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# EUROPEAN EXPERIENCE IN HEARING AND RESOLVING ELECTORAL DISPUTES IN ADMINISTRATIVE JUSTICE

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**The research is devoted to the study of the European experience of hearing and resolving electoral disputes in the administrative justice system. The availability of a national system of effective consideration of disputes concerning legal relations related to the election or referendum process is one of the basic guarantees of free and fair elections. Ukraine is a state that is integrating into the European legal space, thus the European system of standards is of key importance. It is pointed out that the electoral law of most European countries provides for two ways of hearing electoral disputes: administrative and judicial. The administrative method of electoral dispute resolution provides for the possibility of its consideration by various bodies, depending on the elections concerning which dispute arises (parliamentary, provincial, municipal). The judicial procedure for consideration of electoral disputes in foreign countries also has a number of peculiarities. The author describes the experience of such countries as Sweden, Norway, Denmark, Finland, Germany, and France. The advantages and disadvantages of administrative and judicial methods of electoral dispute resolution in European countries are analyzed. It is pointed out that despite the positions according to which preference is given to election commissions consisting of highly qualified specialists, the current state of affairs in Ukraine does not allow to remove election disputes from the jurisdiction of administrative courts. This requires that election commissions be composed of independent, impartial, professional members, and the practice of conducting elections in Ukraine shows quite opposite situation. Nevertheless, in general, the procedural legislation of Ukraine regulating the procedure and terms for appealing electoral violations and consideration of cases of this category by administrative courts in most aspects complies with established European standards.**

**Key words: administrative justice, European experience, electoral disputes, electoral rights, electoral process, administrative procedure for a case hearing, judicial procedure for a case hearing.**

**Formulation of the problem**. The availability of a national system of effective dispute resolution regarding legal relations concerning election or referendum process is one of the basic guarantees of free

and fair elections. The resolution of these disputes is a key element of effective and functional "electoral governance" to ensure confidence in electoral processes.

The problems of appealing against violations and resolving election-related disputes are relevant primarily due to the nature of the rights, freedoms and interests that are the direct object of protection. European Court of Human Rights in its judgment in the Case of Namat Aliyev v. Azerbaijan emphasizes the importance of these aspects. Thus, the European Court of Human Rights proclaimed that the existence of national mechanisms for the effective consideration of such cases is one of the most important guarantees of free and fair elections. This ensures "the effective realization of the right to vote and to be elected, maintains general confidence in the proper organization and conduct of the electoral process by the state, and forms an important mechanism by which the state achieves the fulfillment of its positive obligations under Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms with regard to the conduct of democratic elections" [1].

**Analysis of the problem research.** Such researchers as O. Hnativ, O. Husar, V. Vdovichen, O. Ilnytskyi, S. Kalchenko, O. Sovhyrya, O. Kotsiuruba, V. Nesterovych, M. Smokovych, K. Sioch, N. Khliborob, V. Yarmaki have addressed the issues of protection of citizens' electoral rights in administrative proceedings.

The **purpose of the article** is to study the judicial mechanism for protection of citizens' electoral rights in European countries and to analyze the ways of its improvement in Ukraine.

**Presentation of the main material.** Awareness of the need for effective resolving of disputes arising in the area related to the election or referendum process determines the solution of such a problem actually due to the activity of administrative courts under the conditions of an increasing workload on them. The constant updating of administrative procedural legislation, in particular, the adoption of the Law of Ukraine "On the Judiciary and the Status of Judges" in a new version (2016), the Law of Ukraine "On Amendments to the Commercial Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine and Other Legislative Acts" (2017), etc., has determined the need and relevance of a comprehensive review of the institution of disputes in the field related to the election or referendum process, which is resolved in the administrative court. In this aspect, the experience of foreign countries in resolving electoral disputes is worth examining.

