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THE CONCEPT OF THE CONSTITUTIONAL AND LEGAL MECHANISM OF FINANCIAL SUPPORT FOR THE PREPARATION AND HOLDING OF ELECTIONS OF PEOPLE'S DEPUTIES OF UKRAINE

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Deshko L.M., Bysaga Y.M., The concept of the constitutional and legal mechanism of financial support for the preparation and holding of elections of people's deputies of Ukraine.

The article is devoted to the study of the concept of the constitutional and legal mechanism of financial support for the preparation and holding of elections of People's Deputies of Ukraine. Attention is focused on the fact that the financing of elections should be an object of regulation in order to prevent and counteract such a phenomenon as corruption and such a phenomenon as the implementation of illegal extraterritorial behavior of one state against another through civilians – members of parliaments. Attention is focused on the fact that Russia, using financial resources, influenced the elections of people's deputies of Ukraine, starting with the revival of Ukraine's independence in 1991, and tried to endanger the functioning of democratic institutions in Ukraine and the development of Ukraine as a sovereign democratic independent state. It is emphasized that the attempt of the aggressor state - Russia - to exercise illegal but effective control through pro-Russian political forces in Ukraine was carried out with the use of various financial instruments of influence and manipulation in the elections of people's deputies of Ukraine. The article analyzes international documents devoted to the issues of the constitutional and legal mechanism of financial support for the preparation and conduct of elections. Signs of such a mechanism were identified based on the analysis of the provisions of each of these documents. Also, from the definitions of the concepts of the constitutional and legal mechanism of security, which are contained in the doctrine of the constitutional law of Ukraine, signs of this mechanism were revealed. The following author's definition of the concept of the constitutional-legal mechanism of financial support for the preparation and holding of elections of People's Deputies of Ukraine is a system of organizational-legal and legal means of influence, with the help of which financial opportunities are created for the realization of the right of a citizen of Ukraine to be elected to the Verkhovna Rada of Ukraine, and in the case violation or threat of violation of this right - its protection and protection is carried out.

Key words: democracy, elections, financing, constitutional and legal mechanism, financial support, the right to elect and be elected, the financing of political parties, the criteria for free and fair elections.

Дешко Л.М., Бисага Ю.М. Концепція конституційно-правового механізму фінансового забезпечення підготовки та проведення виборів народних депутатів України.

Стаття присвячена дослідженню поняття конституційно-правового механізму фінансового забезпечення підготовки та проведення виборів народних депутатів України. Акцентовано увагу на тому, що фінансування виборів має бути об'єктом регулювання з метою запобігання та протидії такому

явищу, як корупція, а також такому явищу, як здійснення протиправної екстериторіальної поведінки однієї держави щодо іншої через цивільних осіб – народних депутатів. Акцентується увага на тому, що Росія, використовуючи фінансові ресурси, впливала на вибори народних депутатів України, починаючи з відновлення незалежності України у 1991 році, намагалася поставити під загрозу функціонування демократичних інститутів в Україні та розвиток України як держави. суверенна демократична незалежна держава. Наголошується, що спроба держави-агресора – Росії – здійснити незаконний, але ефективний контроль через проросійські політичні сили в Україні здійснювалася з використанням різноманітних фінансових інструментів впливу та маніпуляцій на виборах народних депутатів України. У статті проаналізовано міжнародні документи, присвячені питанням конституційно-правового механізму фінансового забезпечення підготовки та проведення виборів. Ознаки такого механізму виявлено на основі аналізу положень кожного з цих документів. Також із визначень понять конституційно-правового механізму забезпечення, які містяться в доктрині конституційного права України, виявлено ознаки цього механізму. Надане авторське визначення поняття конституційно-правового механізму фінансового забезпечення підготовки та проведення виборів народних депутатів України – це система організаційно-правових і правових засобів впливу, за допомогою яких створюються фінансові можливості для реалізації права громадянина України бути обраним до Верховної Ради України, а в разі порушення чи загрози порушення цього права - здійснюється його захист і захист.

