

THE CONSTITUTIONAL RIGHT OF CITIZENS TO PARTICIPATE IN THE MANAGEMENT OF STATE AFFAIRS: «LIMITS» AND «LIMITATIONS» IN THE DECISIONS OF THE CONSTITUTIONAL COURT OF UKRAINE

**BASALAYEVA Alla Valentynivna - PhD, Lecturer of Constitutional Law
Department of Taras Shevchenko National University of Kyiv**

ORCID: 0000-0001-7558-2621

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The article is devoted to identifying the legal positions of the Constitutional Court of Ukraine regarding the limits and limitations of the constitutional rights and freedoms of a person and a citizen and their extrapolation to social relations that arise in the implementation of the constitutional right of every citizen to participate in the management of state affairs. Attention is focused on the fact that currently the legislation of Ukraine defines the legal and organizational principles for the purification of power (lustration) for the protection and affirmation of democratic values, the rule of law and human rights in Ukraine. At the same time, to implement the decisions of the European Court of Human Rights in cases against Ukraine, it must be improved because it contains legal norms that are incompatible with the norms of the Convention on the Protection of Human Rights and Fundamental Freedoms. The practice of applying the norms of the national legislation mentioned above turned out to be incompatible, as a result of which the rights and freedoms of Ukrainian citizens were violated (the decision of the European Court of Human Rights in the cases “Polyakh and others v. Ukraine”, “Samsin v. Ukraine”). It is emphasized that the cleansing of power in Ukraine was and remains one of the key issues in Ukraine’s implementation of its strategic course towards full membership in the EU and NATO, as well as in the post-war reconstruction of Ukraine, de-occupation and reintegration of the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol. Interference with the right of Ukrainian citizens to participate in the management of state affairs

cannot be arbitrary. An important role in this process belongs to the Constitutional Court of Ukraine, which ensures the supremacy of the Constitution of Ukraine, resolves the issue of the conformity of the Constitution of Ukraine with the laws of Ukraine on the purification of power, carries out the official interpretation of the Constitution of Ukraine and other powers in accordance with the Constitution of Ukraine.

Keywords: the constitutional right of citizens to participate in the management of state affairs, purification of power, interference, limits of intervention, restrictions, the Constitutional Court of Ukraine, legal positions, suspension of the provisions of laws, narrowing of the right of citizens to participate in the management of state affairs, the right of a citizen to participate in work district or precinct election commission.

Formulation of the problem

The Constitution of Ukraine guarantees every citizen the right to participate in the management of state affairs [1]. This right is not absolute. It can be limited by the state. But such a restriction cannot be arbitrary. In order to achieve such goals as the protection and affirmation of democratic values, the rule of law and human rights in Ukraine, the Law of Ukraine “On Purification of Power” [2] was adopted. Currently, the legislation of Ukraine defines the legal and organizational principles for the purification of power (lustration) for the protection and affirmation of democratic values, the rule of law and human rights in Ukraine. At the same time, to implement the

decisions of the European Court of Human Rights in cases against Ukraine, it must be improved because it contains legal norms that are incompatible with the norms of the Convention on the Protection of Human Rights and Fundamental Freedoms. The practice of applying the norms of the above-mentioned national legislation also turned out to be incompatible, as a result of which the rights and freedoms of Ukrainian citizens were violated (the decision of the European Court of Human Rights in the cases “Polyakh and others v. Ukraine” [3], “Samsin v. Ukraine” [4]). At the same time, the cleansing of power in Ukraine was and remains one of the key issues in Ukraine’s implementation of its strategic course to acquire full membership in the EU and NATO, as well as in the post-war reconstruction of Ukraine, de-occupation and reintegration of the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol. Interference with the right of Ukrainian citizens to participate in the management of state affairs cannot be arbitrary. An important role in this process belongs to the Constitutional Court of Ukraine, which ensures the supremacy of the Constitution of Ukraine, resolves the issue of the conformity of the Constitution of Ukraine with the laws of Ukraine on the purification of power, carries out the official interpretation of the Constitution of Ukraine and other powers in accordance with the Constitution of Ukraine.

