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RESPONSIBILITY FOR VIOLATION OF THE RULES OF FINANCING A POLITICAL PARTY, ELECTION AGITATION OR AGITATION OF A REFERENDUM

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Deshko L.M., Bysaga Y.M. Responsibility for violation of the rules of financing a political party, election agitation or agitation of a referendum.

The article emphasizes that political parties contribute to the formation and expression of the political will of citizens. Thanks to them, citizens of Ukraine can exercise their right to freely choose and be elected to state and local government bodies. A form of direct democracy, in addition to elections, is a referendum. Attention is focused on the fact that the financing of political parties, pre-election campaigning or referendum campaigning can be the tool that, in the presence of deficiencies in the current legislation regulating social relations that arise when giving or receiving a contribution to support a political party, or when receiving state funding of a statutory activities of a political party, or when providing or receiving financial (material) support for pre-election campaigning or referendum campaigning, may be used to suppress the will of voters. Attention is also drawn to such a phenomenon as political corruption.

It is established that the fines for violating the rules of political party financing, pre-election campaigning or referendum campaigning are disproportionate to the amount of money that any political party receives and spends during elections. The consequence of this is that the amount of the fine fixed in the Code of Ukraine on Administrative Offenses, the Criminal Code of Ukraine, is not a safeguard against violations. The amount of money spent on political advertising and pre-election campaigning and the amount of fines for violating the rules of political financing are disproportionate. It is proposed to amend the Code of Ukraine on Administrative Offenses, applying an approach according to which the fine is 100% of the amount of illegal contributions or support received, but not

less than 100 tax-free minimum incomes of citizens. If the reporting procedure is violated, the fine is at least 1,000 tax-free minimum incomes of citizens.

The shortcomings of the legislation of Ukraine consist in the fact that the provision of financial (material) support for campaigning or in favor of a political party is equated with the transfer of ownership; for criminal offenses characterized by a greater degree of public danger, fines are lower than for administrative violations. Ways to improve the current legislation of Ukraine are proposed, including, in Art. 159¹ of the Criminal Code of Ukraine is proposed to provide for such a sanction as confiscation of property.

Key words: elections, referendum, responsibility, political party financing, pre-election campaign financing, referendum campaign financing, reporting, legal responsibility for violation of political financing rules.

Дешко Л.М., Бисага Ю.М. Відповідальність за порушення правил фінансування політичної партії, передвиборної агітації чи агітації референдуму.

В статті підкреслюється, що формуванню і вираженню політичної волі громадян сприяють політичні партії. Завдяки їм громадяни України можуть реалізувати своє право вільно обирати і бути обраними до органів державної влади та органів місцевого самоврядування. Формою прямої демократії окрім виборів є референдум. Акцентується увага на тому, що фінансування політичних партій, передвиборної агітації чи агітації референдуму може бути тим інструментом, який при наявності недоліків чинного законодавства, що регулює суспільні відносини, які виникають при наданні або отриманні внеску на підтримку політичної партії, або при отриманні державного фінансування статутної діяльності політичної

партії, або при наданні або отримання фінансової (матеріальної) підтримки для здійснення передвиборної агітації або агітації референдуму, може бути застосованим для нівелювання волі виборців. Також звертається увага на таке явище, як політична корупція.

Віосновується, що штрафи за порушення правил фінансування політичної партії, передвиборної агітації чи агітації референдуму є неспівмірними з обсягом коштів, які отримує і витрачає будь-яка політична партія під час виборів. Наслідком цього є те, що розміри штрафу, закріплені в Кодексі України про адміністративні правопорушення, Кримінальному кодексі України, не є запобіжником від порушень. Сума коштів, яка йде на політичну рекламу та передвиборну агітацію і розмір штрафів за порушення правил політичного фінансування – не пропорційні. Пропонується внести зміни до Кодексу України про адміністративні правопорушення, застосувавши підхід, відповідно до якого штраф становить 100% від суми отриманих незаконних внесків або підтримки, але не менше 100 неоподаткованих мінімумів доходів громадян. Якщо порушено порядок звітування – штраф становить не менше 1000 неоподаткованих мінімумів доходів громадян.

