
РОЗДІЛ II. КОНСТИТУЦІЙНЕ ПРАВО; МУНІЦИПАЛЬНЕ ПРАВО

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LEGAL REGULATION OF DEPRIVATION OF PUBLIC RIGHTS AND DEPRIVATION OF THE RIGHT TO PERFORM CERTAIN WORK OR ENGAGE IN CERTAIN ACTIVITIES: THE EXPERIENCE OF LITHUANIA AND LATVIA

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Basalayeveva A.V. Legal regulation of deprivation of public rights and deprivation of the right to perform certain work or engage in certain activities: the experience of Lithuania and Latvia.

The article examines the legal regulation of deprivation of public rights and deprivation of the right to perform certain work or engage in certain activities in Lithuania. It is established that the legislation of Lithuania uses the term "deprivation", while the legislation of Latvia uses the term "restriction" to denote the same phenomenon – a type of punishment.

The following features of the legal regulation of deprivation of public rights and deprivation of the right to perform certain work or engage in certain activities in Lithuania are highlighted: 1) is an element of the punishment system; 2) is a type of basic punishment; 3) the range of persons to whom they are assigned: a person who has committed a crime; a person who has committed a criminal offense; 4) types of deprivation of public rights: 1) deprivation of the right to be elected to an elected office; 2) deprivation of the right to be appointed to a position in state or municipal institutions and agencies, business entities or non-state organizations; 5) deprivation of public rights is not established in the sanctions of individual articles of the Criminal Code of the Republic of Lithuania; 6) the subject that imposes a penalty in the form of deprivation of public rights is a court; 7) as a type of punishment it is assigned only if the sanction of an article of the Criminal Code of the Republic of Lithuania provides for a penalty in the form of deprivation of the right to work in a certain position or engage in a certain type of activity; 8) it is assigned if the subject of a crime or criminal offense committed a criminal act in violation of public rights; 8) the term for which this punishment is assigned is from 1 to 5 years.

The features of the legal regulation of restrictions of rights in Latvia are as follows: 1) it is an element of the system of penalties; 2) it is an additional punishment; 3) the range of persons to whom it is assigned: a person who committed a crime; a person who has committed a criminal offense; 4) types of deprivation of public rights: 1) deprivation of certain rights, 2) establishment of a ban that does not allow a person to use certain rights, hold a certain position, carry out a certain professional activity or other type of activity, attend certain places or events; 5) may or may not be provided for in the sanctions of individual articles of the Criminal Code of Latvia; 6) the subject who imposes a penalty in the form of deprivation of public rights is a court or a prosecutor; 7) may also be imposed as a type of additional punishment if the sanction of an article of the Criminal Code of Latvia does not provide for a penalty in the form of deprivation of a certain right; 8) is imposed if the subject of the crime has committed a criminal act; 8) the term for which this punishment is imposed is from 1 to 5 years, in exceptional cases – no more than 10 years.

Key words: the right to participate in the management of state affairs, public rights, the right to perform certain work or engage in certain activities, state, deprivation of rights, court, sanction, crime, criminal offense.

Басалаєва А.В. Правове регулювання позбавлення публічних прав і позбавлення права виконувати певну роботу або займатися певною діяльністю: досвід Литви та Латвії.

В статті досліджується правове регулювання позбавлення публічних прав і позбавлення права виконувати певну роботу або займатися певною діяльністю в Литві. Встановлено, що законодав-

ство Литви вживає термін «позбавлення», в той час як законодавство Латвії – «обмеження» на позначення одного і того ж явища – виду покарання.

Виділено такі особливості правового регулювання позбавлення публічних прав і позбавлення права виконувати певну роботу або займатися певною діяльністю в Литві є такі: 1) є елементом системи покарань; 2) є видом основних покарань; 3) коло осіб, яким призначаються: особа, яка вчинила злочин; особа, яка вчинила кримінальний проступок; 4) види позбавлення публічних прав: 1) позбавлення права бути обраним на виборну посаду; 2) позбавлення права бути призначеним на посаду в державних або муніципальних установах і агентствах, суб'єктах господарювання або недержавних організаціях; 5) позбавлення публічних прав у санкціях окремих статей Кримінального кодексу Литовської Республіки не встановлюється; 6) суб'єкт, який призначає покарання у вигляді позбавлення публічних прав – суд; 7) як вид покарання призначається лише якщо санкція статті Кримінального кодексу Литовської Республіки передбачає покарання у вигляді позбавлення права працювати на певній посаді або займатися певним видом діяльності; 8) призначається, якщо суб'єктом злочину чи кримінального проступку було вчинено злочинне діяння з порушенням публічних прав; 8) термін, на який призначається це покарання – від 1 до 5-ти років.

