

ПРОБЛЕМА БЕЗПЕКИ ВИБОРІВ 2014 Р. В УКРАЇНІ

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В статті розглядається проблема безпеки виборчого процесу на позачергових президентських та парламентських виборах 2014 р. в Україні. Аналізуються дії української влади як в сфері законотворчої діяльності, так і в площині електоральної практики для нейтралізації безпекових загроз під час позачергових виборів глави держави та виборів народних депутатів 2014 р.

Ключові слова: безпека виборів, вибори, виборчі права, демократія, демократичні принципи виборів.

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THE PROBLEM OF SECURITY OF THE ELECTIONS 2014 IN UKRAINE

The article dwells upon security issues of the electoral process during the early presidential and parliamentary elections 2014 in Ukraine. Activity of Ukrainian authorities concerning neutralization of security threats during the early elections of the President and People's Deputies in 2014 is analyzed both in the sphere of legislation and in the field of electoral practice.

Key words: election security, elections, electoral rights, democracy, democratic principles of elections.

Since 2013, Ukraine has been on the way towards drastic changes and transformations which differently influence its development. On the one hand, the Revolution of Dignity has led to positive changes in Ukrainian society: renewal and rotation of political elite; declaration of distinct course towards the integration with the EU and close collaboration with NATO; proclaiming the intention to transform the social and political system in the direction of democratization, protection of human rights and freedoms, civil society building; stating the necessity to form transparent market economic system, etc. On the other hand, the process of practical implementation of these intentions is not easy or unambiguous. It is constrained by the whole set of reasons of both external and internal nature, and can be qualitatively evaluated a bit later. Besides, the Revolution of Dignity and the desire of the Ukrainian society to live in a democratic European state were gained at a heavy cost: military actions in the east of Ukraine; numerous casualties as a result of the events on Maidan and armed confrontation in Donbas; loss of control upon the part of Ukrainian territory and direct threat to sovereignty and territorial integrity of the state; social, political and economic instability; decline in citizens' welfare, etc.

Under the conditions when crisis tendencies started to emerge, one of the main tasks for the state authorities is the security issue which concerns all the spheres of social life, social and political processes in the country. The sphere of electoral relations is not an exception. The problem of election security is important for several reasons. Firstly, the elections 2014 in Ukraine logically followed the events in the country directed towards renewal of the society and political elite. Secondly, since the elections were held under the conditions of undeclared war, election participants (particularly in the east and south of Ukraine) were faced with the whole set of security related threats. Thirdly, it becomes obvious that the problem of electoral process security will remain relevant for our country for a long time in the future.

It is worth mentioning that the problem of electoral process security in the context of new realities is almost uninvestigated at scientific level. Although legislators have implemented a range of measures aimed at eliminating security threats during the elections 2014 in Ukraine, these actions lack scientific substantiation. Thus, it is necessary to research election security in Ukraine as a prerequisite for practical implementation of this issue and exercising electoral rights of citizen.

The objective of the article is to investigate the problem of election security during the electoral practice 2014 in Ukraine.

The research of elections in Ukraine vividly shows that the parliamentary and presidential elections 2014 are quite similar by causes, nature of organizing and conducting, results, social and political

significance. It enables comprehensive analysing of these phenomena, shows obvious advantages of comparative research over their individual analysis.

Considering the electoral practice 2014 in Ukraine, there can be defined the following factors and features common for both the presidential and parliamentary elections:

1. The elections of People's Deputies to Verkhovna Rada of Ukraine and the elections of the President of Ukraine 2014 logically followed the Revolution of Dignity the main demand of which was the transformation of the political system of Ukraine and its democratization. The later was impossible without changing authoritative bodies. That is why the presidential and parliamentary elections were meant to perform a range of tasks:

- to ensure legitimacy of new Ukrainian authorities;
- to enable normalization of the state governing process and stabilize social, political and economic situation;
- to promote the preservation of the territorial integrity of Ukraine;
- to renovate political elite, ensure getting into the Parliament and the presidency of people who are on pro-Ukrainian positions;
- to enable creating an effective government and implement efficient reforms.

2. Since the Ukrainian society has declared a desire to live in a European democratic state, the presidential and parliamentary elections 2014 were like an indicator which, given the level of democracy of the election campaign, had to show the validity of intentions to reform social order from the side of both political elite and ordinary citizens. Thus, the elections 2014 were a sort of a test on maturity of the Ukrainian society and its authorities.

3. The elections were held at times of growing political conscience and culture of Ukrainian citizens, enhancing of their social and state position. In addition, decentralization among political elite could be observed. It made tangible impact on the electoral process and outcomes of citizens' expression of will. This fact manifested itself in almost full absence of influence on the elections by the notorious administrative resource, which was an attribute of all previous election campaigns in Ukraine.

4. Both the presidential and parliamentary elections 2014 were early ones. That is why they were held according to a specific procedure with more concise timing. This demanded prompt actions as of the authorities, the local administration and election commissions, so of the candidates, political forces and voters.