The electoral law of most European countries provides for two ways to resolve electoral disputes: administrative and judicial. The legislation of the countries of Northern Europe give preference mainly to the administrative method. The judicial procedure is not excluded, but it is used for hearing certain types of electoral disputes (for example, in Iceland – disputes related to complaints about violations of the legislation on parliamentary elections).

It should be noted that special courts for electoral disputes, which exist in some foreign countries (e.g., Brazil, Argentina), have not been established in the countries of Northern Europe. Just in one of the five Nordic countries – Finland – such disputes can be considered in administrative courts, which are an independent part of the judicial system of this country.

The administrative method of electoral dispute resolution provides for the possibility of their consideration by different bodies, depending on the elections concerning the dispute arisen (parliamentary, provincial, municipal). Thus, when it comes to elections to the supreme representative bodies of the mentioned countries or presidential elections (in the case of Finland and Iceland), the highest election dispute resolution bodies are represented in Finland by the Supreme Administrative Court, in Sweden, Norway, Denmark and Iceland – by the parliaments themselves or special committees (commissions) to review election results (in Sweden – the Riksdag Committee on Election Review, in Norway – the Committee on Credentials of Deputies, in Denmark – the Folketing Commission on Elections, in Iceland – Althing).

It is noteworthy that in Norway, Denmark and Iceland, the so-called "ministerial filter" is used in this regard, which means that the complaint is first sent to the relevant ministry (in Norway – to the

Ministry of Municipal and Regional Development, in Denmark – to the Ministry of Internal Affairs and Social Affairs, in Iceland – to the Ministry of Justice), and only then it is submitted to the parliament for final consideration and resolution.

In Norway, as a prerequisite for the transfer of a complaint to the Storting (parliament), the National Election Commission of the country must first express its opinion on the statements sent to the chamber [2, p. 63].

In countries such as Estonia and Poland, the Supreme Court makes a decision in an election case after another independent body has made a decision. In Hungary, there is a partially two-instance judicial review (the Supreme Court and, on some issues, the Constitutional Court). Many European constitutions assign this task to constitutional jurisdiction. Such countries include Austria, Germany, Portugal and Spain (for violations of fundamental rights if the available protective measures in administrative courts have been exhausted) [3, p. 150].

Let’s take a closer look at the peculiarities of electoral dispute resolution in some European countries.

In Sweden, the highest body that considers election disputes is the Riksdag (Swedish Parliament) Election Results Committee. It is the last instance for reviewing election complaints. The right to file complaints belongs to:

1) voters included in the electoral list;

2) political parties participating in the elections;

3) candidates for deputies.

The Swedish Election Act of 24.11.2005 regulates the appeal procedure. The body whose actions are appealed must inform the Riksdag Election Review Committee of its opinion on the complaint as soon as possible. All members of the Riksdag Election Results Review Committee must be present at the meeting of the Riksdag Election Results Review Committee at which the complaint is considered. If the complaint concerns the decision on the election results, it is considered by the same composition of the Committee that existed during the election. The bodies and persons involved in organizing and conducting the elections, at the request of the Riksdag Election Results Review Committee, provide it with any data and information. If the complaint raises the issue of sworn testimony of witnesses, the witness's testimony shall be given in a court hearing of the district court upon the decision of the Election Results Review Committee. The Election Results Verification Committee may cancel the election results and decide to hold repeat elections in a separate constituency if: 1) it is proved that there were violations of the current legislation during the preparation and conduct of the election; 2) it is found that there were either obstruction of voting or distortion of election results, or other unacceptable actions were taken during the election. Re-elections are held only if there are grounds to believe that the identified violations affected the election results. The Election Results Review Committee may oblige the relevant electoral body to conduct a recount or take other actions to eliminate the identified violations. The committee also verifies that the procedure for notification confirming the election of members of the Riksdag and the European Parliament has been followed correctly. After the elections to the Riksdag, the inspection must be completed by the day of the first meeting of the newly elected chamber. A report on the verification is sent to the Speaker of the House. In the case of Swedish MPs to the European Parliament, the vetting report is also sent to this body [4, p. 78].

