the region or the composition of political parties and candidates negatively affects the results of elections and reduces their qualitative characteristics [Бучин, 2009].

- Education (literacy) limitation. Only those people who have a certain minimum of education (mostly able to read and write) are allowed to vote. The literacy limitation was distributed in the XIX–XX centuries, and its application was argued that illiteracy allows manipulating voters and abusing the office authority, what ultimately undermines the foundations of democracy. A variety of literacy qualifications is the language qualification that is often used for passive electoral law, for example, fluency in the state language for candidates for elected positions [Мишин, 2010: 295].

According to national scientists, O. Martseliak and S. Martseliak, in conditions of compulsory and free higher education literacy standards are an undemocratic phenomenon that only harms and restricts electoral rights of citizens; therefore, it is advisable to mitigate or even cancel this election qualification [Марцеляк, 2015]. Certain researchers of the electoral process do not agree with this position, in particular, Aranovskiy, who believes that it is inappropriate to attribute literacy to discriminative qualifications, since the level of education and the ability to receive and process information directly determine the voter's ability to make a conscious, rational choice [Арановский, 1998].

In our opinion, it is entirely justified and fair to apply the literacy qualification for “the rights of candidates”. Participation in the political life of the country, the adoption of socially important decisions and the representation of the electorate requires a high level of intellectual ability and education.

II. The application of protective qualifications restricts participation in elections of those individuals whose influence on politics may be dangerous for the state system, is contrary to the political regime, but the use of this type of qualifications does not involve the violation of justice [Бучин, 2009].

Protective qualifications include following:

- Morality qualification – involves the deprivation of the electoral rights of immoral lobbyists (keeping of brothels (Luxembourg) [Лысенко, 2015], vagrancy (Mexico), drug and alcohol abuse (Mexico) [Ковалчук, 2013] deprivation of parental rights (The Netherlands), entrance into service especially military of foreign state (Norway) [Лысенко, 2015], etc.), their behavior does not correspond to a well-established notion of morality in a particular society. The complexity of the use of such qualifications lies in the fact that moral requirements can be enshrined in the law or remains unwritten code of conduct [Бучин, 2016].

In many states, morality limitation includes the removal of persons held in places of deprivation of liberty by a court order (the post-Soviet states (Belarus, Georgia, Kazakhstan, Russia, Tajikistan), the United Kingdom, Malta, etc.) or held in custody as a preventive measure from the electoral process. The constitutions of foreign countries can specify the types of crimes and the terms of imprisonment that make it impossible to express the voting right [Марцеляк, 2015].

- Service qualification. Certain categories of civil servants (government officials, bureaucrats) do not have the right to run for election to representative bodies of power. The use of service qualifications is because of the need to protect

the constitutional mechanism of separation of powers. The qualification may also apply to the active suffrage of certain categories of civil servants, if their voting for certain reasons may hinder the conduct of elections, cause the election results to be biased, or undermine the democratic nature of the election process. So, in England, lords are deprived of the right to vote, because they have their own chamber in parliament [Марцеляк, 2015].

- Army qualification – a kind of service qualification that restricts the electoral rights of military personnel. The active participation of military contingent in political activity stimulates increased interest in politics, whereas the army must perform its functions as an extra-party, depoliticized structure. Excessive military influence on elections can lead to military rebellion, and hierarchical subordination of the army limits servicemen of freedom to vote [Ковальчук, 2013].

- Bankruptcy limitation. The transformation of a person into a bankrupt or a debtor, an inability to pay a debt, shows his/her unreliability, which may adversely affect the one's own choice and, consequently, general well-being. Therefore, the approval of the bankruptcy limitation for citizens through their personal irresponsibility, confirmed by the court, seems to us to be justified and non-discriminatory in nature. The application of this qualification is enshrined in the constitutions of such countries as Italy, Turkey, France etc. [Бучин, 2012]

- Multiplicity limitation, which consists in the fact that the implementation of passive electoral rights are limited by a law-defined number of times. Multiplicity or re-election limitation refers to those who have already held a representative mandate more than one or several terms in a row. Mostly such qualification affects the interests of the head of state. This phenomenon is observed in systems where the president has only representative or rather insignificant attributes of power (Italy, Germany), as well as in the presidential republics, where the president, as the head of the executive branch, is one of the key figures of state policy. In some cases, even the re-election of the president is forbidden (Mexico); in others, the possible number of successive mandates (terms) is limited to two (the Russian Federation), or a presidential office is only possible for one term and is banned for two consecutive terms (a number of Latin American countries). The possibility of repeated re-election in political regimes with dubious democracy serves as a routine phenomenon, turning the “presidency” into a lifelong power of the autocrat [Правовая, 2012].

In certain historical conditions of the development of society, courts may establish additional protective qualifications for certain categories of citizens. It is worth mentioning the deprivation of the electoral rights of persons who participated in the manipulation of electoral votes (Norway, Finland), systematically avoiding participation in elections (Australia, the Netherlands, and Turkey) [Лысенко, 2015: 525].