5. The elections 2014 were held in the environment of difficult social and political situation. The activity of the previous authorities has led to crisis phenomena in national economic system. In addition, the elections were held during aggressive military actions by the Russian Federation the result of which was the annexation of the Autonomous Republic of Crimea and armed confrontation in Donetsk and Luhansk oblasts. Under these conditions, the Ukrainian society faced certain challenges and risks, and the elections demanded a special approach to their organizing.

In the report on the parliamentary election 2014, OSCE has pointed out: "The elections took place in a challenging political, economic and security environment... While the electoral authorities made resolute efforts to organize elections throughout the country, they could not be held in substantial parts of the eastern regions (oblasts) of Donetsk and Luhansk and in Crimea" [10].

At the same time, we should stress some distinct features of security issues during the presidential and parliamentary elections 2014. This problem was more relevant for the presidential election than for the parliamentary ones. It can be explained by the fact that during the latter ones Ukrainian territories were more or less divided into those that were controlled by Ukrainian troops and those under the control of Russian terroristic groups (after Minsk agreements the situation in the Donbass region became relatively stable). Thus, the parliamentary election was held only on the territories controlled by Ukrainian authorities. It was possible to organize and conduct elections under conditions more or less safe for all the participants. During the presidential election, separatist movements were just activating, spheres of influence were not distinctly divided, the situation was rather dynamic. This caused numerous security problems concerning arrangement and conduct of the elections in Donbass.

Responding to the challenges faced by the authorities concerning organization and conduct of the presidential election in Donbass, the legislature attempted to eliminate threats to security by amending the current electoral law. These amendments, first and foremost, were directed to organize effective functioning of election commissions and ensure security of their members.

Complex security situation during the presidential election 2014 made it difficult to staff precinct election commissions, first of all, in Donetsk and Luhansk oblasts. It made Ukrainian People's Deputies amend the electoral law by reducing a minimal number of members of precinct commissions from 12 to 9 persons [5]. On the one hand, such a step allowed formation of precinct election commissions. However, on

the other hand, it significantly complicated organization of the elections and counting in big and medium constituencies.

The legislature allowed to increase the number of members of precinct election commissions to 18 members. This had to be done upon the recommendation of the chairman of a district election commission due to the need in ensuring proper preparation and organization of the elections, including on the election day, by precinct election commissions [4]. However, in our view, practical implementation of this norm is rather doubtful, taking into account, as we can see from the previous experience, the lack of candidates' personnel reserves.

However, perhaps the most important norm for ensuring normal functioning of election commissions was the one according to which "in exceptional case for assurance of proper organization of a district election commission, its location can be transferred by the Central Election Commission upon the recommendation of a respective Head of the Regional State Administration and situated outside the respective constituency" [3]. Considering numerous facts of threatening and pressure on members of district election commissions in Donbass by illegal armed forces, such a legal action would allow not only taking care of the safety of election commission members, but also holding the elections in as many constituencies as possible.

Because of impossibility to hold the elections on some territories, Ukrainian authorities faced the issue of electoral rights for the residents of these regions and also the problem of enabling participants of the anti-terrorist operation to vote. To do this, during both the presidential and parliamentary elections 2014, the procedure for will expression by this category of citizens was simplified through temporary transfer of voting address without changing the election address. Besides, during the presidential election 2014, it was allowed to enter the participants of the anti-terrorist operation in voter lists on the precincts of Donetsk and Luhansk oblasts on the election day. Military personnel were added in voting lists upon the recommendation of unit commanders, and ballot papers could be received by such voters upon presenting a passport, a certificate of employment or a military card [4].

It should be stressed that the legislature has taken care of the situation when elections could not be held within certain constituencies in order to prevent, in legal terms, the threat of election disruption: the possibility of declaring the final results of the presidential and parliamentary elections without taking into account polling stations and constituencies where there were no balloting was enshrined in law [1; 2]. At the same time, we have to understand that the problem of holding the elections on the whole territory of the country concerns the issue of legitimacy of elected authorities which under conditions of the Revolution of Dignity and its consequences was particularly important for functioning of the political system.

Due to security threats, in order to reduce the possibility of election falsification, the legislature ordered the Central Election Commission to discharge ballot papers when it was impossible to transfer them to lower election commissions. This was to be done through sending these ballot papers for destruction to the company which produced them [4].

Also, the legislature has taken care of security during transporting ballot papers to higher election commissions. It had to be accompanied by police officers. If necessary, on the request of the Central Election Commission, transportation of ballot papers had to be accompanied by employees of the Security Service of Ukraine [3].

In addition, the legislature further strengthened security measures during the presidential election and ordered police, not later than eight days before the elections, to provide day-and-night security for premises of district election commissions and, if necessary, on the request of the Central Election Commission, for premises of the State Voter Register [3]. These norms were particularly important for both safety of members of election commissions and ability to conduct the elections in as much of Ukraine as it was possible. Although the parliamentary election was held in the environment of slightly different military situation (relative "truce" after Minsk agreements), yet, in our view, it is appropriate to include similar rules into the current parliamentary electoral law. It becomes especially obvious in view of the fact that, regardless of the events in Donbass, the problem of security of the electoral process will remain relevant for a long time.