State of problem research

In the science of constitutional law, certain legal positions of the Constitutional Court of Ukraine were studied in the scientific works of O. Vasylychenko [5; 6], L. Deshko [7-10], O. Lotyuk [11], N. Petretska [12] and other scientists in the analysis of constitutional principles (principle of the rule of law, principle of equality, etc.), as well as in the analysis of the mechanism certain constitutional rights and freedoms of a person and a citizen. At the same time, a comprehensive study with regard to the development of social relations in Ukraine regarding the legal positions of the Constitutional Court on Human Rights regarding the limits and limitations of the constitutional right of citizens to

participate in the management of state affairs was not conducted.

The purpose of this article is to reveal the legal positions of the Constitutional Court of Ukraine regarding the limits and limitations of the constitutional rights and freedoms of a person and a citizen and to extrapolate them to social relations that arise in the exercise of the constitutional right of every citizen to participate in the management of state affairs.

Presenting main material

According to the Decision of the Constitutional Court of Ukraine in the case of the death penalty dated December 29, 1999 No. 11-пн/1999, the constitutional provision of all rights and freedoms of a person and a citizen in Ukraine is based on the principle: exceptions to the rights and freedoms of a person and a citizen are established by the Constitution of Ukraine itself, and not by laws or other regulatory acts [13]. Thus, if an exception to the constitutional right of everyone to participate in the management of state affairs is established by a law or by-law normative legal act, it contradicts the Constitution of Ukraine. The only source of constitutional law of Ukraine that can establish such exceptions is the Constitution of Ukraine. According to the provisions of the first part of Article 64 of the Constitution of Ukraine, “constitutional rights and freedoms of a person and a citizen cannot be limited, except in cases provided for by the Constitution of Ukraine” [1].

The constitutional right of a citizen to participate in the management of state affairs is not absolute, it can be limited by the state, and therefore, during the purge of power in the conditions of deoccupation and reintegration of the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol, lustration can be applied.

In the decision of the Grand Chamber of the Constitutional Court of Ukraine in the case based on the constitutional submission of 49 People’s Deputies of Ukraine regarding the compliance with the Constitution of Ukraine (constitutionality) of Clause 12 of Section I of the Law of Ukraine “On Amendments and Revocation of Certain Legislative Acts of Ukraine” dated December 28, 2014 year No. 76-VIII

dated May 22, 2018 No. 5-p/2018 of the Constitutional Court of Ukraine notes that the narrowing of the content and scope of existing constitutional human rights and freedoms is their limitation [15].

The Constitutional Court of Ukraine believes that restrictions on the realization of constitutional rights and freedoms cannot be arbitrary and unfair, they must be established exclusively by the Constitution and laws of Ukraine, pursue a legitimate goal, be conditioned by the social necessity of achieving this goal, proportional and justified, in the case of limiting a constitutional right or freedom, the legislator is obliged to introduce such legal regulation, which will make it possible to optimally achieve a legitimate goal with minimal interference in the realization of this right or freedom and not to violate the essential content of this right [14]. According to the principle of legal certainty as one of the elements of the principle of the rule of law, restrictions on the fundamental rights of a person and a citizen and the implementation of these restrictions in practice are permissible, in particular, on the condition of ensuring the predictability of the application of legal norms that establish such restrictions [14].

The prescriptions of the third part of Article 22 of the Constitution of Ukraine should be understood in such a way that when adopting new laws or making changes to existing laws, it is not allowed to narrow the content and scope of existing constitutional human rights and freedoms, if such a narrowing leads to a violation of their essence [15]. The Constitution of Ukraine allows additional regulation by law of the general principles of the purification of power, provided that general democratic principles are observed.