In Norway, according to Article 13-1 (1) of the Election Act dated 28.06.2002, any voter has the right to file a complaint on issues related to the preparation and conduct of the relevant election in the electoral district in which the voter is included in the voter lists, as well as on issues related to the exercise of the voter's voting rights. Norwegian law provides for three types of complaints: 1) complaints related to the preparation and conduct of elections; 2) complaints about the exclusion of a citizen from the voter list; 3) complaints related to the nomination of candidate lists.

In the case of complaints filed in connection with parliamentary elections, they must be filed within seven days of the election date. Complaints against the actions of the provincial election commission

affecting the results of the vote counting in the respective constituency must be filed within seven days from the date of setting of voting results. Election results may be appealed only through administrative proceedings, and Norwegian courts are not competent to consider such disputes. Complaints filed in connection with parliamentary elections must be in writing and addressed to one of the following bodies:

– local election commission;

– provincial election commission;

– the governor of the province (in the case of elections in Oslo);

– The Ministry of Municipal and Regional Development;

– The Storting, which also acts as an appellate body for complaints regarding the exercise of citizens' voting rights in parliamentary elections.

The National Election Commission of Norway must express its opinion on the applications sent to the Storting. In the case of provincial elections, complaints must be filed with the provincial election commission, and in the case of local elections – with the relevant local election commission.

The final authority for filing electoral complaints regarding provincial and local elections belongs to the Norwegian Ministry of Municipal and Regional Development.

When considering complaints, the relevant authorities apply general principles and norms of administrative law, the main source of which is the Law on Administrative Cases of 10.02.1967. First, the complaint is considered by the local or provincial election commission, respectively. If the complaint is not satisfied, then it is transferred to either the National Election Commission of Norway (in the case of parliamentary elections) or the Ministry of Municipal and Regional Development of Norway (in the case of provincial or local elections). The electoral authorities whose decisions or actions are appealed may review them in the usual manner within the time limits stipulated in the Public Administration Act.

The Storting is the body that decides whether to invalidate the results of parliamentary elections and whether to hold re-elections. In this regard, the Storting has the right to review the decisions of the National Election Commission in cases of complaints related to parliamentary elections. The Storting makes its decisions based on recommendations from the temporary Committee for the Verification of the Credentials of Deputies. According to the results of verification of parliamentary elections validity and in case errors are detected, the Storting has the right to demand their elimination as soon as possible. In this regard, it may demand a recounting of votes and a new distribution of seats in the parliament. If the detected errors affect the election results but cannot be corrected, the Storting may declare the elections illegal and demand a second vote, either in one constituency or in the country as a whole.

A special role in the Storting in connection with the consideration of electoral complaints is given to the aforementioned temporary Committee for the Verification of Deputies Credentials. This Committee is formed at the last meeting of the Storting and consists of 18 members. It verifies the mandates of the elected members of parliament and their deputies in the new Storting and checks the legality of the elections. By the time the new Storting convenes for its first session, the Committee prepares a preliminary report on the results of all complaints related to the election of deputies. The day before the opening of the first session of the new parliament, the temporary Credentials Committee shall cease to function. Its report is submitted to the new Credentials Committee of the new Storting, whose members are elected immediately after the start of the parliament’s work on the basis of proportional representation of factions. The new Credentials Committee verifies the mandates of the elected deputies, reviews the report of the temporary committee, and if gross violations during the elections are found, may decide to hold re-elections. Only after hearing the report of the new Credentials Committee do the members of the newly elected Storting elect the chairman and secretary of the chamber [2, p. 63].

In Denmark, any voter has the right to appeal the results of parliamentary elections. The complaint is addressed to the Folketing (parliament) and sent to the Ministry of the Interior and Social Affairs. The deadline for filing a complaint should not exceed one week after the election day. The Folketing has a special 17-member Election Review Committee. This Committee verifies the election results, checks compliance with the rules on elections to the European Parliament, as well as the legality of the mandates of the Folketing and MEPs from Denmark [3, p. 151].

