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APPLICABILITY OF PROCEDURAL REFLECTION OF THE COURT IN THE SETTLEMENT OF ELECTORAL DISPUTES (ANALYSIS OF THE PRACTICE OF THE ECTHR)

The article analyzes the practice of the ECtHR regarding the admissibility of the application of procedural discretion of the court in the settlement of electoral disputes. It is indicated that establishing the truth in an electoral dispute, which is the subject of consideration in administrative proceedings, requires the judge to apply the choice, which should be the basis for substantiating the procedural actions taken in the case, and interpreting the norms of procedural legislation. It is substantiated that the implementation of the procedural task assigned to a judge or a panel of judges to resolve a public law dispute is always associated with justifying the boundaries of procedural discretion, establishing the boundaries of the discretionary powers of public authorities and local self-government, which requires the establishment of criteria for the legitimacy of its application, which justifies the relevance of this study.

It is stated that the application of procedural discretion is generally recognized and permissible in the settlement of public law disputes, which include electoral disputes. The criteria for the legitimacy of the application of procedural discretion in the practice of the ECHR on the settlement of electoral disputes are related to the need to comply with the requirements of international and European legislation, as well as the need to comply with the requirements and principles of electoral law. It is indicated that the exercise of electoral rights is associated with the establishment of their relative nature, as stated in the decisions of the ECtHR, the content of which is the admissibility of restrictions and prohibitions on their implementation, which should not be discriminatory. The normative establishment of standards for the implementation and protection of electoral rights is associated with the need to apply reasonable restrictions that do not reduce the quality and effectiveness of their implementation, do not affect the content of the electoral process, but only introduced in order to ensure the rule of law.

Key words: *administrative process, administrative case, electoral disputes, discretionary powers, European Court of Human Rights, judicial discretion, consideration, public law dispute.*

У статті проаналізовано практику ЄСПЛ щодо допустимості застосування процесуального розсуду суду у врегулюванні виборчих спорів. Вказано, що встановлення істини у виборчому спорі, що є предметом розгляду у порядку адміністративного судочинства, вимагає від судді застосування вибору, що має бути базисом для обґрунтування як вжитих у справі процесуальних дій, так і тлумачення норм процесуального законодавства. Обґрунтовано, що реалізація покладеного на суддю чи колегію суддів процесуального завдання із врегулювання публічно-правового спору, завжди пов'язується із обґрунтуванням меж процесуального розсуду, встановленням меж дискреційних повноважень органів державної влади та місцевого самоврядування, що вимагає встановлення критеріїв правомірності його застосування, що обґрунтовує актуальність даного дослідження.

Констатовано, що застосування процесуального розсуду є загальновизнаним та допустимим у врегулюванні публічно-правових спорів, до яких відносяться і виборчі спори. Критерії правомірності застосування процесуального розсуду у практиці ЄСПЛ із врегулювання виборчих спорів пов'язується із необхідністю дотримуватись вимог актів міжнародного та європейського законодавства, а також і необхідністю дотримуватись вимог та принципів виборчого права. Вказано, що здійснення виборчих прав пов'язується із встановленням їх відносного характеру, про що зазначається у рішеннях ЄСПЛ, зміст чого полягає у допустимості застосування обмежень та заборон із їх реалізації, що не повинно носити дискримінаційний характер. Нормативне встановлення стандартів реалізації та захисту виборчих прав пов'язується із необхідністю застосування розумних обмежень, що не зменшують якість та ефективність їх впровадження, не впливають на зміст виборчого процесу, а лише запроваджуються із метою забезпечення дії принципу верховенства права.