In the decision of the Constitutional Court of Ukraine in the case on guarantees of independence of judges) dated June 18, 2007 No. 4-p/2007 [16], the issue of narrowing the scope of human rights was raised, while the content of the right remained unchanged. This resulted in a decrease in the achieved level of guarantees of the independence of working judges. It follows from this that the application of such instruments, the consequence of which is in practice the narrowing of the rights of citizens who exercise their right to participate in

the management of state affairs, is contrary to the Constitution of Ukraine. In the decision of the Constitutional Court of Ukraine in the case on social guarantees of citizens) dated July 9, 2007 No. 6-p/2007, the issue of the application of such a measure by the state as the suspension of the laws was raised. It must be carried out in accordance with the requirements of the Constitution of Ukraine. This legal procedure is organically connected with the repeal of laws, making changes and additions to them [17].

If the law suspends for a certain period of time the legal regulation of relations in a certain area, stops the operation of the mechanism for realizing the constitutional right of a citizen to participate in the management of state affairs, which is a sign of the limitation of this right, then if such suspension occurs systematically, this should be qualified as the actual cancellation of their actions Suspension of the provisions of the laws, which define the citizen's right to participate in the management of state affairs, its content and scope, is a limitation of this right and can take place only in cases provided for by the Constitution of Ukraine.

In Art. 64 of the Constitution of Ukraine comprehensively defines such cases, namely, it is provided that in conditions of war or a state of emergency, separate restrictions on human rights and freedoms can be established with an indication of the period of validity of these restrictions, and a number of rights and freedoms that cannot be limited under any circumstances are defined [17]. As a result, for example, of the temporary suspension of the current laws of Ukraine, which establish benefits for persons who participate in the management of state affairs, compensation or other forms of social guarantees, their standard of living actually decreases. According to Art. 64 of the Constitution of Ukraine, the rights of citizens may be limited, including by suspending the operation of laws (their individual provisions), only in conditions of martial law or a state of emergency for a certain period.

Decision of the Constitutional Court of Ukraine in the case based on the constitutional submission of 51 people's deputies of Ukraine regarding compliance with the Constitution of Ukraine (constitutionality) of the provisions of

Article 92, Clause 6 of Section X “Transitional Provisions” of the Land Code of Ukraine (case on permanent use of land plots) dated September 22, 2005 No. 5 -рп/2005 cancellation of constitutional rights and freedoms is their official (legal or actual) liquidation. Narrowing the content and scope of rights and freedoms is their limitation. In the traditional understanding of activity, the defining concepts of the content of human rights are the conditions and means that make up the capabilities of a person, necessary to meet the needs of his existence and development. The scope of human rights is their essential property, expressed by quantitative indicators of human capabilities, which are reflected by the corresponding rights, which is not homogeneous and general. The generally recognized rule is that the essence of the content of the fundamental right cannot be violated in any case. One of the elements of the rule of law is the principle of legal certainty, which states that the limitation of the basic rights of a person and a citizen and the implementation of these limitations in practice is permissible only under the condition of ensuring the predictability of the application of legal norms established by such limitations [18]. That is, the limitation of the constitutional right to participate in the management of state affairs should be based on criteria that will enable a person to separate lawful behavior from illegal behavior, to predict the legal consequences of his behavior.

Any restriction of human and citizen rights must be not only legally justified, but also socially justified and adequate [19]. In the decision of the Constitutional Court of Ukraine in the case on the constitutional submission of the Supreme Court of Ukraine regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of the laws of Ukraine “On the principles of preventing and countering corruption”, “On the responsibility of legal entities for committing corruption offenses”, “On introducing changes to some legislative Acts of Ukraine on Liability for Corruption Offenses” (Case on Corruption Offenses and Implementation of Anti-Corruption Laws) dated October 6, 2010 No. 21-рп/2010 states that in order to effectively use working time by state officials, the

legislator may provide for additional permitting mechanisms (regulators), which normalize their participation in scientific and teaching activities not by the main place of work, but not by recognizing these actions as corrupt and establishing administrative responsibility only for the very fact of their implementation outside of working hours [19].