Ключові слова: демократія, вибори, фінансування, конституційно-правовий механізм, фінансове забезпечення, право обирати і бути обраним, фінансування політичних партій, критерії вільних і чесних виборів.

Formulation of the problem.

Ukraine has been subjected to military aggression by Russia since February 2014 [5]. From February 24, 2022, a full-scale military invasion of Russia on the territory of Ukraine began. This was preceded by the actions of the Russian Federation to exercise illegal power on the territory of Ukraine through a number of civilians. In particular, using financial resources, Russia influenced the elections of people's deputies of Ukraine, starting with the revival of Ukraine's independence in 1991, and tried to jeopardize the functioning of democratic institutions in Ukraine and the development of Ukraine as a sovereign democratic independent state. The attempt of the aggressor state - Russia - to exercise illegal but effective control through pro-Russian political forces in Ukraine was carried out with the use of various financial instruments of influence and manipulation in the elections of people's deputies of Ukraine.

Since 2014, Ukraine has been resisting Russian aggression. In Ukraine, on the initiative of the Security Service, the activities of 12 pro-Russian parties were finally banned. The decision to ban the functioning of the "Socialist Party of Ukraine" was made on the basis of the President's decree and the decision of the National Security Council. They are based on evidence of the party's destructive activities, collected within the scope of the SBU's response to threats to national security. This political force added to the list of previously banned pro-Russian political parties, including: "Opposition Bloc", "Socialists", "Justice and Development" party, "Nashi", "State", "Bloc of Volodymyr Saldo", "Left Opposition", "Sharia Party", "Union of Left Forces", "Opposition Platform - For Life" and "Progressive Socialist Party of Ukraine". In the course of investigative and operational actions, it was proven that representatives of these political forces took a direct part in: establishing a regime of invaders in the territories of Ukraine captured by the Russian Federation, organizing and holding fake "referendums" in these territories.

As Yu. Klyuchkovskiy and V. Wenger rightly point out, "under such conditions, the functioning of democratic institutions must adapt to the requirements and circumstances of the war", and "...after the end of the war, the issue of fully restoring the work of state authorities and local self-government bodies, holding elections" [17].

The above shows that the constitutional and legal issue of the mechanism of financial support for the preparation and holding of elections of People's Deputies of Ukraine is one of the key for the further development of Ukraine as a democratic independent sovereign state.

The purpose of this article is to formulate the definition of the concept of constitutional and legal from the mechanism of financial support for the preparation and holding of elections of People's Deputies of Ukraine.

Analysis of scientific publications.

Prof. O. Vasylchenko [5; 11], A. Vyhivska [12], L. Deshko [11; 16], V. Wegner [12], Yu. Klyuchkovskiy [17], O. Lotyuk [19], S. Martelyak [20; 21], O. Martzelyak [20] and other scientists [18; 22] devoted their research to the issues of qualifications in electoral law, constitutional and legal regulation of payment of cash

deposits and financing of pre-election campaigning, state financing of statutory activities of political parties, financing of elections. At the same time, the issue of the very concept and structure of the constitutional-legal mechanism of financial support for the preparation and holding of elections of People's Deputies of Ukraine remains fragmentarily researched in the scientific literature.

Thus, Yu. Klyuchkovskiy and V. Wegner in the 2022 study note regarding the financing of elections that "Costs for the preparation and holding of national elections should be carried out at the expense of state budget funds allocated specifically for the preparation and holding of the appropriate type of elections, and the costs for the preparation and holding local elections - respectively at the expense of the state budget and the relevant local budget (depending on the type of election - own local budget funds or received as a targeted subvention from the State Budget of Ukraine) (Articles 90, 147 and 209 of the Election Code of Ukraine). Funds must be provided in the corresponding budget, which requires a fairly accurate calculation of financial needs, which in the conditions of post-war reconstruction may be greater than usual. Such a calculation can be fully carried out only if there is an understanding of the number of elections that will be scheduled. In addition, the appropriate funds must be provided in the State Budget of Ukraine for the relevant year at the time of its adoption, or the parliament will have to make changes to the state budget" [17], but the question of the structure of the entire mechanism for providing financing for the elections of people's deputies is not disclosed. In a number of works of constitutionalist scientists, the issue of the concept of constitutional and legal support was raised, but they related to specific subjective legal rights (for example, the works of L. Deshko [1; 3; 5; 8; 9; 10; 16], O. Marczelyak [20], A. Nechiporuk [22], etc.).

