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## PRINCIPLES OF ADMINISTRATIVE AND LEGAL REGULATION OF ELECTORAL RELATIONS IN UKRAINE

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### Summary

The article deals with the principles of administrative and legal regulation of electoral relations in Ukraine, characterized the concept and role of the principles of law in the mechanism of state regulation of social relations, the basic problem, the nature and characteristics of the principles of administrative and legal regulation in the sphere of electoral relations, proposed a list of such principles with their proposal classification.

**Key words:** principles, administrative and legal regulation, voting rights, elections, electoral attitudes.

### Аннотация

Статья посвящена исследованию принципов административно-правового регулирования избирательных отношений в Украине, дано понятие, освещена роль принципов права в механизме государственного регулирования общественных отношений, определены основные задачи, природа и особенности принципов административно-правового регулирования в области избирательных отношений, предложены критерии классификации таких принципов.

**Ключевые слова:** принципы, административно-правовое регулирование, избирательные права, выборы, избирательные отношения.

### Formulation of the problem.

Ukraine was proclaimed as a democratic legal country entered into obligations to create an electoral system equal to the requirements of international standards and democratic principles to the creation of the electoral system. Regulated electoral rights are the most democratic in the Constitution of Ukraine and the existing order of implementation is not able to guarantee observation. Taking into consideration the absence of a legal mechanism for rights of implementation, these rights can be more declarative than real. The principles of electoral relations are being substituted as the citizen's declared electoral rights are real in case of secure coercive power of the state, and can legally ensure not only voter rights and responsibilities but also own obligations to the defense of rights and civil liberties. The correlation of rights, responsibilities and obligations of the state, public organizations and other subjects of voting rights who takes part and prepares election in Ukraine has essential importance for understanding of the content, the dynamics and the logic of the voting system development.

Systematization of the elective law is specific and needs special scientific and specialized analyses from the standpoint of reality to adapt to Ukraine current circumstances. Voting in Ukraine for the period of

its independency indicated at many problems related to the legislative improvement of the juridical responsibility.

**Problem statement.** The question of the improvement of the elective legislation is actual and does not lose its applicability. Ukraine needs to solve problems concerned to the improvement of the elective legislation. Adoption of the general Election legal code and approaches to voting is one of the European commission references for the democracy by means of the law with intention to optimize elective process.

The most important approaches to draft new democratic elective matters in Ukraine are the principle of administrative and legislative regulation of elective rights. Essentiality, opportunity and promptness of study such principles attach conditions to the fact that the state is a legal entity of the elective matters. In a point of fact any complex activity should begin with some general guidelines and plans for further steps to improve the electoral process, so consider it appropriate to draw attention to the problem of determining the place and role of principles of such procedure.

The principles of administrative and legislative regulation of elective rights of citizens of Ukraine are correlated to and provided with warranty of law, justice and accuracy in the state governance with proper fulfillment



of obligations, requirements of Constitution and Law of Ukraine. Ukrainian scientists as V. Averyanov, Alexander Bandurka, Yu Bytyak V. Garashchuk V. Halunko V. Olefir M. Stavniychuk, V. Shapoval, T. Kolomoets, B. Kolpakov, V. Pohorilko A. Lavrynovych, O. Murashyn did research on this problem. However, analysis of research suggests that the role of the theory and principles of administrative regulation in particular electoral rights has not yet found its proper problem solving and require further study.

**The purpose** of the article is based on the theory of the administrative law, adhering on the doctrinal rules of administrative law and legislation; statutory regulations form the principles of administrative and legal regulation in the sphere of electoral relations in Ukraine.

Pursuant to the Article № 21 of the Universal Declaration of Human Rights enacts that „everyone has the right of participation in the state administration directly or through independently chosen representatives. The will of citizens should be the basis of the authority and government; the will must be in attached period and not fixed elections are held on the basis of common right and equal suffrage law by the secret ballot voting or by similar methods to ensure free voting procedures” [3].

