

## Artículo de investigación

**The protection of suffrage through legal remedies**

Правові засоби захисту виборчих прав громадян

La protección del sufragio a través de recursos legales

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This article is devoted to the issue of the legal protection of citizens' electoral rights. The object of the study is the social relations that arise during the realization by citizens of their electoral rights. The subject of the study is the legal remedies for the protection of the citizens' electoral rights.

Moreover, the novelty of this article is that it first attempted to identify the problems of the electoral rights of Ukrainian citizens, and to indicate ways to overcome them. The purpose of the article is a systematic analysis of the electoral rights of citizens, the identification of problems of protection of data rights and the determination of proposals to improve the mechanism of protection of electoral rights of citizens. The key methods of scientific research are general scientific methods of analysis and synthesis, dialectical and logical methods. Specific methods to be used in the study will be: comparative, forensic, and formal legal.

In the conclusion the authors highlighted the most promising measures for the protection of citizens' electoral rights and established that there are two main forms of suffrage protection: judicial and extra-judicial.

**Keywords:** Voting rights, elections, protection of rights, legal remedies.

**Анотація**

Статтю присвячено дослідженню питання особливостей правового захисту виборчих прав громадян. Об'єктом дослідження є суспільні відносини, які виникають під час реалізації громадянами їх виборчих прав. Предметом дослідження є наявні правові засоби захисту виборчих прав громадян.

Новизна цієї статті полягає в тому, що вона визначає проблеми виборчих прав громадян України та вказує шляхи їх подолання. Метою статті є системний аналіз інституту виборчих прав громадян, висвітлення проблем захисту цих прав та надання пропозицій щодо вдосконалення механізму захисту виборчих права громадян. Основними методами наукового дослідження є загальнонаукові методи аналізу та синтезу, діалектичний та логічний. Спеціально-наукові методи, які будуть використовуватись у дослідженні є: порівняльно-юридичний та формально-правовий.

У висновку автори висвітлили найбільш перспективні заходи захисту виборчих прав громадян та встановили, що існує дві основні форми захисту виборчих прав: судовий та позасудовий з їх подальшим обґрунтуванням.

**Ключові слова:** виборчі права, вибори, захист прав, засоби захисту.

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## Resumen

Este artículo está dedicado al tema de la protección legal de los derechos electorales de los ciudadanos. El objeto del estudio son las relaciones sociales que surgen durante la realización por los ciudadanos de sus derechos electorales. El tema del estudio son los recursos legales para la protección de los derechos electorales de los ciudadanos. Además, la novedad de este artículo es que primero intentó identificar los problemas de los derechos electorales de los ciudadanos ucranianos e indicar formas de superarlos. El propósito del artículo es un análisis sistemático de los derechos electorales de los ciudadanos, la identificación de problemas de protección de los derechos de datos y la determinación de propuestas para mejorar el mecanismo de protección de los derechos electorales de los ciudadanos. Los métodos clave de la investigación científica son métodos científicos generales de análisis y síntesis, métodos dialécticos y lógicos. Los métodos específicos que se utilizarán en el estudio serán: legal comparativo, forense y formal. En la conclusión, los autores destacaron las medidas más prometedoras para la protección de los derechos electorales de los ciudadanos y establecieron que existen dos formas principales de protección del sufragio: judicial y extrajudicial.

**Palabras clave:** Derechos de voto, elecciones, protección de derechos, recursos legales.

## Introduction

In modern democratic society, elections are a way of forming public authorities - public authorities and local self-government bodies. The people are the sole source of power in Ukraine for the authority to administer state and public affairs to elected bodies and officials. Only the people of Ukraine have the right to determine those people who on their behalf will exercise their powers in the positions of President of Ukraine, Deputies of Ukraine, deputies of local councils, city, town, village heads. Against this background, suffrage is a fundamental right of citizens guaranteed by the Constitution of Ukraine.

The public relations involved in the provision of cultural services are very diverse and cover different aspects of cultural activity. Civil society – is a unique system of interaction between social individuals, social groups, layers and strata, which balances the vectors of its components (Kharytonov, Kharytonova, Tolmachevska, Tklich, & Fasii, 2019).

