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## Features of public electoral administration in situation of pandemic

### Особливості публічного адміністрування виборчого процесу в умовах пандемії

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#### Abstract

The aim of the article is to consider the issues of public administration of the election process in situation of pandemic, the peculiarities of the implementation of election legislation and the problems of elections in Ukraine and abroad with the introduction of quarantine restrictions. The subject of the study is the peculiarities of holding elections in situation of pandemic. Research methodology. The set of general scientific and special methods is used to achieve the objectives of the research: systemic, dialectical, systemic and structural, legal and dogmatic, comparative, predictive methods. Research results. It has been noted that in many countries the question of postponing the dates of elections and referendums, which had been set in advance, was raised because of the Covid-19 pandemic. Practical meaning. The analysis of the experience of foreign countries in postponing the voting dates of elections and referendums has shown that such measures had been taken because of the introduction of the state of emergency as the special legal regime for public authorities and administration throughout the State or in individual administrative-territorial

#### Анотація

Метою статті є розгляд питань публічного адміністрування виборчого процесу в умовах пандемії, особливостей реалізації виборчого законодавства та проблемам проведення виборів в Україні та у зарубіжних країнах при введенні карантинних обмежень. Предметом дослідження є особливості проведення виборів в умовах пандемії. Методологія дослідження. Для виконання завдань дослідження використовується комплекс загальнонаукових і спеціальних методів: системний, діалектичний, системно-структурний, право-догматичний, порівняльний, прогностичний методи. Результати дослідження. Відмічається, що у багатьох країнах після завчасного призначення дати проведення виборів та референдумів, ставало питання про перенесення відповідних дат через пандемію Covid-19. Практичне значення. Аналіз досвіду іноземних країн щодо перенесення дати голосування на виборах та референдумах свідчить, що такі заходи здійснювались у зв'язку з введенням надзвичайного стану як особливого

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units, which entailed substantial restriction of citizens' rights and freedoms in the area of electoral matters. Value / originality. The need for further research of alternative voting methods, such as direct visits to the polling station, such as remote voting, voting by mail, early voting, mobile voting, electronic voting, voting by proxy and others has been substantiated.

**Keywords:** election process, election, public administration, public management, state of emergency, emergency situation.

## Introduction

As a result of the Covid-19 pandemic, the public administration of many countries has faced a number of challenges due to the need to maintain a balance between adherence to international and national principles of democratic election procedures and the threat of dangerous health consequences. This makes it necessary to study the current problems of organization and conduction of elections in situation of pandemic. After all, elections in Ukraine are the key form of popular expression of will, as well as the way of direct exercise of power by the Ukrainian people. The electoral process itself depends on the effectiveness of the existing system of public administration in the State and timely response to threats to the implementation of universal, equal and direct suffrage.

As a result of the pandemic, Ukraine and other countries have faced the problem of the lack of special legal regime for elections. In this case, the leadership of the States is forced to ensure the electoral process in the face of epidemiological danger, but in this case there are a number of threats of a worsening of the epidemiological situation, as well as distortion of election results due to mines in the number of voter turnout. The experience of many countries shows that the postponement of elections is one of the possible solutions to this problem and can be used in the case of exceptional epidemiological conditions, but this approach is sufficient and therefore requires a detailed analysis of its feasibility.

After all, the possibility of deciding to postpone the election after the start of the election

правового режиму діяльності органів державної влади та управління на території усієї держави або окремих адміністративно-територіальних одиниць, що тягло за собою суттєве обмеження прав і свободи громадян у сфері виборчого процесу. Цінність / оригінальність. Визначено необхідність подальшого дослідження питання щодо впровадження альтернативних способів голосування, що виключають безпосереднє відвідування виборчої дільниці, таких як дистанційне, голосування поштою, дострокове голосування, мобільне, електронне голосування, голосування з доручення та інших.