Presentation of the main material of the study.

According to the Guidelines and report on the financing of political parties, which were adopted by the Venice Commission on March 9-10, 2001, "ensuring equality of opportunity for different political forces is possible if the costs of election campaigning are limited to a certain maximum that corresponds to the situation in the country and set in proportion to the number of voters supporting them. The state must participate in the expenses of the pre-election campaign, providing funds equal to a certain percentage of the above-mentioned maximum or in proportion to the number of votes received. However, parties that have not achieved a certain threshold of votes may be denied such a contribution. Transparency of election expenses should be achieved by publishing the campaign estimate" [4]. So, the features of the election financing mechanism are: 1) expenses; 2) the entity making the expenditures is the state; 3) spending in accordance with the principle of transparency.

In her research, scientist S. Martzelyak draws attention to the Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the CIS Member States, Art. 10 of which it is established that fair and transparent financing of elections, election campaigns of candidates, and political parties (coalitions) is ensured during fair elections. Funding of election-related activities is carried out at the expense of budget funds. States provide, in the cases and in the order provided for by constitutions and laws, to candidates, political parties (coalitions) participating in elections, the allocation of budget funds on fair terms, as well as the possibility of forming an extra-budgetary fund at the electoral body or forming its own monetary election fund for financing his election campaign and using for these purposes his own funds, voluntary monetary donations of individuals and (or) national legal entities in the amounts and in the manner prescribed by law. The use by candidates, political parties (coalitions) of other funds, except for those that have gone to the specified funds, should be prohibited by law and bear responsibility in accordance with the law [6; 20]. It follows from this that the features of the election financing mechanism are as follows: 1) financing is provided for by the state constitution and state laws; 2) allocated funds are budgetary; 3) the entity that allocates funds is the state; 4) the possibility of creating an extra-budgetary funding fund at the electoral body; 5) the possibility of using one's own funds to finance the election campaign; 6) possibility of using donations; 7) entities that can make donations - natural persons and legal entities not endowed with public-authority powers.

According to the 2002 Code of Good Practice in Electoral Matters, the financing of elections must ensure equal opportunities for political parties and candidates, as well as be transparent. Transparency is ensured on two levels: 1) it concerns the funds allocated for campaigning: detailed information on the expenditure of these funds must be accurately reflected in a special chart of accounts; 2) transparency is ensured at the level of monitoring the financial situation of elected representatives before they take office and after the end of their term of office. The commission responsible for issues of financial transparency officially accepts declarations from elected representatives about their financial situation [2, p. 18]. So, the features of the election financing mechanism are as follows: 1) the goal is to ensure equal opportunities; 2)

compliance with the principle of funding transparency; 3) monitoring of the financial situation of elected representatives.

On April 8, 2003, at the 835th meeting, the Committee of Ministers of the Council of Europe adopted Recommendations Rec (2003) 4 “On general rules for combating corruption in the financing of political parties and election campaigns” [24]. According to Art. 1 of the Recommendations, state support for parties may be of a financial nature. State support should be provided on the basis of objective, fair and reasonable criteria. The state must ensure that support from the state and/or citizens does not limit the independence of political parties. There are also two separate sections in this document: section 2 is devoted to the sources of funding for election candidates and elected officials, and section 3 is devoted to election campaign expenses.