Also, the current legislation of Ukraine establishes a relatively high level of guarantees for the voting rights of Ukrainian citizens. The issue of protecting the suffrage of citizens is very important for every citizen of Ukraine (Zavorotchenko, 2015).

In addition, the novelty of this article is that it first attempted to identify the problems of the electoral rights of Ukrainian citizens, and to indicate ways to overcome them.

## Methodology

Dialectical, synergistic, anthropological, philosophical, formal-logical, systemic, historical, comparative-legal, formal-legal and other methods of research were used in the research process. On the basis of the dialectical method, the Institute of suffrage was considered as a social phenomenon that has undergone significant transformations during its historical development in the territory of Ukraine, as well as the tendencies of its legal protection.

## Analysis of recent research

Ukrainian and foreign scientists have devoted their research to various aspects of suffrage, as well as a detailed analysis of legislation in this area of legal relations, as S.A. Afanasyeva, V.V. Bukach, A.V. Vasin, A.M. Golovistkova, L.Yu. Grudcyna, I.V. Drobush, M.V. Zajceva, V.A. Konov, A.M. Kononov, A.Yu. Olijnyk, V.F. Pogorilko, V.O. Serogin, and others.

## Presentation of key research findings

According to the Constitution of Ukraine, the protection of electoral rights is the responsibility of the state, the state protection of human and citizen's rights and freedoms is guaranteed, everyone has the right to protect their rights in all ways, not prohibited by law, the state is obliged to compensate for damage caused by illegal acts (or inaction) public authorities or officials (Constitution of Ukraine, 2018).

The purpose of the article is a systematic analysis of the electoral rights of citizens, the identification of problems of protection of data

rights and the determination of proposals to improve the mechanism of protection of electoral rights of citizens.

First of all, it should be noted that the residence of a citizen on the territory of a polling station is a ground for inclusion in the voter list, established under the Law of Ukraine "On Freedom of Movement and Free Choice of Residence in Ukraine" of December 11, 2003 No. 1382-IV (On Freedom of Movement and Free Choice of Residence in Ukraine, 2018).

The protection of electoral rights can be seen as a compulsory mechanism for exercising the right of citizens of Ukraine to elect and be elected to state and local self-government bodies, which is provided by intergovernmental organizations, state authorities, municipal bodies, their officials by preventing electoral violations, realization or restoration of the infringed right.

Chechot points to the need to differentiate between forms of protection of violated rights and the means by which persons protect their rights or freedoms, and also the ways used by the jurisdictional body to protect the violated rights (Chechot, 1984).

The following types of responsibility for violation of electoral rights are distinguished in the science of constitutional law: administrative and criminal, experts also distinguish constitutional and legal responsibility (Kutafyn, 2001), and as regards legal methods of protecting electoral rights, they can be protected by the court and by the administrative body.

If we turn to the characteristic of the constitutional legal essence of protection, we can distinguish two aspects: firstly, the protection of citizens' rights is an activity that is mandatory for the state, and secondly, the protection of rights is a combination of actions carried out thanks to legislatively established actions and techniques (Fylyppova, 2010).

At present, the most urgent and most common practice is to remove obstacles to the exercise and restoration of passive suffrage, in particular - to refuse registration or to cancel the registration. In such a case, the higher electoral commissions or the court may protect the suffrage. The administrative form of protection through higher election commissions is the most expeditious.

Judicial protection is implemented in the form of international protection and with the help of the domestic judicial system.

Besides, the means of administrative protection of electoral rights include:

- Verification of the accuracy of information provided to candidates for registration;
- Termination of illegal campaigning activities;
- Prevention of production of counterfeit and illegal election campaign materials;
- Other measures that can be applied by police and prosecutors (Fylyna, 2009).

Election commissions use information and enforcement acts provided by state bodies as well as local self-government bodies to restore citizens' electoral rights, eliminate obstacles to their implementation, prevent violations, but do not have sufficient enforcement mechanisms to implement their own decisions (Zavorotchenko, 2016).

Concerning the criminal protection of the electoral rights of citizens, it should be noted that the prosecution of members of election commissions in practice is not a sufficiently effective means of combating irregularities during election campaigns.