In the Article № 25 of the International Covenant on Civil and Political Rights, adopted in 16th December 1966 and effective in 1976 proclaimed the right of every citizen „to vote and be elected on the efficient periodic elections held on the basis of common and equal suffrage by the secret ballot voting to ensure the free expression of the will of the voters” [5]. This article duplicates the statute of the Universal Declaration of Human Rights; it was commented in 1996 by the UN Committee on Human Rights. The itemization contained comments according to that states regardless of the form of government should guarantee citizens the rights referred to in Article № 25 of the International Covenant on Civil and Political Rights. In particular, it was defined in the document of the law to the right of every citizen to participate in public affairs, to vote and to be elected and these rights are defended [12]. In general, in the Article № 25 of International Covenant on Civil and Political Rights and Statements to it; the issues to guarantee public and political rights of each citizen to stand for election and to be elected are mentioned here.

The Constitution of Ukraine was adopted in 1996 and it was an important stage in the development and establishment of Ukrainian election law. The regulatory issues of elections and referendums are in the Chapter III of the Constitution, entrenches the basic principles of the electoral law as an essential requirement for all elections held in Ukraine. It should be particularly emphasized that in a race for struggle at the presidential election in Ukraine in 2004, these quite abstract constitutional provisions *ex facto* somewhat unexpectedly became directly applicable. The Supreme Court of Ukraine in its historical judgment of 3 December 2004 indicated that justified and systematic violations of fundamental constitutional principles do not allow recognizing the formal electoral procedures of valid elections [8, p. 39].

Ukraine needs qualitatively new, stable, foreseeable electoral law. Constant changes in electoral law can carry the threat to legal security, constitutionally acceptable legal heritage of law rules and realization of the free will of the voters. The Constitutional Court of Ukraine also expressed opinion on inadmissibility of amendments to the electoral legislation during the election process, as it will have unintended consequences.

Starting to study the conceptual and categorical apparatus we refer to the legal etymological dictionary. Providing a generalized concept of the word „principle” the compilers note that it comes from the Latin „principium” and literally translates as that from what everything starts [1]. This definition is determined in the Dictionary of the Ukrainian language, where the concept of the word „principle” is considered as 1) the basic starting position of any scientific system theory, the ideological direction; principle, the basic law of any exact science; 2) feature based on the establishment or implementation of something, a way to create something or implement it. Typically, the rule is based on at any organization, company, etc.; 3) the conviction, regulation, the rules that somebody follows in life, behavior; canon [6, p. 927].

In the legal sector under principles often understand the basis of law, rigorous standards to requirements set in the rules and content, reflecting the general laws and the essentials of rights in favor of its reference point [9, p. 240]. Despite its theoretical orientation, principles play an important role in regulating the practice of public relations. Thus, A. Skurko called principles of law as

„bridge” between abstraction and casualty of legal regulation, allowing in modern conditions „rational law” maintain the necessary level of casuistry in legal activities in order as it may seem paradoxical, achieving uniformity of law, ensuring that the integrity of the legal system and the effectiveness of law as a social regulator [10, p. 12]. Similar opinions were expressed by K. Pysenko, who noted that „the principles of law should be the basis for the legal regulation, which makes it predictable, makes the practice to be stable, double standards in making decisions and conversely, practice guides to a clear and precise implementation of the objectives of the legislator laid down in the relevant legal documents to the common application of the standards, rules and examples of proper behavior” [7, p. 12].

Based on the assumption of the theoretical principles are mentioned above, should note that in the field of electoral principle administrative regulation establish the fundamental principles, the guiding idea, on this principles are based and developed the whole mechanism of administrative regulation of the people power and hand over power to the elected representatives in accordance with the law. The principles are the basis not only of the administrative law on elections, but also are the main criterion for legitimacy and legality of the actions of the electoral process, reduce the risk of possible fraud set the future direction of legal regulation of electoral relations and their violations may have implications declaring condemn elections invalid.

The Administrative law regulates the field of activity of the executive and administrative bodies by the traditional approach and public relations of regulatory principles, consisting in this area [6, p. 8] intended to give concrete content to detail provided by the Constitution guarantees citizens’ electoral rights, that is a real mechanism for their implementation and execution. By regulating social relations that arise, change and stop involving power-management bodies, administrative law and principles that they are implemented in the field of electoral legal directed primarily to perform two main tasks: 1) building effective mechanism of election administration, that is created proper conditions for realization of the citizens’ voting rights and their protection; 2) limit the impact of the current political elite in the course of the election.

