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RIGHT TO FREE ELECTIONS IN THE EUROPEAN COURT OF HUMAN RIGHTS JUDGEMENTS

The topic of my report is the right to free elections, an extremely topical issue for Ukraine, as soon a presidential election will be held. Although the practice of the European Court of Human Rights (ECHR) does not extend the corresponding article of the Convention to presidential elections, parliamentary elections are shortly held in Ukraine too (on 27th October). Every citizen of our state needs to know the basic criteria for protecting their rights during the elections.

Among the international legal documents in the field of human rights, the Convention for the Protection of Human Rights and Fundamental Freedoms has a special place, since it provides for a unique institution for monitoring compliance with its requirements – the European Court of Human Rights. The Convention establishes not only the requirement for the States Parties to comply with their obligations under the Convention, but also the requirement to ensure the political, constitutional and legal conditions for these rights and freedoms to be exercised. This was enshrined in Article 3 of Protocol No. 1 "Right to Free Elections" of the Convention for the Protection of Human Rights and Fundamental Freedoms, which is as follows: "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature" [1].

By enshrining the "new" law, which is not in the main text of the Convention, this Article, which is the outcome of political compromise, in essence does not directly establish any individual right, but some kind of "free expression of the opinion of the people"; besides, it excludes municipal and regional elections, presidential elections, which are not elections of "the legislature" in the strict sense.

As O.S. Bakumov points out, one of the most serious discord among judges is the interpretation of Article 3 of Protocol No. 1 of the Convention "Right to Free Elections". Its wording, in contrast to other rights and freedoms enshrined in the provisions of the Convention and the protocols thereto, defines only the obligation of the States Parties. This form allowed the European Commission, at the initial stage of its existence when it still acted in parallel with the Court, to deny the existence in the Convention system of the subjective right to free elections which follows from the above-mentioned obligation [2].

The Article contains the formulation of the obligation of states to hold free elections, not mentioning specific human rights and freedoms. According to the Court, the obligations to refrain or not interfere are not of paramount importance, in contrast to most of the rights, but the obligation of states to take positive measures to hold democratic elections. From the perspective of the Court, Article 3 of the Protocol includes: understanding of the term "legislature"; guarantees of subjective voting rights, in particular the right to vote (active suffrage), the right to stand for election and the right to be a member of a legislature (passive suffrage); general (institutional) principle of "free elections".

However, the Court's judgments claim that the right to free elections is not absolute. In the internal legal systems of the States Parties, rights to vote and stand for election are predetermined by a number of conditions which in principle are not precluded under Article 3. In this regard, the States Parties, having certain freedom of national discretion, have the right to interfere in the rights guaranteed by Article 3, but such interference cannot curtail the rights in question to such an extent as to impair their very essence; and such interference shall be imposed in pursuit of a legitimate aim; and the means employed shall not be disproportionate (see judgements in the following cases: *Ahmed and others v. the United Kingdom* [3], *Hirst v. the United Kingdom* [4]). Such restrictions must not thwart "the free expression of the opinion of the people in the choice of the legislature".

The Article of the Protocol in question uses the notion of the choice of the legislature, so it is important to define what exactly the Article implies by this concept. It is an interesting fact that the concept should not be limited to this institute. Thus, in the case of *Mathieu-Mohin and Clerfayt v.*

Belgium [5], the ECHR noted that in federal states, local governments may also be considered legislatures if they are empowered to pass laws.

According to the practice of the ECHR, the above-mentioned Article 3 does not apply to other voting procedures, namely to referenda, elections to all local authorities, except legislative ones, and to presidential elections. The right to free elections in accordance with the practice of the ECHR includes both the right to vote (active suffrage) and the right stand for election (passive suffrage). The ECHR takes a firm stand on the possibility of states to impose restrictions on active suffrage, in particular, the Court has found violation of Article 3 of the Protocol in voting rights deprivation among convicts serving sentences in detention centers, since the freedom of the legislator's actions is not unlimited and cannot be extended as an absolute sanction to people serving sentences in detention centers. Furthermore, a temporary ban on voting for persons who were declared bankrupt in a civil proceeding (for example, a number of cases against Italy) has also been recognized as a violation [6].

On the other hand, the ECHR in its practice has recognized voting rights deprivation acceptable in the following cases: 1) Not reaching the minimum age (*Hilbe v. Liechtenstein*); 2) Absence of registration in the electoral register (*Georgian Labour Party against Georgia*).

A state can impose certain restrictions on the right to stand for election by, for example, setting requirements for the knowledge of the official language, while stating the legitimacy of the aim in the requirement as to the knowledge of the official language by the candidates for election to parliament. In the case of *Podkolzina v. Latvia*, the ECHR held that there had been a violation of Article 3 of the Protocol due to the lack of sufficient guarantees of impartiality of the language knowledge verification [6].

A state can establish as a qualifying requirement the continuous residence of a candidate in its territory for a specified period, and such a restriction is justified on the basis of "The assumption that a non-resident citizen is less interested and less aware of everyday problems of the state". Moreover, the ECHR in the case of "*Melnychenko v. Ukraine*" held that there had been a violation of Article 3 of the Protocol, the decisive factor was a registered address in his internal national passport.

To conclude, the right to free elections stipulated in Article 3 of the Protocol to the Convention, in our opinion, is extremely important, since it

enables a person to exercise their will to improve the quality of life in the state after being elected to the legislature. On the other hand, it enables people to elect worthy representatives, for example, to the Verkhovna Rada of Ukraine, the legislature which creates rules and norms for our life.

References:

1. Конвенція про захист прав людини і основоположних свобод. (Convention on the Protection of Human Rights and Fundamental Freedoms). – Access mode: https://zakon.rada.gov.ua/laws/show/995_004
2. Правові позиції Європейського суду з прав людини щодо права на вільні вибори: спірні питання практики (The Legal Position of the European Court of Human Rights on the Right to Free Elections: Disputes Practice) / O.S. Вакимов // Вісник Національної академії правових наук України (Herald of the National Academy of Legal Sciences of Ukraine). - 2016. - No. 3. - P. 183-193. – Access mode: http://nbuv.gov.ua/UJRN/vapny_2016_3_29
3. Рішення у справі “Ахмед та інші проти Сполученого Королівства” Ahmed and Others v.the United Kingdom)as of 02.03.2017.–Access mode: <https://www.echr.com.ua/translation/postanovi-i-rishennya-vid-2-bereznya-2017roku-yespl/>
4. Рішення у справі “Матьє-Моан та Клерфейт проти Бельгії”(Mathieu-Mohin and Clerfayt v.Belgium) as of 02.03.1987. – Access mode: <https://swarb.co.uk/mathieu-mohin-and-clerfayt-v-belgium-echr-2-mar-1987/>
5. Рішення у справі: “Гіртст проти Сполученого Королівства” (Hirst v. the United Kingdom) as of 02.03.1987. – Access mode: <https://swarb.co.uk/mathieu-mohin-and-clerfayt-v-belgium-echr-2-mar-1987/>
6. Теорія та практика застосування Конвенції про захист прав людини і основоположних свобод (Theory and Practice of Applying the Convention for the Protection of Human Rights and Fundamental Freedoms: Compendium). – Kharkiv: Pravo, 2017. - 374 p.

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TERNOPIL NATIONAL ECONOMIC UNIVERSITY DRIVING TO SUICIDE (FROM BULLYING AND ABUSE)

Driving to suicide does not literally mean getting into a car and driving one’s self to death (it is important to note that ‘Death Drive’ is different from driving to suicide). Suicide is the simply taking of one’s life. Suicide