

PURPOSE AND SPECIFICS OF THE CONSTITUTIONAL AND LEGAL RESPONSIBILITY OF THE PARTICIPANTS IN THE ELECTION PROCESS

Vyshnevskaya Maryna

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Annotation. The article is devoted to the study of the purpose and specifics of the constitutional and legal responsibility of the participants of the election process.

It has been established that currently there is insufficient research on the systematic analysis of constitutional and legal responsibility. Ukrainian legislation regulates various types of legal liability, such as civil, criminal, and administrative, but it is little improved with regard to constitutional and legal liability. The term “constitutional and legal responsibility” is not used in the Constitution of Ukraine, although there are separate provisions related to this form of responsibility. This limits the possibility of using constitutional and legal responsibility to perform various tasks provided for by the constitutional law of Ukraine.

It was determined that constitutional and legal responsibility has a political nature and can arise even in the absence of violations of the law. In this context, constitutional responsibility is associated with actions that are viewed from a political point of view as negative. An example of such responsibility is the collective responsibility of the government before the parliament, which is provided for in Article 87 of the Constitution of Ukraine. Although this form of responsibility has a political aspect, it cannot be considered full-fledged political responsibility, since political responsibility and legal responsibility are different concepts. One of the differences of legal responsibility is that it is tied to the violation of legal norms, and this involves the application of appropriate coercive measures or sanctions, which are established by law.

It is emphasized that it is important to create effective regulation of this issue, to ensure a balance between freedom of speech and responsibility for spreading false information. The law should require mandatory fact-checking before publishing information in mass media or social networks during election campaigns.

Arguably, the development and implementation of electronic platforms for engaging citizens in the electoral process can simplify and improve their participation, including electronic voting, online consultations and other interactive means of communication with citizens.

Key words: constitutional and legal responsibility, subjects of the election process, legal accountability, mass media, media literacy, democracy.

1. Introduction.

In domestic legal science, constitutional and legal responsibility, compared to other types of legal responsibility, has been studied not so long ago. Different approaches to its understanding arose due to the ambiguous perception of this type of legal responsibility.

It is important to note that the systematic analysis of constitutional and legal responsibility is an understudied issue. Ukrainian legislation provides for various types of legal liability, such as civil,

criminal, administrative, and others, with the exception of constitutional liability. The latter, although present in the Constitution of Ukraine dated June 28, 1996, is described rather fragmentarily. Moreover, the term “constitutional-legal responsibility” itself is not used in the Constitution of Ukraine, although it contains separate provisions related to constitutional responsibility. All this limits the opportunity to fully use constitutional and legal responsibility to fulfill its various functions, which are inherent in the institution of constitutional law of Ukraine.

The term “constitutional legal responsibility” is used by lawyers in various senses, including both broad and narrow ones. In the constitutional and legal science of Ukraine, a view was formulated according to which, in a broad sense, this term refers to all forms of public legal responsibility for violations of the current constitutional legislation of Ukraine. In the narrow sense, we are talking exclusively about constitutional and legal responsibility, which is a separate, specialized type of legal responsibility defined by the Constitution and laws of Ukraine.

2. Political nature of constitutional and legal responsibility.

Constitutional-legal responsibility, in addition to the general characteristics that are characteristic of legal responsibility for violations of the constitutional legislation of Ukraine, has its own unique features that make it a type of public-legal responsibility, different from others.

One of the features of constitutional and legal responsibility is its political character, which can appear even when there is no violation of the law at all. In this case, constitutional responsibility is associated with actions perceived as negative from a political point of view. The collective responsibility of the government before the parliament, provided for in Article 87 of the Constitution of Ukraine, is an example of this type of responsibility. It is the presence of a political aspect in constitutional and legal responsibility that can lead to the assumption that this form of responsibility is one of the types of political responsibility. However, this assumption can be rejected because political responsibility and legal responsibility, including constitutional-legal responsibility, represent different concepts. A distinctive feature of legal responsibility is its attachment to the violation of legal norms, without which its application is not possible, and this involves the use of appropriate coercive measures or sanctions, which are defined by legal norms.

Of course, legal responsibility, like all aspects of legal relations in society, cannot be politically neutral. Law, in general and in its individual aspects, always has a political context. The political orientation of will expressed in law is one of the important characteristics of law, which determines its social role in society. Moreover, constitutional and legal responsibility sometimes really has a bright political character and is connected with political responsibility. For example, the resignation of the government can be a consequence of both constitutional and legal responsibility, when it concerns the improper performance of its duties by the government, and political responsibility, when the government resigns to solve a political crisis in the country. Simultaneous application of both types of liability may also occur. At the same time, it is important to remember that constitutional-legal responsibility involves the violation of constitutional duties by senior officials, while political responsibility can arise for other political reasons [1].