The crime in the electoral process, despite its great social dangers and hyperactivity, is not included in the traditional scheme of the Special Part of Criminology. It is considered appropriate to classify this category of illegal acts as a separate, independent type of crime, which will facilitate a comprehensive, multidimensional and deep criminological investigation of this type of crime since the practice of social life in recent years has forced to recognize at the highest level of state power in Ukraine.

Depending on the nature and content of the criminological factors, all the causes and conditions that influence the commission of crimes against the suffrage of citizens can be grouped into the following blocks.

Socio-moral factors are driven by society's disillusionment with the ability of the authorities to change their lives for the better.

The factors of economic nature are due, first of all, to the decline in the standard of living of citizens, which is accompanied by unemployment, non-payment of wages,

deprivation of social benefits, forms the social basis for the determination of crimes related to meeting the natural needs of the population, and secondly, – ineffective system of financing elections and election campaigns, and consequently a small amount of money for election commission members at all levels.

The factors of a legal nature include instability of the electoral legislation, which causes certain legal conflicts, difficulties in the application of laws by the electoral process, as well as low legal education of voters, which, of course, leads to a considerable expansion of opportunities for committing crimes against the electoral rights of citizens also loyalty to legislation that provides for liability for violations of citizens' suffrage.

The organizational-managerial factors of the author include difficulties in forming the composition of election commissions; problems with the removal and adjustment of voting facilities; insufficient provision of electoral commissions and other subjects of the electoral process by technical means (Mozol, 2008).

The low level of application of criminal sanctions for falsification of election documents and the results of the voting, in our opinion, is explained by the following reasons:

- 1) The difficulty of establishing and proving these circumstances, especially signs, regarding the falsification of voting results (Orlov, 2006);
- 2) The difficulty of establishing the personal guilt of a member of the election commission, since, as a rule, these violations are carried out collectively and sometimes it is impossible to find out what actions of a particular member of the election commission have caused a violation of the electoral rights of citizens;
- 3) Political factors in the form of communication of officials responsible for attracting suspected members of election commissions with officials who initiate a "political order" for a certain number of voters in favor of a particular candidate, resulting in the identification of facts of committing crimes by certain members of the election commissions are not within the "sphere of interest" of the above-mentioned officials.

These factors can only be eliminated by strengthening public control over election commissions and police (Zavorotchenko, 2016).

Suffrage is one of the key constitutional rights of citizens of Ukraine due to the fact that it is the exercise of suffrage that makes it possible to directly express the power of the people. It is important to emphasize that the value of electoral rights consists not so much in their proclamation as in the fact that the current legislation guarantees their free implementation and protection in situations where the rights are violated.

The development of Ukrainian suffrage in modern conditions is dynamic, and the focus is on the normative regulation of the protection of citizens' suffrage, as a result of which all citizens participating in the election process have the opportunity to defend their interests most effectively.

At the same time, the analysis of law enforcement practice demonstrates gaps in the existing legislation, which governs the procedure for protecting the electoral rights of citizens.

In the period of preparation and conduct of elections, a huge number of violations of various kinds, abuse of powers, conflicts inevitably arise. Each such situation requires the application of effective protective measures prescribed by law. In jurisprudence, issues of protecting citizens' electoral rights and resolving disputes in the field of electoral law have been intensively developed since the mid-90s. XX century due to the fact that the process of establishment of democratic institutions of popular representation has begun in society, which necessitated the development of electoral legislation. However, many issues of domestic protection of the electoral rights of citizens remain to this day without due attention. The system of electoral rights of citizens, as well as the whole system of political rights, is characterized by a number of common features, but some features are inherent in the electoral rights:

1. Since the activities of state bodies as a result of the exercise of citizens' electoral rights can be substantially transformed in accordance with the interests of citizens, the very exercise of electoral rights has a strong impact on the state;
2. Unlike other political rights, the implementation of most voting rights is

impossible without the assistance of the state and the establishment of special institutions and procedures by it.

It is important to determine the ratio of the concepts of “protection” and “defense” of the rights and freedoms of citizens in the electoral system.

Protection is a system of interrelated measures implemented by both state bodies and public organizations, which are aimed at preventing violations of citizens' electoral rights, as well as eliminating the causes of their occurrence, which enables citizens to fully exercise their rights and freedoms.