Moreover, some former communist countries do not give electoral rights to the ex-members of the Communist Party and its related individuals and organizations (in particular, Indonesia), as well as the countries of the former Socialist Group, restricting the passive suffrage of the members of the Communist Party of the Soviet Union, members of special services, ideologists using mechanisms of lustration [Арановский, 1998].

III. Discriminative qualifications give rise to endless deprivation of electoral rights, which can be applied, primarily,

to opposition or socially unprotected sections of the population who are incapable of defending their political interests. This type of qualifications is not related to such circumstances as capacity, age, and place of residence. The result of electoral discrimination is the prevention of persons of a certain nationality, race, sex, property or social status, etc., to participate in elections. Discriminative qualifications cannot be justified by the convenience for voters or electoral technology. It is a false claim that these qualifications are aimed at protecting and improving the electoral process [Бучин, 2016].

Discriminative qualifications include:

- Gender qualifications, which provide for the dissemination of electoral rights only to the male category of the population, while the role of women in the electoral process is simply ignored. Recognition of women's electoral rights at the legislative level took place at the turn of the nineteenth and twenty-first centuries (along with establishing excessive property, education or/and age qualifications). For the most part, women were only eligible to vote in local and regional elections. The existence of gender qualifications is considered natural in states where Islam is an official ideology (Jordan, Kuwait, etc.).

Despite the abolition (their availability is rather an exception to the rule) of the gender qualifications at the present stage, analyzing the role of women in the electoral process, we can state that even today, problems in implementing gender policy in the electoral field are available even in the most democratic states of the world. To overcome this type of problem, the gender quota system is used to regulate the representation of both sexes in party lists or lists of candidates for public office. This practice was first applied in Sweden in 1972 [Мяловицька, 2008].

In our opinion, it is expedient to supplement the mechanism of gender quotation with measures of political activity of women and their political professionalization for the effective women's activity in the political life of the country. It should be noted that women's emancipation should not ignore the rights of men, because the number expression of the quota of gender in parliament, let's say, 60 % of women to 40 % of men in the lists, in this case, discriminates men's rights, giving significant benefits to women. Therefore, some states are already actively introducing so-called biennial quotas in electoral legislation, in which the rights and opportunities of both sexes must be equal.

- Race (nationality) qualifications that impede the right of representatives of certain races (nationalities) to take part in elections (for example, in Myanmar there is a ban on ethnic rochings to participate in elections). Today, race qualifications are recognized as inhumane and antidemocratic which can have no place in the world in general and in the electoral law of any country, in particular. One example of the use of race qualifications was the regime of the apartheid in the Republic of South Africa, where there were two special chambers: the first – for Indian citizens and another for other ethnic groups, which in any case excluded the black population (now race qualifications in South Africa are prohibited) [Правовая, 2012]. Nationality qualifications are also reflected in the electoral law of foreign countries. In particular, in accordance with the Constitution of Turkmenistan, only a citizen of the Turkmen state can run for presidency (This is the case for very many countries); The Constitution of the Principality of Monaco fixes the provision on the need for membership to the

National Council member to be the Monegasque [Марцеляк, 2015].

- Religion qualifications recognize the existence of electoral rights only for persons who profess a specific religion. The geographical scope of the religious qualification covered the West European countries of the nineteenth century (for example, the granting of voting rights only to Christians in Germany, Anglicans in England, Catholics in Spain) and the countries of East and Asia in the twentieth century. Modern Islamic countries restrict the electoral right of non-Muslim citizens [Арановский, 1998].

- Labor qualifications, which mean a limitation of the electoral rights of the unproductive citizens. Thus, the Constitution of the RSFSR in 1918 restricted the right to elect and to be elected in relation to the "capitalists" (persons who used hired labor, private entrepreneurs, persons who lived on unworked incomes) and clergy (monks, clergymen). In accordance with the Law "On the Revolution" of November 22, 1973, in the Gambia, "exploiters", merchants, owners of vehicles and industrial objects, other persons who used hired labor, as well as scroungers were removed from the elections [Правовая, 2012].

It is important to take into account the psychological perception of restrictions that establish qualifications. In fact, only qualifications that are perceived by a large part of society as an unfair and unjustified restriction of the citizen rights can be considered as discriminative [Арановский, 1998].

Summing up, it should be noted that the problem of the application of electoral qualifications requires a balanced approach which, on the one hand, will not lead to excessive and unjustified narrowing of the electorate, and, on the other hand, will not neutralize the values of elections as a democratic institution without allowing for voting extremely incompetent or even dangerous for society. Ukrainian electoral legislation mostly meets international democratic standards regarding the application of electoral qualifications. At the same time employing the electoral limitations in Ukraine, we must take into consideration national specificity as well as the state of war. Therefore, the use of particular electoral qualifications should correlate with the security issues of our state. Given the lack of consistent electoral experience, the problem of the optimal use of electoral limitations remains relevant for Ukraine, which may be a promising direction for our future research.

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