Yes, in Art. 8 of the Recommendations, contained in section 2, states that the rules on the financing of political parties should be applied *mutatis mutandis* to the financing of election campaigns of candidates in elections; financing of the political activities of elected officials. According to Art. 9 of the Recommendation states should consider taking measures aimed at preventing excessive financing of the needs of political parties, for example, by setting limits on election campaign expenditures. In Art. 10 of the Recommendation states that states should require accounting of all expenditures, direct and indirect, on election campaigns by each political party, list of candidates, and each candidate. So, the features of the election financing mechanism are as follows: 1) measures for which financing is applied - election campaigns of candidates; political activity of persons who were elected; 2) the duty of the state is to take measures to prevent excessive financing of the needs of political parties; 3) a requirement from the state to keep records of all expenditures by political parties and candidates.

Chapter 4 of the Recommendations is devoted to transparency. Yes, according to Art. 11 Recommendations States should require political parties and persons associated with political parties, referred to in Article 6, to keep proper records and reports. The reporting of political parties should be consolidated and include, where possible, the reporting of persons referred to in Article 6. Article 12 of the Recommendations states that States should require that the reporting of a political party discloses all donations received by the party, including the nature and value of each donation. In the case of donations exceeding the specified value, the persons who made the donation must be identified in the reporting. According to Art. 13 of the Recommendations, political parties have an obligation to present and publish reports. Thus, the features of the election financing mechanism are: 1) the requirement in the legislation for proper accounting and reporting of political parties and candidates; 2) enshrining in state legislation the obligation to present and publish reports by political parties.

It follows from Chapter 5 of the Recommendations that one of the features of the election financing mechanism is financing monitoring. According to Art. 16 contained in Chapter 6 of the Recommendations, states should require that violations of the rules of financing political parties and election campaigns result in effective, adequate and preventive sanctions. We emphasize that the inclusion of the above-mentioned preventive measures contributes to the national legal system within the European legal space.

In the doctrine of the constitutional law of Ukraine, there are no scientific works in which the issue of the constitutional mechanism for ensuring the financing of elections is comprehensively investigated. There are studies devoted to the concept of the mechanism of ensuring this or that subjective legal right. Undoubtedly, these studies are valuable for the formulation of the author’s definition of the constitutional and legal mechanism for ensuring the financing of elections, because they allow, moving from the general to the specific, to define the concept of “constitutional and legal mechanism for financial support for the preparation and holding of elections of People’s Deputies of Ukraine.”

Thus, according to K. Volynk, the security mechanism is a complex of interrelated and interacting normative and legal prerequisites, legal instruments and general social conditions, which create a set of opportunities for the full realization of rights and freedoms, their protection against potential offenses and the protection of rights and freedoms that have been violation [14, p. 30]. So, the signs of such a mechanism in the general sense are as follows: 1) a complex structure; 2) structure: legal means, general social conditions; 3) the goal is to create opportunities for the full implementation of subjective legal rights.

E. Horyan claims that the mechanism for ensuring the basic rights and freedoms of citizens includes all (both social and legal) conditions and means that ensure the implementation, protection and protection of citizens’ rights [15, p. 12]. According to Yu. Todyk and O. Martselyak, the constitutional-legal mechanism for ensuring the basic rights and freedoms of Ukrainian citizens is a unified system of basic rights and freedoms of Ukrainian citizens, their guarantees, as well as bodies of state power, local self-government and other institutions of the state and society, the activities of which are aimed at the lawful realization of

the rights and freedoms of citizens of Ukraine, and in necessary cases at their protection and protection [23, p. 36]. It follows from this definition that the features of the above-mentioned mechanism are: 1) enshrined in the constitution and laws of Ukraine; 2) the purpose of functioning is the legitimate implementation and protection and protection of subjective legal rights.

Conclusion. The above allows us to formulate such an author's definition of the concept of the constitutional and legal mechanism of financial support for the preparation and holding of elections of People's Deputies of Ukraine - it is a system of organizational, legal and legal means of influence, with the help of which financial opportunities are created for the realization of the right of a citizen of Ukraine to be elected to the Verkhovna Rada of Ukraine, and in case of violation or threat of violation of this right - its protection and protection is carried out.

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