Defense is a compulsory way to exercise a right that is used to restore violated rights. However, it must be taken into account that such a separation is very conditional, since the protective measures also fulfill the function of preventing offenses.

The system of suffrage implies an active and passive form of realization by citizens and political parties of their electoral rights.

It is proposed to understand the protection of electoral rights as a mechanism for restoring violated or removing obstacles to the implementation of subjective electoral rights, carried out on the initiative of holders of violated rights or bodies authorized by law using appropriate forms, procedures, methods and tools.

According to the authors, the procedure for protecting the electoral rights of citizens is understood as the procedure for subjects of the electoral process and law enforcement agencies to protect the electoral rights of citizens, regulated by procedural norms. The procedures for protecting the electoral rights of citizens, in accordance with the nature of the violated right and the subject of the dispute, are regulated by constitutional law if the protection of rights is carried out by election commissions, as well as constitutional and administrative procedural law, if the defense is carried out by judicial means. These procedures are jurisdictional, i.e., they are related to the settlement of disputes, they are dispositive, since they are initiated by the subjects of legal relations.

In each form of protection, a large number of various procedures can be distinguished, depending on the nature of both the law itself and its violation, the consequences of the violation that determine the types, as well as the

application of specific methods and means of protecting electoral rights. For example, in the framework of judicial protection, the procedure for protecting the right to be included in the voter list differs from the procedure for protecting the right to be registered as a candidate in terms of the consideration of the application, the entry into force of a court decision, etc.

At the same time, the procedure for protecting the electoral rights of citizens should ensure the implementation of the basic principles of the jurisdictional process, including the principle of objectivity, equality of arms, cost-effectiveness of the process, etc. In addition, the procedures for protecting electoral rights must ensure the implementation of the most important principles of the protection itself, which should attribute the principle of effectiveness and accessibility of protection.

Thus, the improvement of specific procedures for protecting the electoral rights of citizens should be based on the need to ensure the implementation of these principles.

The function of protecting the electoral rights of citizens on behalf of the state is carried out by election commissions and other law enforcement and, above all, judicial bodies. In this regard, the main domestic forms of protection of citizens' electoral rights are the extrajudicial and judicial forms. They are obliged to restore the violated rights, ensuring their implementation, while the shortcomings of one are compensated by the advantages of another form. Both of these forms are designed to protect specific voting rights, have their own specific methods and means of protection, and are carried out as part of a procedure regulated by law (Andreeva, Krasovskaya, & Stepanov, 2015).

Extra-judicial form of protection is carried out not only by election commissions, but also by other law enforcement agencies, including internal affairs bodies and the prosecutor's office. But the key role belongs to the election commissions, which are specialized bodies in the field of electoral law.

The protection provided by the courts can be distinguished on judicial protection, which is carried out through administrative legal proceedings, and judicial defense, which is implemented through constitutional legal proceedings (constitutional judicial protection). Both kinds of protection are important for the society.

## Conclusions

Taking into account the peculiarities of the election procedures and the specifics of the stages of the election process, the most promising preventive measures are the following:

- Raising the financial support of members of election commissions at all levels;
- Strengthening the control over the use of budget funds allocated for elections, as well as the financial activities of political parties and blocs;
- Further introduction and use in the electoral process of information technologies;
- Enhancing the promotion of fair, transparent, democratic elections by publishing popular science magazines, manuals, posters, holding various conferences, round tables, seminars, etc.;
- Development and creation of an effective system of continuous electoral education of citizens through the creation and implementation of various projects to inform voters;
- Involvement of the media as elements of basic and additional legal education and political education of voters to create television and radio programs of electoral direction, as well as to disseminate legal knowledge through specialized election periodicals.

There are two main forms of suffrage protection. They are judicial and extra-judicial.

Judicial protection is carried out through administrative legal proceedings. It can be provided through the constitutional procedure.

Extra-judicial form of protection is carried out not only by election commissions, but also by other law enforcement agencies, including internal affairs bodies and the prosecutor's office. But the key role belongs to the election commissions, which are specialized bodies in the field of electoral law.

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