Despite attempts to apply legislative mechanisms for security threats elimination during the presidential and parliamentary elections, organization of the electoral process considering existing armed confrontation in the part of Donbass was either extremely difficult or impossible at all. This concerned, first and foremost, the activity of election commissions. Members of district and precinct election commissions were persecuted by armed groups. Security forces failed to ensure their safety properly. That is why the election commissions in Donbass often operated secretly, being afraid of physical violence from the terrorist groups. Members of commissions often refused to perform their duties. This caused instability of their work and frequent alteration of members of electoral bodies. Sometimes, these changes happened even on the day before the elections or on the very election day [7-12].

At the same time, having observed the elections, the international OSCE / ODIHR mission, positively characterized the activity of election commissions in Donetsk and Luhansk oblasts. "The determination of many election officials in these oblasts to overcome the serious challenges" was observed [11].

Armed confrontation in the east of Ukraine caused the range of other problems concerning organizing and conducting of the elections. In particular, Maintenance Bodies of the State Voter Register could not work efficiently. Consequently, not all commissions could get voter registers and made them available for public scrutiny. Election campaigning was barely held, and external advertising was nearly the only form of delivering the information about the candidates to the residents of Donbass. Also, in the area of combat operations, the question of freedom of speech and safety of journalists was acutely raised [6; 8; 10-12].

It should be mentioned that the very political environment affected the pre-election campaign predetermining its characteristic features and causing certain problems. Separately we have to emphasize poor content of both the presidential and parliamentary campaigning. Political forces tried to speculate with the problems of war and peace, security and reformation of the state. "Main political and security problems faced by the country were reflected in campaign messages of the candidates. Their programs promised safety, stability and unity of the state, decentralization, constitutional reform, language policy, reformation of armed forces, fight against corruption and oligarchy, relations with the European Union, NATO and the Russian Federation" [11].

During the presidential election 2014 in Donbass, numerous violations were observed on the election day. Committee of Voters of Ukraine noticed, "...voting in the majority of precincts in Donetsk and Luhansk oblasts was disrupted, and the very elections in these regions were accompanied with the attacks by armed separatist groups, intimidation of voters and commission members, detention of hostages, elimination of election documents" [12].

It is also worth noting that quite low number of residents of Donetsk and Luhansk oblasts and The Autonomous Republic of Crimea availed themselves of the opportunity to transfer the voting address. Reasons for this can be the following: insufficient people's awareness about the possibility of the simplified procedure; different approach to interpretation of the grounds for granting the right to vote according to the simplified procedure in different bodies of the State Voter Register; complexity of the procedure of transferring voting address which required from citizens two out-of-region trips (for the registration and balloting) that was quite dangerous during hostility [9-12].

For the future, taking into consideration the above, citizens should be more informed about the mentioned procedure. It is advisable to simplify the procedure of transferring voting address without changing the election one and make it more accessible for citizens. This is particularly relevant for the presidential election which is held in a single nationwide constituency.

Analyzing the problem of electoral process security (a new one for Ukraine) two points should be emphasized. Firstly, it becomes obvious that the election security issue will be relevant for our country in the future. Taking into account geopolitical situation, even in the case of rapid conflict resolution in the Eastern Ukraine (which, in our opinion, is unlikely to happen), election security will be on the agenda of Ukrainian authorities because during elections there will be high probability of diversionary and terrorist acts aimed at destabilizing of the situation in the country.

Secondly, we want to stress the situation which seems paradoxical at first sight: in our view, impossibility to hold the elections on the whole territory of Ukraine has played to some extent a positive role for our country (more during the presidential election and less during the parliamentary ones). What concerns the elections of the President, if the elections had been held in all regions of Ukraine, a run-off second ballot could have been necessary since P. Poroshenko was not supported significantly in Donbass and The Autonomous Republic of Crimea. Thus, the threshold of 50% of votes around Ukraine might not have been reached. In such a case, our country might have been in the state of uncertainty for three more weeks, and that, consequently, would have worked towards destabilization of the situation by the Russian Federation. Talking about the parliamentary election, impossibility to hold the elections in certain constituencies of the eastern and southern Ukrainian regions prevented anti-Ukrainian political forces from winning the office or reduced in number their representation in the Parliament. However, we understand that such a positive role is very arbitrary because it is based on leveling legitimate voting rights of a significant number of Ukrainian voters.

In conclusion, it should be pointed out that modern Ukrainian society faced a new problem of the electoral process – its security. During the presidential election 2014, due to prompt alterations in the electoral law, threats to organizing and conducting elections were partially eliminated. Obviously, without stabilization and further conflict resolution in the east of Ukraine, we cannot speak about the possibility to ensure election security completely. However, the importance of legislative mechanisms for elimination of threats to security should not be underestimated in any way. That is why, apparently, the law mechanisms for election security, which are available in the current presidential electoral law, have to be transferred into the

current parliamentary electoral law with its further improvement on the basis of accumulation of already acquired practical experience. This will lay down prospects for our further research in the sphere of security of electoral relations.

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