**Ключові слова:** виборчий процес, вибори, публічне адміністрування, публічне управління, надзвичайний стан, надзвичайна ситуація.

campaign is quite ambiguous. In terms of the need to protect the population if a pandemic occurs after elections, or the epidemiological situation deteriorates significantly, the elections may be suspended. However, a set of problematic issues immediately arises regarding the legitimacy of such suspension, as well as the creation of the legal mechanism for resuming the previously suspended election process. Given that such procedures affect the exercise of basic constitutional rights and freedoms of citizens, all relevant procedures (e.g., the grounds for suspension and resumption, setting deadlines for resumption of the election process) should be regulated not only by law but also by the Constitution of Ukraine.

In general, the legislation may provide the grounds and modalities for the interruption of the electoral process and the postponement of the elections in the event of a significant epidemiological threat. In order to prevent the possibility of abuse of such measures by the authorities, the procedure for making such a decision should be as far as possible regulated at the legislative level. In turn, the grounds for postponing the election should be related to the emergency epidemiological situation, which poses a threat to life and health of a large part of the population and, in terms of legislation, has clearly defined qualitative and quantitative characteristics.

The purpose of the article is to study the features of public administration of the electoral process in situation of pandemics in terms of organization

and regulation of this process. The objectives of the article are to analyze the current legislation of Ukraine and study the experience of foreign countries in organizing the election process in a pandemic, as well as formulating proposals to improve the efficiency of public administration in this area.

### Methodology

The set of general scientific and special methods is used to perform the achieve the objectives of the research: systemic, dialectical, systemic and structural, legal and dogmatic, comparative, predictive methods.

Systematic method is used to implement theoretical and methodological generalization of scientific concepts, developments of domestic and foreign scientists on regulation of the electoral process. Dialectical method makes it possible to analyze the organizational and legal mechanism of State regulation of the electoral process, which is constantly changing and developing under the influence of various factors, including Covid-19 pandemic. System and structural method, as well as formalistic method contribute to the consideration of the components of the organizational and legal mechanism of State regulation of the electoral process. Legal and dogmatic method helps to analyze Ukrainian legal acts, which regulate the electoral process in our country, including in the state of emergency. Comparative method is useful when considering the experience of foreign countries on the postponement of voting in elections and referendums. Predictive method is applied for proposing **alternative voting methods, which could be used in situation of pandemic or other emergency situations.**

### Literature Review

Scientific research on the organizational and legal basis for the electoral process in Ukraine has been carried out by many scholars. Significant contribution to the development of the relevant direction was made by such researchers as: Kalchenko (2015), who studied the adaptation of administrative procedural legislation of Ukraine, which regulates the procedure for resolving cases of election disputes; Korniienko (2021), who considered European election standards and constitutional and legal regulation of local elections; Oliinyk (2017), who studied electoral relations as the object of administrative and legal regulation; Stavniiichuk (2001), who paid considerable attention to the problems of theory and practice

of application of the legislation on elections of people's deputies of Ukraine; Yavorskyi (2000), who highlighted political and legal aspect of the modern election process in Ukraine; Yarmolenko (2020), who investigated the legal regulation of election information support.

Besides, there is still a large amount of research on the issues of electoral legislation and the electoral process, but in the context of the Covid-19 pandemic, a number of issues of public administration of the electoral process need additional scientific solutions. To date, scholars have not sufficiently studied the issue of ensuring the electoral process in emergency situations; in particular, there are almost no works with practical recommendations for improving the system of public administration of the electoral process in situation of Covid-19 pandemic.

### Results and Discussion

Organizational and legal principles of ensuring the electoral process in situation of pandemic should be considered taking into account the characteristics of its stages and the composition of the actors. The electoral process can be considered as the set of legal relations in the area of organization and conduction of elections, these legal relations are conditioned by legal norms that regulate the relevant activities in this area. The election process, in fact, is a regulatory activity, which consists of individual stages, defined by the legislation in a certain sequence.