Недоліки законодавства України полягають і в тому, що надання фінансової (матеріальної) підтримки на здійснення агітації або на користь політичної партії отожднюється з передачею права власності; за кримінальні правопорушення, які характеризуються більшим ступенем суспільної небезпеки, штрафи є меншими, ніж за адміністративні порушення. Пропонуються шляхи вдосконалення чинного законодавства України, в тому числі, в ст. 159¹ Кримінального кодексу України пропонується передбачити таку санкцію, як конфіскація майна.

Ключові слова: вибори, референдум, відповідальність, фінансування політичної партії, фінансування передвиборної агітації, фінансування агітації референдуму, звітування, юридична відповідальності за порушення правил політичного фінансування.

Formulation of the problem.

Political parties contribute to the formation and expression of the political will of citizens [1; 4]. They take part in elections, and thanks to them, citizens of Ukraine can exercise their right to participate in the management of state affairs, freely choose and be elected to state and local self-government bodies. A form of direct democracy, in addition to elections, is a referendum. Its importance is difficult to overestimate [14].

Financing of political parties, pre-election campaigning or referendum campaigning can be the tool that, in the presence of deficiencies in the current legislation regulating public relations, which

arise when providing or receiving a contribution to support a political party, or when receiving state funding of the statutory activities of a political party, or when providing or receiving financial (material) support for election campaigning or referendum campaigning can be used to suppress the will of voters, lead to political corruption. Collectively, this can pose a threat to the security of the state and democracy [15].

The above shows that the improvement of the mechanism of prosecution for violations of the rules of financing a political party, pre-election campaign or referendum campaign should be in the field of view of both scientists and practitioners.

The state of development of this problem.

Issues of financing political parties were studied in the research of Yu. Bysaga [2; 3; 13; 16], O. Vasylychenko [5], O. Lotyuk [6] and others. These issues are also raised in textbooks on constitutional law, administrative law, and criminal law. The research of L. Deshko [7–11], T. Gurzhii [12], A. Gurzhii [12] and other scientists are devoted to issues of state funding control. At the same time, since 2019, the legislation of Ukraine regarding the financing of a political party, pre-election campaign or referendum campaign, and regarding responsibility for the violation of the funding procedure established by the legislation of Ukraine has been fundamentally changed. We emphasize that civil society is being strengthened in Ukraine, so-called political and financial corruption in elections is not tolerated. Society's demand for the formation and expression of the political will of citizens without using such a tool as the so-called political corruption is increasing. Society's demand to improve the mechanisms for bringing to justice those guilty of violating the procedure for financing a political party, pre-election campaign or referendum campaign is also growing. This indicates the relevance of research on the topic raised in this article.

The purpose of this article - identify deficiencies in the legislation of Ukraine that regulates public relations that arise when providing or receiving a contribution to support a political party, or when receiving state funding for the statutory activities of a political party, or when providing or receiving financial (material) support for pre-election campaigning or referendum campaigning, and develop proposals for its improvement.

Since 2019, there has been a change in the legislation regulating public relations that arise when financing a political party, pre-election campaign or referendum campaign. At the same time, the problems that arise in practice regarding liability in the event of violation of the procedure for financing a political party, pre-election campaign or referendum campaign have not been fully resolved. Reducing or eliminating legal liability for violations of political financing rules is a threat to democracy.

In order to improve the electoral legislation of Ukraine to Art. 212¹⁵ of the Code of Ukraine on Administrative Offenses was amended: the words «all-Ukrainian or local» were deleted from the title of the article; in the first paragraph, the words «all-Ukrainian or local campaigns» were replaced by the words «or campaigns»; the second paragraph after the words «political party» was supplemented with the words «financial (material) support for pre-election campaigning or referendum campaigning». Thus, violation of the procedure established by law for providing or receiving a contribution to support a political party, violation of the procedure established for providing or receiving state funding for the statutory activities of a political party, as well as violation of the procedure established by law for providing or receiving financial (material) support for pre-election campaigning or referendum campaigning - entail the imposition of a fine on citizens from seventy to one hundred non-taxable minimum incomes of citizens and on officials - from one hundred to one hundred and thirty non-taxable minimum incomes of citizens with confiscation of the amount of contributions to support a political party, financial (material) support for election campaigning or campaigning referendum, provided or received in violation of the law [17].