Особливостями правового регулювання обмеження прав в Латвії є такі: 1) є елементом системи покарань; 2) є додатковим покаранням; 3) коло осіб, яким призначаються: особа, яка вчинила злочин; особа, яка вчинила кримінальний проступок; 4) види позбавлення публічних прав: 1) позбавлення певних прав, 2) встановлення заборони, яка не дозволяє особі використовувати певні права, займати певну посаду, здійснювати певну професійну діяльність або діяльність іншого роду, відвідувати певні місця чи заходи; 5) може бути передбачене, а може бути і не передбачене у санкціях окремих статей Кримінального закону Латвії; 6) суб'єкт, який призначає покарання у вигляді позбавлення публічних прав – суд або прокурор; 7) як вид додаткового покарання може призначатися і якщо санкція статті Кримінального закону Латвії не передбачає покарання у вигляді позбавлення певного права; 8) призначається, якщо суб'єктом злочину було вчинено злочинне діяння; 8) термін, на який призначається це покарання – від 1 до 5-ти років, у виключних випадках – не більше 10-ти років.

Ключові слова: право брати участь в управлінні державними справами, публічні права, право виконувати певну роботу або займатися певною діяльністю, держава, позбавлення права, суд, санкція, злочин, кримінальний проступок.

Formulation of the problem.

Public rights or rights that enable citizens of Lithuania and Latvia to perform certain work are not absolute. They can be limited by the state. It is well known that in order for such a restriction not to be arbitrary, it must be provided for by law, pursue a legitimate goal, and the measures taken must be proportionate to the goal pursued and the result achieved by their application [1].

Lithuania and Latvia were once occupied by the USSR. Today, part of the territory of Ukraine is occupied by Russia. In the future, it can be predicted that citizens of Ukraine who previously lived in the territories occupied by Russia and collaborated with Russian special services will express a desire to exercise their constitutional right guaranteed to them by Article 38 of the Constitution of Ukraine [2]. Of course, the question will arise whether such exercise will not pose a threat to the national security of Ukraine, and on the other hand, how to prevent arbitrary interference with the rights of citizens guaranteed by Article 38 of the Constitution of Ukraine. Conceptual approaches to this need to be developed today.

The purpose of this article is to highlight the features of the legal regulation of deprivation of public rights and deprivation of the right to perform certain work or engage in certain activities in Lithuania and Latvia.

The state of research on the issue. In legal science, new studies by professors Oksana Vasylchenko, Lyudmila Deshko, and Olga Lotyuk [3-6] were devoted to the issue of lustration and restriction of the right to participate in the management of state affairs. These studies lay the foundation for the development of the above-mentioned concept. The issue of power cleansing is also addressed in the work of scientists A. Grigorenko, Ya. Lenger, V. Fedorenko, and others. At the same time, the issue of legal regulation of deprivation of public rights and deprivation of the right to perform certain work or engage in certain activities in Lithuania and Latvia, which have a common experience of occupation with Ukraine, has not been comprehensively studied.

Presenting main material.

Constitutional rights and freedoms of man and citizen are guaranteed by the state and cannot be abolished. At the same time, a person may be limited in those rights and freedoms that are not absolute, and may also be deprived of certain rights.

The term "restriction" in the New Explanatory Dictionary of the Ukrainian Language is defined as establishing a certain limit of something, binding something with restrictive conditions [7, p. 29]. The term "deprivation" in the same dictionary is defined as taking away, subtracting something [7, p. 29]. The term "termination" is defined as stopping the movement, action of something, interrupting any action, process [8, p. 544].

Lithuanian legislation does not provide for the "suspension" of public rights or the right to perform certain work or engage in certain activities, which, if applied to a person guilty of committing unlawful acts or omissions, would have a preventive, restorative, terminating meaning.

Restriction of a public right or the right to perform a certain work or engage in a certain activity does not mean its deprivation, which is applied for a certain period of time. Usually, restriction of public rights or the right to perform a certain work or engage in a certain activity is collective, not individual in nature.

Deprivation of a public right or the right to perform a certain work or engage in a certain activity is individual in nature and is an additional punishment in Lithuania. The rule of law, considering punishment primarily as a corrective and preventive measure, should not use excessive, but only necessary and purpose-driven measures [9].