The Constitution and laws of Ukraine establish certain rules of conduct for officials and employees of state authorities and local self-government bodies, including certain restrictions on their non-official activities [20]. Such restrictions are constitutionally justified, since some types of activities of these persons outside their service may objectively cause a situation incompatible with the proper performance of their official duties due to the occurrence of a conflict of interests and this may affect the objectivity or impartiality of decision-making, and as well as on the performance or non-performance of actions during the performance of the official powers granted to her [20]. The legal position of the Constitutional Court of Ukraine is that the state introduces legal mechanisms that prevent a conflict of interests or ensure its settlement in the event of one [20].

In this regard, the Constitution of Ukraine establishes restrictions on the non-official activities of persons authorized to perform the functions of the state and local self-government bodies, namely: the entrepreneurial activity of deputies, officials and officials of state authorities and local self-government bodies is limited by law; people’s deputies of Ukraine may not have another representative mandate or be in public service; requirements regarding the incompatibility of the deputy’s mandate with other types of activity are established by law; The President of Ukraine may not engage in other paid or entrepreneurial activities or be a member of the governing body or supervisory board of a profit-making enterprise; members of the Cabinet of Ministers of Ukraine, heads of central and local executive bodies do not have the right to combine their official activities with other work, except for teaching, scientific and creative work outside of working hours, to be part of the governing body or supervisory board of an enterprise whose purpose is to ob-

tain profit; professional judges cannot hold any other paid positions, perform other paid work, except scientific, teaching and creative [20].

According to the Decision of the Constitutional Court of Ukraine in the case of the constitutional submission of 47 People's Deputies of Ukraine regarding the compliance with the Constitution of Ukraine (constitutionality) of the provisions of the second part of Article 5 of the Law of Ukraine "On the Commissioner of the Verkhovna Rada of Ukraine on Human Rights" (the case of age qualification) dated April 18, 2000 No. 5-прт/2000, the legal positions regarding the social relations we are investigating are as follows: 1) the establishment of certain qualification requirements by the Constitution of Ukraine and the laws of Ukraine does not violate the constitutional principle of equality (Article 24), because all citizens who meet specific qualification requirements have the right to occupy relevant positions; 2) expediency is a criterion in the legislative establishment of qualification requirements for age [21]. Therefore, the establishment of qualification requirements for the age of a citizen - the bearer of the right to participate in the management of state affairs - can be established by the law of Ukraine. Similarly, the law of Ukraine may establish other qualification requirements. The establishment of qualification requirements by the law of Ukraine is not a violation of the principle of equality. However, the goal of establishing certain differences (requirements) in the legal status of employees must be substantial, and the differences (requirements) pursuing such a goal must comply with constitutional provisions, be objectively justified, justified and fair. Otherwise, setting restrictions on holding a position would mean discrimination [22].

According to part four of Article 15 of the Constitution of Ukraine, the state guarantees freedom of political activity, which is not prohibited by the Constitution and laws of Ukraine [23]. This means that at the constitutional and legislative levels, certain restrictions and conditions for the realization of the right of citizens to freedom of political activity may be established [23]. This activity of citizens is carried out through their participation in the political life of society, in particular through the right of citizens to participate in the management of state

affairs, in all-Ukrainian and local referendums, to freely elect and be elected to state and local self-government bodies [23]. Electoral commissions are the subject of the election process, its integral component, they are empowered to resolve important issues for the state regarding the organization and conduct of elections, therefore, there are grounds to assert that participation in the work of such election commissions is a way of realizing the right of citizens to participate in management of state affairs [23]. Depriving a citizen of Ukraine of the right to participate in the management of state affairs by participating in the work of the district or precinct election commission in connection with his residence outside the relevant district or city in the absence of a state of war or state of emergency is a violation of the fourth part of Article 15, the first part of Article 38 Constitution of Ukraine [23].