According to Art. 212²¹ of the Code of Ukraine on Administrative Offenses, violation of the established procedure or deadlines for submitting a financial report on the receipt and use of election fund funds, a report of a political party on property, income, expenses and obligations of a financial nature, or submission of a financial report drawn up in violation of the established requirements, - entail the imposition of a fine from three hundred to four hundred tax-free minimum incomes of citizens [17].

According to Art. 159¹ of the Criminal Code of Ukraine, the submission of knowingly false information in the report of a political party on property, income, expenses and obligations of a financial nature or in the financial report on the receipt and use of funds of the election fund of a political party, a local organization of a political party, a candidate - shall be punished by a fine of one hundred up to three hundred tax-free minimum incomes of citizens or by correctional works for a period of up to two years, or restriction of freedom for the same period, with deprivation of the right to hold certain positions or engage in certain activities for a period of five years. Deliberately making a contribution to the support of a political party by a person who does not have the right to do so or on behalf of a legal entity that does not have the right to do so, intentionally making a contribution in favor of a political party by an individual or on behalf of a legal entity in a large amount, intentionally providing financial (material) support for pre-election campaigning or referendum campaigning by an individual or on behalf of a large

legal entity or a person who does not have the right to do so, or on behalf of a legal entity that does not have the right to do so, as well as intentionally receiving a contribution in favor of a political party from a person who does not have the right to make such a contribution, or in a large amount, intentionally receiving a large amount of financial (material) support in the implementation of pre-election campaigning or referendum campaigning, intentionally receiving such financial (material) support from a person who does not have the right to provide such financial (material) support, - shall be punished by a fine of one hundred to three hundred non-taxable minimum incomes of citizens or corrective labor for a period of up to two years, or restriction of freedom for the same period, with deprivation of the right to hold certain positions or engage in certain activities for a period of five years. Actions committed repeatedly - are punishable by a fine from three hundred to five hundred tax-free minimum incomes of citizens or corrective labor for a term of up to two years, or restriction of freedom for the same term, with deprivation of the right to hold certain positions or engage in certain activities for a term of five years [18].

If actions (intentional contribution to the support of a political party by a person who does not have the right to do so or on behalf of a legal entity that does not have the right to do so, intentional contribution to the political party by an individual or on behalf of a legal entity in a large amount, intentional provision of financial (material) support for pre-election campaigning or referendum campaigning by a natural person or on behalf of a legal entity in a large amount or by a person who does not have the right to do so, or on behalf of a legal entity that does not have the right to do so, as well as intentionally receiving a contribution for the benefit of a political party from a person who does not have the right to make such a contribution, or in a large amount, intentionally receiving a large amount of financial (material) support in the implementation of pre-election campaigning or referendum campaigning, intentionally receiving such financial (material) support from a person who does not have the right to provide such financial (material) support) committed by a group of persons, body organized group or combined with the demand for contribution or financial (material) support in the implementation of pre-election campaigning or referendum campaigning, such actions are punishable by restriction of freedom for a period of five years or deprivation of liberty for the same period, with deprivation of the right to hold certain positions or engage in certain activities for a period of five years.

At the same time, if you compare the amount of money spent on political advertising and election campaigning and the amount of fines for violating

the rules of political financing, these amounts are disproportionate. So, for such actions as making or receiving illegal contributions or support – the legislation of Ukraine provides for a fine of UAH 1,190 to UAH 1,700 for citizens, and UAH 1,700 to UAH 2,210 for officials. (Article 212¹⁵ of the Code of Ukraine on Administrative Offenses). If the reporting procedure is violated, the fine is from UAH 5,100 to UAH 6,800. Are such fines a deterrent for violators? Statistics show that no. It seems that the way out of this situation could be to apply an approach according to which the fine is 100% of the amount of illegal contributions or support received, but not less than 100 tax-free minimum incomes of citizens. If the reporting procedure is violated, the fine could amount to at least 1,000 tax-free minimum incomes of citizens.