Constitutional-legal responsibility is a special type of constitutional-legal relations in Ukraine, with all the characteristic features (political-legal character, specific list of subjects, etc.). Its onset, change or termination is based on the existence of all components of constitutional relations - subject, object, content of constitutional legal relations and legal fact (or facts). If at least one of these components is missing, then the legal responsibility can no longer be recognized as constitutional and legal.

3. Distinguishing between the concepts of “constitutional and legal responsibility” and “state and legal responsibility”.

We share the opinion on the importance of distinguishing the concepts of “constitutional-legal responsibility” and “state-legal responsibility”. This important issue is related to the different perception

of these two types of responsibility by scientists. Some scientists consider state-legal responsibility as a special form of responsibility for violation of the Constitution, which combines it with constitutional-legal responsibility. However, in our opinion, these concepts cannot be equated.

On the one hand, state-legal responsibility can cover constitutional-legal responsibility, since constitutional norms are part of state-legal norms. On the other hand, the concept of constitutional and legal responsibility has a broader socio-political meaning than just a legal category of state-legal measures of responsibility. Such a conclusion can be drawn, since constitutional and legal responsibility has features of both political and legal responsibility [2].

4. Types of constitutional and legal responsibility.

In modern legal literature, two main types of constitutional and legal responsibility are widespread: positive (prospective) and negative (retrospective). This division is based on the legal grounds for the occurrence of constitutional and legal responsibility, namely: a) negative (retrospective) responsibility is based on the legal fact of a constitutional violation; b) positive (prospective) liability is based on the legal fact of acquiring the status of constitutional tortious capacity. Legal responsibility for violation of constitutional legislation or constitutional-legal responsibility in a broad sense has a direct connection with a constitutional violation (criminal offense). In the case of positive legal responsibility in constitutional law, a set of legal measures is used to prevent a constitutional violation, and in the case of negative constitutional responsibility, a system of public legal sanctions for the committed constitutional violation is used. Relations related to constitutional and legal responsibility arise not only as a result of a constitutional violation, but also in the context of its prevention and application of positive constitutional and legal responsibility [3].

The positive nature of legal responsibility can be explained through such aspects as “psychological attitude of a person (subject of law) to the fulfillment of the duties assigned to him” and “sense of responsibility”. However, these definitions belong more to the sphere of morality, religion and, to some extent, politics, rather than law. Proponents of positive legal responsibility take it beyond the realm of law, using concepts such as consciousness, feelings, and morality that belong to other realms.

The term “positivity” in legal responsibility means that this form of responsibility exists not only in cases of offenses, but also applies to actions in the present and future, contributing to the lawful behavior of the subjects of legal relations. The first idea of positive legal responsibility was expressed in the work of P. Nedbail, who considers it as an independent and proactive activity within the framework of legal norms. It involves achieving positive goals and is responsible for achieving success in completing tasks.

Retrospective legal responsibility is always based on objective legal norms and the negative consequences they provide for antisocial and illegal behavior. On the other hand, positive responsibility plays an important role as a psychological stimulator of socially useful behavior. This means that the sense of responsibility, considered not as a legal category, but rather as a moral concept, a religious aspect, and partly a political aspect, has the scope of a more general social nature. It is more associated with morality and religion and has limited legal specificity. Law, in turn, is based on these moral foundations of positivity and is aimed at ensuring responsible and lawful behavior of all subjects of social relations. However, legal practice is more interested in responsibility related to laws, court proceedings and violation of law and order. Thus, it can be concluded that legal responsibility and constitutional-legal responsibility, as its important subspecies, should be considered mainly in the context of retrospective or negative nature. Other types of social responsibility can have a positive aspect of responsibility [4].

5. Modernization of the constitutional and legal responsibility of the subjects of the election process.

Improving the constitutional and legal responsibility of the subjects of the election process is possible by:

Increasing the transparency of financing of political parties and campaigns. It is important to require political parties and campaigns to provide detailed information on sources of funding, including internal and external sources. The publication of such information must be available to the public and be carried out in real time.

Independent audit of finances. It is important to create an independent audit body or commission that will check the financial activities of political parties and campaigns. This body should be empowered and have access to financial information of all subjects of the election process.

All political parties, candidates and election campaigns should be required to submit detailed financial reports. These reports must contain information on sources of funding, expenses and information on all financial transactions related to election activities. An independent audit body should have the right to demand from political parties and campaigns an explanation regarding any questionable financial transactions or expenses.

The audit body (commission) must have the right to conduct frequent and regular audits of financial activities. This will allow timely detection of violations and improprieties and taking appropriate measures. Audit results must be made public for general public access. This will ensure the openness and transparency of election finance activities.

The audit body must present its conclusions to the authorities responsible for the supervision and regulation of election finance activities. These bodies can decide on punitive or corrective measures.