Conclusions

1. The constitutional right of a citizen to participate in the management of state affairs is not absolute, it can be limited by the state, and therefore, during the purge of power in the conditions of deoccupation and reintegration of the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol, lustration can be applied.

2. If an exception to the constitutional right of everyone to participate in the management of state affairs is established by a law or by-law regulatory act, this contradicts the Constitution of Ukraine. The Constitution of Ukraine allows additional regulation by law of the general principles of the purification of power, provided that general democratic principles are observed.

3. Suspension of the provisions of the laws, which define the citizen's right to participate in the management of state affairs, its content and scope, is a limitation of this right and can take place only in cases provided for by the Constitution of Ukraine. Such, which contradicts the Constitution of Ukraine, is the use by the state of such instruments, the effect of which is in practice the narrowing of the right of citizens to participate in the management of state affairs. If the law suspends for a certain period of time the legal regulation of relations in a certain

area, stops the operation of the mechanism for realizing the constitutional right of a citizen to participate in the management of state affairs, which is a sign of the limitation of this right, then if such suspension occurs systematically, this should be qualified as the actual cancellation of their actions.

4. The state may establish certain rules of conduct for officials and employees of state authorities and local self-government bodies, including certain restrictions on their non-official activities.

5. A structural element of a citizen's right to participate in the management of state affairs is the right of this citizen to participate in the work of the district or precinct election commission. Depriving a citizen of this right in connection with his residence outside the relevant district or city in the absence of a state of war or state of emergency is a violation of the fourth part of Article 15 and the first part of Article 38 of the Constitution of Ukraine.

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**КОНСТИТУЦІЙНЕ ПРАВО
ГРОМАДЯН БРАТИ УЧАСТЬ В
УПРАВЛІННІ ДЕРЖАВНИМИ
СПРАВАМИ: «МЕЖІ» ТА «ОБМЕЖЕННЯ»
В РІШЕННЯХ КОНСТИТУЦІЙНОГО
СУДУ УКРАЇНИ**

Статтю присвячено виявленню правових позицій Конституційного Суду України щодо меж та обмежень конституційних прав і свобод людини і громадянина та їх екстраполяції на суспільні відносини, які виникають при реалізації конституційного права кожного громадянина на участь в управлінні державними справами. Акцентується увага на тому, що наразі законодавством України визначено правові та організаційні засади проведення очищення влади (люстрації) для захисту та утвердження демократичних цінностей, верховенства права та прав людини в Україні. Водночас, на виконання рішень Європейського суду з прав людини у справах проти України воно має бути вдосконалене оскільки містить норми права, які є несумісними з нормами Конвенції про захист прав людини і основоположних свобод. Несумісною виявилась і практика застосування норм вище згаданого національного законодавства, наслідком чого стало порушення прав і свобод громадян України (рішення Європейського суду з прав людини

в справах «Полях та інші проти України», «Самсін проти України»). Підкреслюється, що очищення влади в Україні було і залишається одним з ключових питань при реалізації Україною свого стратегічного курсу на набуття повноправного членства в ЄС та НАТО, а також при повоєнному відновленні України, деокупації та реінтеграції тимчасово окупованої території Автономної Республіки Крим та міста Севастополя. Втручання ж у право громадян України на участь в управлінні державними справами не може бути свавільним. Вагома роль в цьому процесі належить Конституційному Суду України, який забезпечує верховенство Конституції України, вирішує питання про відповідність Конституції України законів України з питань очищення влади, здійснює офіційне тлумачення Конституції України та інші повноваження згідно з Конституцією України.

Ключові слова: конституційне право громадян брати участь в управлінні державними справами, очищення влади, втручання, межі втручання, обмеження, Конституційний Суд України, правові позиції, зупинення дії положень законів, звуження права громадян на участь в управлінні державними справами, право участі громадянина в роботі окружної або дільничної виборчої комісії.