Ключові слова: *адміністративний процес, адміністративна справа, виборчі спори, дискреційні повноваження, Європейський Суд з прав людини, розсуд судді, розгляд, публічно-правовий спір.*

Introduction. According to Art. 38 of the Constitution of Ukraine, the exercise by citizens of electoral rights refers to the forms of implementation of direct democracy, which is a defining feature of a democratic constitutional state. The inalienability and unconditionality of voting rights is confirmed in the practice of national administrative courts, as well as in the practice of the European Court of Human Rights (hereinafter referred to as the ECtHR). Thus, in the case of Frodl v. Austria, the ECHR substantiated the unconditional nature of the inadmissibility of normative fixing of the prohibition on restricting the exercise by citizens of the right to vote, which is a fundamental guarantee of ensuring the free and transparent formation of public authorities and local self-government in a modern country.

Establishing the truth in an electoral dispute, which is the subject of consideration in administrative proceedings, requires the judge to apply the choice, which should be the basis for substantiating the procedural actions taken in the case, and interpreting the norms of procedural legislation. Therefore, the implementation of the procedural task assigned to a judge or a panel of judges to resolve a public law dispute is always associated with justifying the boundaries of procedural discretion, establishing the boundaries of the discretionary powers of state authorities and local governments, which requires the establishment of criteria for the legality of its application, which justifies the relevance of this study. The years 2023-2024, according to the requirements of the current legislation of Ukraine, should become the years of elections of people's deputies of the Verkhovna Rada of Ukraine and the President of Ukraine, which determines the relevance of drawing research attention to the practice of the ECtHR in resolving electoral disputes.

The degree of scientific development of the problem. The study of the issues of procedural discretion should be based on the research of such scientists as V.B. Averyanov, S.V. Kivalov, V.K. Kolpakov, T.A. Kolomoets, R.A. Kuybida, M.I. Turcan, etc. The content of the procedural discretion of the administrative court in the settlement of electoral disputes was established in the publications of A.V. Basalaeva, V.M. Bevzenko, S.V. Kalchenko, Yu.B. Klyuchkovsky, O.M. Pasenyuk, M.I. Smokovich and others. However, the issue of generalizing the practice of the ECtHR on the application of procedural discretion in the settlement of electoral disputes was covered fragmentarily and requires additional attention to this problem.

The purpose of the scientific article is to characterize the practice of the European Court of Human Rights on the application of procedural discretion in the settlement of electoral disputes.

Presentation of the main material. The criteria for applying the procedural discretion of a judge or a panel of judges of an administrative court depend on the establishment of the content of the normative prescriptions of the current legislation of Ukraine, the results of law enforcement practice and the practice of the European Court of Human Rights.

The admissibility of the presence of procedural discretion has long been considered as an unacceptable practice of judges of the state judicial system and criticized by representatives of legal science [1, p. 12]. However, the practice and scientific and theoretical approaches of the present testify not only to the admissibility of the ambiguity in the application of the norms of procedural discretion, but also to its actual expediency for the proper protection of the rights and interests of the individual in public management public relations.

In one categorical row there are such categories as “procedural discretion”, “judicial discretion”, “judicial discretion”, “judge's discretion”, “discretionary powers” [2, p. 125], which requires focusing research attention on establishing the content of discretion. Barak defines the discretion of the judge as a certain set of powers vested in the judge, which consists in making a choice between several "legal alternatives" [3, p. 10]. That is, scientists focus on understanding the expediency of exercising discretion through the application of criteria for the legality, validity and expediency of the choice. The focus on establishing the content of the discretion of the judge of the administrative court is carried out in the monographic study by V.M. Bevzenko and G.V. Lord. Within the framework of the conclusions reached, scientists substantiate the discretion of the administrative court as an opportunity, established by legislative provisions, to choose the content of a procedural decision in a public law dispute [4, p. 71].