It should be noted that an independent audit body should conduct constant monitoring of financial transactions during election campaigns, and not only at the audit stage, which will allow timely detection and response to violations.

It should also be given the right to cooperate with other bodies, such as law enforcement agencies and courts, to ensure the effective imposition of sanctions in cases of violations.

The general principle is that an independent audit of finances is aimed at preventing corruption, ensuring the integrity and transparency of the electoral process, as well as ensuring accountability for violations.

Implementation of effective and optimal sanctions. Provide for serious sanctions for violators of election laws, including significant fines, disqualification from participating in elections, and even criminal liability in case of serious violations.

Independence of election commissions. It is important to guarantee the independence of election commissions from political pressure and influence. This can be achieved through the procedures for the nomination and appointment of commission members, as well as the definition of clear rules for their functioning.

Prohibition of discrimination. Legislation should include provisions prohibiting any form of discrimination or harassment of voters, candidates or journalists on political or other grounds.

Electoral monitoring. Implementation of the election monitoring system involving independent observers who will monitor violations and incidents of the election process. Their reports should be publicly available and taken into account when making decisions about election results.

Prohibition of fake news and disinformation. Legislation should include mechanisms to combat the spread of fake news and disinformation during election campaigns.

It is important to ensure proper regulation of this issue, to balance freedom of speech and responsibility for spreading false information. The law should provide for mandatory factual verification of information before its publication in mass media or social networks during election campaigns. This means that journalists and other news agencies must verify the authenticity of information before releasing it to the public.

The law should also provide mechanisms for responding to cases of fake news and disinformation. This may include the rapid removal of inaccurate information and the imposition of administrative fines on violators.

It is also worth predicting responsibility for spreading false information, especially if this information is aimed at influencing voters or discrediting candidates. This may include sanctions such as fines, legal action or other appropriate measures.

We believe it is appropriate that all fake news or disinformation be clearly identified as such. This will help citizens to distinguish between reliable and unreliable information. It is important to ensure cooperation with social media platforms to identify and remove fake news and disinformation.

Strengthening media literacy, which implies an important role of education and public education. The main goal is to create public education programs and initiatives aimed at increasing the level of media literacy among citizens. This may involve working with and developing educational programs for different populations, such as students, adults, and others.

An important aspect of media literacy is teaching people how to analyze the information they consume and distinguish fact from misinformation. Programs should provide critical thinking and source-checking skills that include understanding the structure and source of information and the ability to fact-check. Through public campaigns and information materials, citizens can be made aware of the importance of media literacy and how they can join the fight against fake news.

Universities, schools and other educational institutions can include media literacy in their curricula. This will help create a media literate generation. The media can also play an important role in improving media literacy.

Strengthening media literacy aims to make citizens more informed consumers of information and reduce the impact of fake news and disinformation on the election process.

Participation of citizens. Ensuring the opportunity for citizens to actively participate in election procedures through the support of citizen initiatives, referenda, and public discussion of laws and political decisions.

It is considered appropriate to use mechanisms that allow citizens to initiate legislative changes or reforms. This can be done through collecting signatures or other forms of public support to submit specific issues to the government or parliament.

Ensuring open and accessible public discussions of laws, policy decisions and programs is an important component of citizen participation. Citizens should be able to voice their opinions and help shape decisions through open consultations and meetings.

Promoting the development and activities of civil organizations working in the field of politics and human rights can increase citizen participation. Civil organizations can monitor election procedures, promote citizen education, and coordinate civic activism.

The development and implementation of electronic platforms for engaging citizens in the electoral process can simplify and improve their participation. This may include electronic voting, online consultations and other interactive means of communication with citizens.

Citizen participation is a fundamental principle of democracy, and enabling citizens to actively participate in electoral procedures is an important step in improving democratic governance and ensuring fair and representative elections.

Disputing the results. The law should clearly define the appeals procedures and rules governing appeals of election results. This includes deadlines for filing appeals, evidence that can be presented, and how cases are handled. The appeal process should be transparent and accessible to all interested parties.

Ensuring the independence of judicial bodies that resolve disputes regarding election results is an important aspect of legal protection. Courts must be independent from the influence of political or other factors and have the appropriate competence to decide cases of this kind.

The process of contesting election results should be open and accessible to citizens. Decisions of judicial bodies must be made public, and participants have the right to be represented by lawyers and participate in court hearings.

6. Conclusions.

Theoretical aspects related to the definition of constitutional and legal responsibility within the framework of legal responsibility remain relevant and require further research in the field of scientific research. It should be noted that there is a fact when the existence of constitutional responsibility or constitutional-legal responsibility in the national legal system was practically not taken into account for a long period.

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Maryna Vyshnevskya,

*graduate student of the Department of Constitutional Law
and comparative law
Uzhhorod National University
Uzhhorod, Ukraine*