Taking into consideration a specific appropriation and purpose of the administra-



tive provisions in the general system of legal rules to ensure proper electoral process, offer to share the principles of administrative and legal regulation of electoral relations in Ukraine into three levels.

Thus, the first level comprises the general principles of electoral law in force in the system of implementation of the electoral citizen's rights. The corresponding system of principles is related to the essence of elections as a form of democracy. Maintaining and defending the main goals and objectives of the electoral process, these principles define the general character in issue and direction of its specification by administrative regulation. The science of the constitutional law refers to a) the principle of compulsory elections; b) the principle of universal suffrage; c) the principle of equal suffrage; d) the principle of direct suffrage; e) the principle of free elections; f) the principle of a secret ballot; g) the principle is based on a periodic basis of elections and so on.

The second level comprises general principles of administrative law that run the gamut of all areas of administrative and legal regulations, including the election. These principles include: a) the rule of law; b) the principle of legality; c) the principle of equality of similar administrative rights before the law; d) principle of humanism and justice in relations between members and subjects of public administration; e) the principle of mutual accountability of public administration and public facilities management; d) the principle of serving the public administration to human society e) the principle of professional competence of civil servants; f) the principle of publicity, facility and transparency of the public administration.

The third level includes special principles that ensure effectiveness of managerial influence is in the field of the electoral relationship. They memorialize the balance and adjustment of goals, objectives and functions of the administrative and legal regulation in the field of electoral relations; reflect the particular specific process of the elections. Among the category of principles are mentioned above, we can split up:

*Respond of the administrative functions to goals and objectives of state administration to election process.* This principle provides theoretical and scientifically grounded chain between the control elements: objectives, issues and functions.

*The principle of independency of the state election administration.* The relevant principle prohibits any political pressure

on public bodies and administration are involved in the election process from the political parties, executive government and any legal entity interested in. This principle guarantee and limits influence of the political establishment on the process of election. The Venice Commission warns that „... there is too great a risk that the authorities will try to compel administrative bodies to act on its requirements and orders. This applies to both the central government and local authorities, even in cases where the authorities of the latter control the national opposition” [4]. Note that although named principle and tends to general principles (defined by us first or second level), given its importance in organizing the electoral process, which, as we know, characterized by a high level of politicization, he attributed it to us special.

The principle administration of election authority which suggests that the task of organizing and holding elections should be entrusted to the authority for which they are the main feature. It also means that the bodies that organize the election process should be separated from other public authorities, have the opportunity to carry out their duties with sufficient independence from other organs of government. Should mention that in the constitutions of some countries, such as Nicaragua 1987, Colombia in 1991 even secured a fourth branch of government – Election [11, p. 112].

The relevant principle sets out that the entire accumulation of all entities of election administration, comprise one system that has a single purpose and performs administrative functions specifically. Along with this principle, the principle of separation of functional competence between the state administrative bodies of election process, in accordance with each subject of public administration has individual competencies are responded only to him and the person is responsible for the implementation of it. Duplication of power is prohibited.

*The principle of concentration of functions of the election process management in the single state administration body.* According to the principle, the main controlling and supervising functions belong to and carried out by the single independent body. It is the Central Election Commission in Ukraine, has potential to regulate the election relation with the system of resources and implements.

*The principle of total controlling and monitoring of election process.* This principle provides with a power to control,

monitor and supervise over the legality of elections not only from state administration and local governments, but also from international organizations, public communities and by the means of media.

*The principle of reliable, true and complete information.* The state administrating authorities inform and give true, complete information on the procedure and the results of the election campaign.

*The principle of security, defense and protection of the voting rights at all levels of election.* The government provides with proper implementation, monitoring and protection of electoral rights from the beginning to the end of the election. For implementing the protection of voting the Law enforcement officials run this process at the polling stations and monitor, keep close tabs on public security, also accompany the members of polling stations, guard ballot boxes and perform other functions to ensure law and order. The Ministry of Justice of Ukraine ensures the work of the courts, judicial establishments, judges for faster consider of violation cases.