N. Savchin establishes that judicial discretion is a certain principle of the administration of justice, capable of providing the most optimal settlement of a public law or private law dispute, limited to the content of legal acts, fundamental principles and concepts of law, its spirit and factual circumstances of the case [5] . procedural discretion of the court C.A. Shatrava refers to the totality of discretionary powers of the subject, which allows a person to choose a certain form of activity or a certain decision, depending on his assessment of the actual and legal circumstances of the case [6, p. 276-277]. Correlation links between the interpretation of the content of the norm, the circumstances of the case and the adoption of a decision are carried out in the scientific developments of Vel Gi De [7, p. 51].

Therefore, the application of procedural discretion is generally recognized and permissible in the settlement of public law disputes, which include electoral disputes. The criteria for the legitimacy of the application of procedural discretion in the practice of the ECHR on the settlement of electoral disputes are related to the need to comply with the requirements of international and European legislation, as well as the need to comply with the requirements and principles of electoral law. Thus, in accordance with the provision of Recommendations No. Rec (2003) 16 of the Committee of Ministers of the Council of Europe “On the enforcement of administrative decisions and court decisions in the field of administrative law”, requirements are established for court decisions that are taken in administrative institutions; establishing the availability and comprehensiveness of the implementation

of the operative part of the judgment; implementation of the mechanism of responsibility of an administrative body obliged to comply with the decisions of the ECtHR [8].

The exercise of electoral rights is associated with the establishment of their relative nature, as stated in the decisions of the ECHR, the content of which is the admissibility of restrictions and prohibitions on their implementation, which should not be discriminatory. The normative establishment of standards for the implementation and protection of electoral rights is associated with the need to apply reasonable restrictions that do not reduce the quality and effectiveness of their implementation, do not affect the content of the electoral process, but are only introduced for the purpose of ensuring the operation of the principle of the rule of law [9, p. 41-42].

The jurisdiction of the ECtHR relates to disputes to ensure the exercise of the function of judicial control in disputes related to the conduct of the electoral process for the "legislature". The official interpretation of the category "legislative body" in accordance with the practice of the ECtHR is based on its expanded understanding as a set of public authorities whose activities ensure the development and adoption of normative acts of national action. Thus, in the Case of Vito Sante Santoro v. Italy, the ECtHR concluded that it was expedient to apply the provisions of Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms as relations related to the formation the national parliament (as a "legislative body" in the narrow sense), and on the relations that arise with the formation of regional councils empowered to exercise the functions of local self-government (i.e., it is a "legislative body" in a broad sense) [10].

At the same time, the practice of the ECtHR contains an opposite approach to establishing the content of the category "legislative body". Thus, in the case of Clerfayt, Legros v. Belgium, the conclusion is substantiated that it is inappropriate to classify local elections as legislative elections [11]. The same position is justified in the Case of Booth-Clibborn v. the United Kingdom, where the ECtHR determined that it is inappropriate to apply its subject matter jurisdiction to electoral disputes over the formation of district councils in the United Kingdom [12].

The procedural discretion of the ECtHR is also applied in establishing the content of the subject composition of disputes related to the organization and conduct of the electoral process. Thus, in the Case of Malarde v. France, the ECtHR substantiated that it is unacceptable to file a complaint by a person with a small percentage of voter support, which will not affect their effectiveness [13]. In the case of Kovacs v. Ukraine, the ECtHR considered an application submitted by an applicant who received fewer votes than the winning candidate [14].

At the same time, it should be noted that the boundaries of the exercise of judicial control by the ECtHR are not limited only to the claims of the applicant. Thus, in the course of settling a dispute that became the subject of a complaint in the case

Consequently, the procedural discretion of the ECtHR, applied in electoral disputes, depends on the nature, content, object, and subject composition of such legal relations of an electoral dispute. The limits of the procedural discretion of the ECtHR in the consideration of electoral disputes reach the need to establish the content of the category "legislative body" as a body authorized to develop and adopt normative legal acts that have imperative significance within the national territory of a particular state. In addition, the application of the procedural discretion of the ECtHR in the settlement of electoral disputes depends on the presence of a public (public) interest (resonance) in the formation of state authorities and local self-government.

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