Scientific sources have identified the following stages using a rather formal approach: 1) the formation of the territorial basis for the elections; 2) establishment of administrative bodies for the direct organization of the electoral process; 3) compilation of election registers; 4) registration of election participants; 5) monitoring compliance with election campaigning standards; 6) organization of voting; 7) conducting calculations and summarizing (Kliuchkovskiy, 2018, p. 586).

The legislation defines the following stages of the election process in the election of people's deputies: 1) nomination and registration of candidates for deputies; 2) establishment of district and precinct election commissions; 3) conducting election campaigning; 4) formation of special polling stations that exist on a temporary basis; 5) establishment, verification and updating of electoral rolls; 6) voting; 7) counting of votes, establishing the results of voting and the results of elections of

deputies and their official promulgation (Law of Ukraine No. 396-IX, 2019). The election process of the elections of the President of Ukraine and local elections are legally structured in the same order, taking into account their separate identity.

There are also other views on the definition of the relevant stages; in the context of this study it is proposed to proceed from their following order:

- 1) elections appointment;
- 2) establishment of constituencies and polling stations;
- 3) establishment of election bodies;
- 4) nomination and registration of candidates;
- 5) conducting election campaigning;
- 6) establishment, verification and updating of electoral rolls;
- 7) conducting voting;
- 8) counting of votes and publication of voting results;
- 9) second round of elections including campaigning, voting and counting (optional stage);
- 10) establishing the results of elections and their promulgation.
- 11) termination of powers of polling stations.

Given the importance of all of these stages of the electoral process, this study will consider the specifics of the election, taking into account the impact of the pandemic on the most vulnerable stages.

Besides, the range of entities, for which pandemic poses an immediate threat and requires public administration to take additional measures in this direction, should also be taken into account.

Art. 22 of the Electoral Code of Ukraine enshrines the list of these entities: 1) the voter, who has the right to vote in the relevant elections; 2) the election commission authorized to prepare and hold relevant elections; 3) the party (party organization) that nominated candidates to the relevant elections; 4) the candidate registered to participate in the relevant elections in the manner prescribed by law; 5) the official observer from a candidate or party (party organization) – the subject of the relevant election process or from a public organization, registered in the manner prescribed by law.

However, it is advisable to support the view of Hryshchenko (2018) on this issue, according to whom the actors of the election process are: 1) voter; 2) the Central Election Commission, as well as another election commission formed in

accordance with the Law; 3) the party that nominated the candidate; 4) candidate registered for election in accordance with the procedure established by law; 5) State authorities and local governments; 6) official observer for the party that nominated candidates for election in the State district, from the candidate for deputy in the single-member constituency, from a public organization that is registered in accordance with the procedure established by this Law; 7) official observer from a foreign State and international organizations, registered by the Central Election Commission; 8) officially registered representatives of the mass media; 9) proxies of the candidate.

In case the first phase of the electoral process is initiated - election appointment, it is planned to determine the exact date of voting, which also establishes the start of the election campaign and its time limits. In fact, from the date of the election, the above-mentioned electoral actors begin to interact on the further realization of their rights and responsibilities.

Significant problem in holding elections in a pandemic may be the issue of postponing the voting date after the election process has already begun. The legislation of Ukraine provides for the termination of the electoral process of national elections and relevant local elections during the state of war or emergency in Ukraine or in certain parts of the country. After the cessation or abolition of the state law or a state of emergency, the relevant electoral process, which has been suspended as a result, starts over again. However, the legislation does not specify the possibility of terminating the election process in the situation of pandemic. However, in many countries, due to the Covid-19 pandemic, after an election date (presidential, parliamentary or local) has been set in advance, the issue of postponing the dates of elections or referendums in their entirety was raised, and if there is a second round in the electoral process – postponement of the date. Besides, in some countries, there was a need to impose severe restrictive measures, which effectively missed the opportunity to hold relevant elections and referendums on previously established dates.