Based on the research assessment should come to the conclusion:

Under the principles of administrative and legal regulation of electoral relations in Ukraine should understand initial ideas, the general principles of administrative law; specialized principles;

- the state election administration is aimed at the creating an environment in which citizens are free to exercise voting rights;

- the principles of administrative and legal regulation of electoral relations in Ukraine should be divided into three levels: common principles of electoral relations; the general principles of administrative law; the specialized principles;

- the specialized principles comprise the agreement and guidelines functions of administration to the aims and objectives of state regulation of the election process; principle of the independent and not prejudicial bodies of the state regulation of election process; principle of administrating by special bodies; principle sets out the entire accumulation of all entities of election administration in a single centralized body of state regulation; the process of controlling and monitoring of the voting and elections; the principle of the true and complete information; the principle of improvement of protection and security of the election rights at all levels of election process.



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## ОСОБЕННОСТИ ПРЕДЪЯВЛЕНИЯ ГРАЖДАНСКОГО ИСКА В УГОЛОВНОМ ПРОЦЕССУАЛЬНОМ ЗАКОНОДАТЕЛЬСТВЕ УКРАИНЫ

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### Summary

The article is devoted to problematic issues of the application of civil action for damages caused by a criminal offense. Particular attention is paid to the status of civil plaintiff and its representatives. The author proposes to add the Code of Criminal Procedure the article „A statement of the claim in criminal proceedings”. In addition, to amend Art. 61 CPC of Ukraine, concerning the assignment of claims to a third party.

**Key words:** damages reimbursement (compensation) in criminal proceedings, victim, criminal proceedings, civil action, civil plaintiff, representative of civil plaintiff.

### Аннотация

В статье рассмотрены проблемные вопросы заявления гражданского иска о возмещении вреда, причиненного уголовным правонарушением. Особое внимание уделено статусу гражданского истца и его представителей. Автор предлагает дополнить КПК Украины статьей «Предъявление гражданского иска в уголовном судопроизводстве». Кроме того, внести изменения в ст. 61 УПК Украины, касающиеся уступки права требования гражданского истца третьему лицу.

**Ключевые слова:** возмещение (компенсация) вреда, потерпевший, уголовный процесс, гражданский иск, гражданский истец, представитель гражданского истца.

**Постановка проблемы.** В условиях реформирования уголовного процессуального законодательства особое значение приобретают защита конституционных прав и свобод потерпевшего, создание и функционирование системы надежных правовых гарантий с целью обеспечения права на правосудие и судебную защиту при осуществлении уголовного судопроизводства [1]. Согласно ст. 2 УПК Украины основными задачами уголовного судопроизводства определены защита личности, общества и государства от уголовных правонарушений, а также охрана прав и свобод и законных интересов участников уголовного производства [2].

Учитывая сложные экономические и социально-политические условия последних лет, в которых наблюдается рост совершения корыстных преступлений, проблема возмещения вреда, причиненного преступлением, становится актуальной и требует всестороннего научного и практического исследования.

**Актуальность темы исследования.** Институт возмещения вреда за годы независимости был предметом научного рассмотрения многих ученых-процессу-

алистов, в частности: А.В. Верхогляда, А.В. Крикунова, В.Т. Нора, А.В. Федоровой, А.А. Юхно и др. Большой вклад в содействие развитию отечественной доктрины института возмещения вреда в уголовном процессе внесли такие ученые, как Б.Л. Вашук, М.В. Гузель, Я.А. Клименко, Р.В. Корякин. После принятия нового УПК 2012 г. на проблемы института возмещения (компенсации) вреда в уголовном производстве обратили внимание С.Е. Абламский, Н.Г. Мазур, В.Т. Нор и др. Но комплексного научного анализа функционирования этого института после вступления в действие нового уголовного процессуального законодательства не проводилось.

**Целью данной статьи** является исследование особенностей реализации института предъявления гражданского иска о возмещении (компенсации) вреда, причиненного уголовным правонарушением, после вступления в действие нового УПК и предоставление предложенной усовершенствования уголовного процессуального законодательства в этой сфере.

**Изложение основного материала.** Главой 9 УПК Украины предусмотрены формы возмещения (компенсации) вре-