In addition, it is noteworthy that for criminal offenses characterized by a greater degree of public danger, the fines are smaller than for administrative violations. Thus, the intentional implementation or receipt of illegal contributions or support, as well as the submission of knowingly false information in financial reports, is punishable by a fine from UAH 1,700 to UAH 5,100. If such actions are committed repeatedly, the sanction includes a fine of UAH 5,100 to UAH 8,500. It can be seen that such a fine is not a deterrent against committing a crime either. The way out of this situation could also be to increase the amount of fines and tie them to the amount received by the political party in the form of illegal contributions or support.

We focus on another practical problem – the confiscation of the amount of contribution or financial support to support a political party or to carry out pre-election campaigning. Yes, in Art. 212¹⁵ of the Code of Ukraine on Administrative Offenses provides for the possibility of confiscating the amount of a contribution or financial support to support a political party or to carry out pre-election campaigning. However, as follows from the norms of this article, only the object that is in the private property of the violator can be confiscated, unless otherwise provided by the laws of Ukraine. Questions arise: who owns the amount of contribution or financial support for the support of a political party or for the implementation of pre-election campaigning? If a fine is imposed on an individual, what are the negative consequences for the legal entity that made the contribution? Should election funds be opened before the court makes a decision on the merits of the case?

The fact is that the shortcomings of Ukrainian legislation are that the provision of financial (material) support for campaigning or for the benefit of a political party is equated with the transfer of ownership. If the funds are transferred by an individual, it is assumed that these funds belong to this individual. But when the funds are transferred

by a legal entity, who is fined? In accordance with the legislation of Ukraine – for a natural person. A legal entity among the entities listed in Art. 212¹⁵ of the Code of Ukraine on administrative offenses, not specified. But the funds of a legal entity are not the same as the funds of a legal entity.

Also in Art. 212¹⁵ of the Code of Ukraine on Administrative Offenses provides for responsibility both for providing and for receiving a contribution or support, and in the event that both subjects are held liable, the same subject – contribution or support – is subject to confiscation. At the same time, at the time of prosecution under Art. 212¹⁵ of the Code of Ukraine on administrative offenses, election funds can already be closed.

As for the norms of the Criminal Code of Ukraine, in Art. 159¹ does not provide for such a sanction as confiscation of property. The norms of the Criminal Code of Ukraine provide for the possibility of applying special confiscation (Article 96¹ of the Criminal Code of Ukraine) or confiscation of property as a measure of a criminal law nature to a legal entity (Clause 4 Part 1 of Article 96³ of the Criminal Code of Ukraine). The use of special confiscation is more likely, because if the confiscation of property at the time of the court's decision on special confiscation is impossible due to their use, or as a result of the impossibility of separation from legally acquired property, alienation, or for other reasons, the court makes a decision to confiscate the amount of money, which corresponds to the value of such property (Part 2 of Article 96² of the Criminal Code of Ukraine).

Conclusions.

1. Fines for violating the rules of financing a political party, pre-election campaign or referendum campaign are disproportionate to the amount of funds received and spent by any political party. The consequence of this is that the amount of the fine fixed in the Code of Ukraine on Administrative Offenses, the Criminal Code of Ukraine, is not a safeguard against violations. The amount of money spent on political advertising and pre-election campaigning and the amount of fines for violating the rules of political financing are disproportionate. It is proposed to amend the Code of Ukraine on Administrative Offenses, applying an approach according to which the fine is 100% of the amount of illegal contributions or support received, but not less than 100 tax-free minimum incomes of citizens. If the reporting procedure is violated, the fine is at least 1,000 tax-free minimum incomes of citizens.

For criminal offenses characterized by a greater degree of public danger, fines are lower than for administrative violations. It is not a safeguard against committing a crime. The way out of this situation could also be to increase the amount of fines and tie them to the amount received by the

political party in the form of illegal contributions or support.

2. The shortcoming of Ukrainian legislation is that the provision of financial (material) support for campaigning or for the benefit of a political party is equated with the transfer of ownership.

3. In Art. 159¹ of the Criminal Code of Ukraine is proposed to provide for such a sanction as confiscation of property.

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