If we consider the experience of foreign countries, we can cite as an example the local elections in 118 English local councils, the London Assembly and 7 British regional councils, as well as the mayoral election in London. The elections were due to be held in May 2020, but were postponed to May 2021 (BBC News, 2020a). Extraordinary local

elections in Latvia to the City Council of Riga were originally scheduled for April 25, 2020, but given the epidemiological situation in the country and the ban on mass events, as well as the need to reduce the risk of Covid-19, these elections were postponed to September 5, 2020 (Baltic News Network, 2020).

The presidential elections in Poland were postponed from May 10, 2020 to June 28, 2020 (BBC News, 2020b); the regional elections in Euskadia and Galicia (Spain), originally scheduled for 5 April 2020 (Lecumberri, 2020); local elections, which were planned for December 2020, were postponed (Postelnicu, 2020), the second round of local elections in France was postponed from March 21, 2020 (AFP/The Local, 2020); there were also postponements of referendums, in particular, the referendum on the reduction of parliamentary seats in Italy, scheduled for 29 May, was postponed (Reuters Staff, 2020).

At the same time, it should be noted that the election process in many countries took place within the timeframe established by law during the Covid-19 pandemic. Thus, in 2020, the following elections and referendums were held in foreign countries: local elections in Queensland, Australia (March 29, 2020); parliamentary run-off elections in 11 constituencies of Cameroon (March 22, 2020); municipal elections in the Dominican Republic (March 15, 2020); local elections in France (March 15, 2020); local elections in Bavaria, Germany (first round on March 16, 2020 and the second round on March 29, 2020); constitutional referendum in Guinea (March 22, 2020); Senate elections, Ireland (30-31 March 2020); legislative elections in Israel (March 2, 2020); general elections in Mali (March 29, 2020); local elections in Hanchesti, Moldova (March 15, 2020); local elections in Lucerne, Switzerland (March 29, 2020), Kuomintang chairman elections in Taiwan (March 7, 2020), local by-elections in Japan (April 2020); parliamentary elections in Kiribati (April 14, 2020); parliamentary elections in South Korea (April 15, 2020), etc. (Asplund 2021). During the election process in these countries, the public administration took special measures to protect the actors of the election process from the threat of infection.

The analysis of the experience of foreign countries in postponing the date of elections and referendums shows that such measures were taken in connection with the introduction of a state of emergency as a special legal regime for public authorities and administration throughout

the State or individual administrative-territorial units, which caused significant restriction of the rights and freedoms of citizens in the electoral process. A number of restrictions were introduced in some countries with the aggravation of the epidemiological situation, but without the introduction of a state of emergency, and by establishing emergency situation with the adoption of special regulations to combat the pandemic by taking a set of preventive anti-epidemiological measures.

For example, the state of emergency, which could lead to a significant delay in the presidential election, has not been declared in Poland, although emergency measures may be taken in a situation of special danger in accordance with the law. Therefore, these elections were postponed for a short time mainly due to technical problems (BBC News, 2020b).

The introduction of emergency situation instead of a state of emergency as a basis for postponing the voting date is considered more appropriate, as the state of emergency will significantly limit the possibility of holding elections and the rights of the subjects of the election process.

An important issue is the creation of legal grounds for postponing the voting date or conducting remote voting in the situation of pandemic. The Venice Commission notes that there is no rule in international law that makes it impossible to hold elections or referendums during the state of emergency. However, in accordance with the legislation of Ukraine and some other countries, the state of emergency may postpone or provide an opportunity to postpone the election process.

The legitimate aim of maintaining constitutional order may indeed justify postponing the voting date in exceptional situations where there is a need to postpone the election in order to ease tensions and give voters the opportunity to express their will in a safe and orderly manner. Therefore, the Venice Commission also notes that there are no specific legal provisions on postponing the election date (Council of Europe, 2020).

It should be borne in mind that holding regular elections is the important component of the democracy in the State. However, in the case of an emergency, States have to take the opportunity to postpone the voting date. Indeed, there may be reasons for postponing the voting day and interrupting the election process, but the

abuse of such measures can undermine the institutional certainty of any democratic State.