In Iceland according to the Act on Elections to Althing (Parliament) No. 24/2000 of 16.05.2000, a voter may file a complaint in the following cases: 1) if the voter believes that the elected candidate does not meet the requirements for holding a parliamentary mandate; 2) in case of violation of the procedure for nominating a list of candidates; 3) if the voter believes that the list of candidates nominated by a party receives votes in an illegal manner that leads to the annulment of the election results; 4) in case of violations of the provisions of the Althingi Election Act. The complaint must be submitted in writing in duplicate to the Ministry of Justice of Iceland no later than four weeks after the announcement of the election results, but before the newly elected Althing convenes for its first meeting. In this case, the Ministry of Justice must immediately send one copy of the complaint to the representatives of the party that submitted the list of candidates nominated by it, and the second copy to the Althing as soon as possible after its first meeting. Complaints about violations of the provisions of the Althing Election Law that do not involve decisions of local authorities, election commissions, or the Althing are filed with the relevant police department and are subject to criminal proceedings.

In case when the Althing receives a complaint that any member of the newly elected Althing does not meet the requirements for holding a deputy position or has obtained a mandate illegally, the Parliament conducts an independent investigation and makes a decision based on the results of the investigation. If the Althing finds that the elected deputy does not meet the requirements for holding a deputy position, it takes the decision that the election of the deputy is illegal. If, following the review of complaints, it becomes apparent that the violations committed affect the election results, the Althing may decide that the election of the deputy is illegal. If the Althing decides that the election of the entire party list in a particular constituency is illegal, re-elections must be held in that constituency. The date of the re-election is set by the Ministry of Justice. The re-election must be held as soon as possible, but in any case no later than one month after the Althing has decided to invalidate the election in that constituency and to hold a second vote in that constituency [7, p. 341].

In Finland, unlike in other countries, it is possible to appeal the results of voting in administrative courts. The system of administrative courts in Finland consists of the Supreme Administrative Court and nine provincial administrative courts. The procedure for challenging election results is regulated by the Election Act of 18.10.1998 and the Administrative Procedure Act of 1996. The results of parliamentary elections may be appealed to the respective provincial administrative court within 14 days of the official announcement of the election results. Complaints against violations of the rules on European Parliamentary elections are filed with the Helsinki Administrative Court. Election complaints are considered in court on a priority basis. A complaint may be filed: 1) on the issue of the contradiction of the election commissions decision to the law: by any person whose rights have been violated by the decision; by a nominated candidate for deputy; by a political party or electoral bloc that participated in the election; 2) on the issue of the election being held in violation of the law: by any voter. The complaint should be made in writing and should contain information about the decision being appealed, an indication of the part of the decision being appealed, and the grounds for the appeal. The complaint is considered on the basis of the principles of publicity and transparency. In accordance with § 103 of the Election Law 1998, if the provincial administrative court decides that the decision of the election commission is contrary to the law and this fact may affect the election results, such contested decision is either subject to change or new elections are held in the electoral district. If a district or municipal election commission has committed violations in the counting of votes and determination of voting results that affected the election result, such results are subject to correction.

The decision of the provincial administrative court can be appealed to the Supreme Administrative Court of Finland within 30 days [8, p. 25].

The protection of the right to vote is a fundamental principle of democracy in Germany. German system of voting rights protection is based on two main principles:

1. Constitutional courts, but not administrative courts, are primarily responsible for protecting the right to vote – the Federal Constitutional Court of Germany for elections to the German Bundestag (and the

European Parliament) and the respective constitutional courts of the Länder for elections to the Landtags (state parliaments). In general, administrative courts are only responsible for elections to municipal representative bodies, as municipal bodies do not act as parliaments.

2. The legal substantive defense is a deferred process, which means that a special appeal procedure (known as the "election validation process") is applied to retrospectively check whether the elections were conducted properly. The rationale for this approach is that the electoral process should not be hampered by countless individual court proceedings, and that Parliament itself should be involved in the verification of elections from the very first stage. Before and during the elections, legal protection is provided only in exceptional cases (e.g., constitutional complaint or institutional complaint/litigation challenging the electoral law; complaint about non-recognition by a political party/entity authorized to nominate candidates) [5, p. 94, 95].

In France, there is a distribution of powers: administrative courts of first instance consider electoral disputes regarding local elections (elections at the level of communes and departments), and their decisions are appealed to the Council of State. The Council of State directly considers cases on regional and European elections, and the Constitutional Council considers cases on presidential elections, elections to the legislature and the Senate [2, p. 151].

Summarizing, it should be noted that the Code of Good Practice in Electoral Matters adopted by the Venice Commission at its 52nd Plenary Session on October 18–19, 2002, provides for two ways to protect electoral rights: by courts or election commissions. At the same time, preference is given to election commissions, which are formed from highly qualified specialists, while courts have less experience in election-related issues. This position is not without merit, as the electoral process is a temporary, fleeting phenomenon and, accordingly, electoral disputes do not arise often, so sometimes the court's experience in handling such cases may be insufficient. However, the current state of affairs in Ukraine, in our opinion, does not allow for the removal of election disputes from the jurisdiction of administrative courts. In order to do it, election commissions must be formed of independent, impartial, professional members, and the practice of holding elections shows rather opposite situation.

**Conclusions.** Ukraine is a state that is integrating into the European legal space, so the European system of standards is of key importance. In general, the procedural legislation of Ukraine, which regulates the procedure and terms for appealing electoral violations and hearing cases of this category by administrative courts, in most aspects complies with the established European standards.

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## ЄВРОПЕЙСЬКИЙ ДОСВІД РОЗГЛЯДУ ТА ВИРІШЕННЯ ВИБОРЧИХ СПОРІВ В ПОРЯДКУ АДМІНІСТРАТИВНОЇ ЮСТИЦІЇ

**Досліджено європейський досвід розгляду та вирішення виборчих спорів у порядку адміністративної юстиції. Наявність національної системи ефективного розгляду спорів щодо правовідносин, пов’язаних із виборчим процесом чи процесом референдуму, є однією з основних гарантій вільних і справедливих виборів. Україна – держава, яка інтегрується у європейський правовий простір, тому європейська система стандартів має ключове значення. Вказується на те, що виборче право більшості європейських країн передбачає два способи розгляду виборчих спорів: адміністративний та судовий. Адміністративний спосіб розгляду виборчих спорів передбачає можливість їх розгляду різними органами, залежно від виборів, через які спір виникає (парламентськими, провінційними, муніципальними). Судовий порядок розгляду виборчих спорів у зарубіжних країнах теж має ряд особливостей. Описується досвід таких країн, як Швеція, Норвегія, Данія, Фінляндія, Німеччина, Франція. Аналізуються переваги та недоліки адміністративного та судового способу розгляду виборчих спорів у європейських країнах. Вказується, що, незважаючи на позиції, відповідно до яких перевага щодо розгляду виборчих спорів віддається виборчим комісіям, які формуються з висококваліфікованих фахівців, сучасний стан справ в Україні не дозволяє вивести з під юрисдикції адміністративних судів виборчі спори. Для цього потрібно, щоб виборчі комісії формувалися із незалежних, безсторонніх, професійних членів, а практика проведення виборів в Україні свідчить про абсолютно протилежну ситуацію. Проте, загалом, процесуальне законодавство України, яке регламентує порядок і строки оскарження виборчих порушень, розгляду справ такої категорії адміністративними судами, у більшості аспектів відповідає усталеним європейським стандартам.**

**Ключові слова: адміністративна юстиція, європейський досвід, виборчі спори, виборчі права, виборчий процес, адміністративний порядок розгляду справи, судовий порядок розгляду справи.**