The examination of the experience of foreign countries in postponing the voting date allows to determine certain criteria, according to which decisions on such postponement were made. These criteria are primarily medical indicators and take into account the transmission of Covid-19, the number of hospitalized people, hospital occupancy, etc. On the basis of these indicators, the State should assess the possibility of deterioration of the epidemiological situation in the case of holding elections. At the same time, the extent to which the pandemic may affect voter turnout and turnout on polling day should be taken into account.

It should be noted that in countries where, in the context of a pandemic, voting took place in appropriate elections, voter turnout was approximately 20 per cent lower than in previous elections (e.g., Iran, France). For example, in Iran, during the first round of voting in the regular parliamentary elections, 42.57% of voters took part in the voting, which is almost 20% lower than during the previous parliamentary elections in 2016. During the first local elections in France on March 15, 2020, 44.46% of voters took part in the voting, which is almost 20% lower than during the previous local elections in 2014 (Lysenko, 2020).

In general, it is difficult to assess the consequences of the postponement of the elections and the impact of the pandemic on the political process, as it is not over yet and tends to spread rapidly. Currently, there are no studies on the impact of the electoral process on the spread of infectious diseases; there is a possibility of increasing the number of patients with Coronavirus after the election, so it is necessary to take additional measures against infectious diseases in their preparation.

In fact, the postponement of the election date (voting date) under pandemic in foreign countries is a new legal phenomenon that has a direct impact on the electoral process, guarantees of voting rights, determining the methods of voting, voter turnout, and results of the elections. At the same time, it is necessary to consider the mechanism of legal regulation of postponement of elections (voting dates), especially in emergency situations, and to develop appropriate amendments to the election legislation to ensure the guarantees of elections.

In addition to the issue of postponing the voting date, the issue of the expediency of introducing special voting methods during the expression of will is also important. In this case, it may be about creating conditions that will allow voters to express their will safely with the least risk to their health. Such specific methods include remote voting, namely postal voting, which is partially used in such countries as the USA, Poland, Germany, Switzerland, etc. It is also possible to consider remote voting through electronic systems as an alternative. The introduction of such mechanisms minimizes the risks for the most vulnerable groups and will allow voters to exercise their right to vote by alternative voting.

Voting by mail, which takes place regardless of the time and place of elections in some foreign countries, is considered the most convenient in situation of pandemic. However, it is associated with certain risks in terms of: voter identification, ballot transportation, secrecy of the ballot and counting of votes. Due to certain risks, online voting was not considered as an alternative to traditional voting in Singapore, as it could threaten the secrecy and security of the election process. So far, a small number of countries use electronic voting (e.g. Estonia), although some other countries have returned to traditional voting after using this method (for example, Norway). It is difficult for some countries to introduce new online voting systems during a pandemic due to the high security requirements of this method, while adhering to international human rights law.

However, in practice, different States have tried to use special voting methods, such as: early voting, multi-day voting, mobile voting by proxy, voting at special polling stations, electronic voting, voting outside the polling stations.

### **Conclusion**

Thus, the Covid-19 pandemic has created unprecedented challenges for the electoral process in many countries. The main problem is holding elections in accordance with the requirements of the national legislation and international election standards in situation of pandemic. The main task in this situation is to implement the principles of universal, free, equal and secret suffrage, despite measures to combat the pandemic and the introduction of alternative means of voting.

Further study is required on the introduction of alternative means of voting, which exclude direct

visits to the polling station, such as remote voting by post, early voting, mobile voting, electronic voting, etc.

Despite the difficulties of complying with all international electoral standards during pandemic, new legal mechanisms need to be developed to regulate the election rules to reduce the risk of infection and adhere to basic electoral principles to ensure that elections are safe and fair. Therefore, the issue of postponing the election date and interrupting the election process is of great practical importance, which requires additional legal regulation by electoral legislation.

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