Types of punishment are defined in Art. 42 of the Criminal Code of Lithuania. In particular, these types include deprivation of public rights (paragraph 1, paragraph 1, Article 42) and deprivation of the right to be employed in a certain position or engage in a certain type of activity (paragraph 2, paragraph 1, Article 42). These types of punishment are applied both to persons who have committed misdemeanors (clause 1, clause 2, article 42, clause 2, article 42 of the Criminal Code of Lithuania) and to persons who have committed a crime. If more than two types of punishments of different types are imposed for several committed crimes, the court, when imposing a final combined sentence, shall choose two punishments from the imposed ones: one of them is the most severe, and the other is at the discretion of the court. Such punishments may include deprivation of public rights, deprivation of the right to be employed in a certain position or to engage in a certain type of activity.

According to article 44 of the Criminal Code of Lithuania, deprivation of public rights deprivation of public rights is not specified in the sanction of article [10]. Such a penalty is imposed by the court when the sanction of the article provides for a penalty in the form of deprivation of the right to work in a certain position or engage in a certain type of activity and a criminal act has been committed in violation of public rights [10]. Public rights may be deprived for a period of one to five years, with the term of this penalty being calculated in years and months [10].

According to Article 45 of the Criminal Code of Lithuania, deprivation of the right to work in a certain position or engage in a certain type of activity is carried out in accordance with a court ruling on deprivation of the right to work in a certain position or engage in a certain type of activity in cases provided for by the Special Part of this Code, in the event that the offender has committed a criminal act in the field of his professional activity or if, taking into account the nature of the criminal act committed, the Court concludes that the convicted person cannot retain the right to work in a certain position or engage in a certain type of activity [10].

The right to work in a certain position or engage in a certain type of activity may be deprived for a period of one to five years. The term of this punishment is not determined by the sanction of the article - it is determined by the court when imposing the punishment [10]. If a penalty in the form of deprivation of the right to work in a certain position or engage in a certain type of activity is imposed together with imprisonment or arrest, it is imposed for the entire term of imprisonment or arrest or for the term that the court has decided to begin after the term of imprisonment or arrest has been served [10].

Thus, the features of the legal regulation of deprivation of public rights and deprivation of the right to perform certain work or engage in certain activities in Lithuania are as follows: 1) is an element of the system of penalties; 2) is an additional punishment; 3) the range of persons to whom they are assigned: a person who committed a crime; 4) types of deprivation of public rights: 1) deprivation of the right to be elected to an elected position; 2) deprivation of the right to be appointed to a position in state or municipal institutions and agencies, business entities or non-state organizations; 5) deprivation of public rights is not established in the sanctions of individual articles of the Criminal Code of the Republic of Lithuania; 6) the subject that imposes a penalty in the form of deprivation of public rights is the court; 7) as a type of punishment it is imposed only if the sanction of the article of the Criminal Code of the Republic of Lithuania provides for a penalty in the form of deprivation of the right to work in a certain position or engage in a certain type of activity; 8) it is imposed if the subject of a crime or criminal misdemeanor committed a criminal act in violation of public rights; 8) the term for which this penalty is imposed is from 1 to 5 years.

In Art. 36 of the Criminal Code of Latvia, the following types of punishments are defined: main – deprivation of liberty; forced labor; additional – confiscation of property; expulsion from the Republic of Latvia; forced labor; fine; restriction of rights; probation supervision [11]. Therefore, in Latvia, unlike Lithuania, restriction of rights cannot be the main type of punishment, but only an additional one.

In paragraph 3 of Art. Article 36 of the Criminal Code of Latvia states that a person who has committed a criminal offense, a less serious crime or a serious crime punishable by imprisonment for a term of up to five years may be sentenced by the prosecutor, upon drawing up a punishment order, to a fine or compulsory labor, as well as an additional punishment - restriction of rights or probation supervision [11].

According to Article 44 of the Criminal Code of Latvia, restriction of rights is defined as the deprivation of certain rights or the imposition of a ban that does not allow a person to use certain rights, hold a certain position, carry out a certain professional activity or other type of activity, attend certain places or events [11]. Thus, unlike Lithuanian legislation, Latvian legislation includes both the deprivation of certain rights and the imposition of a ban on the use of certain rights. In Lithuania, these are separate types of punishment, unlike Latvia (the prohibition on the use of a certain right is covered by the concept of "restriction of rights").

In paragraph 2 of Article 44 of the Criminal Code of Latvia, it is stated that restriction of rights is an additional punishment, which is imposed by a court or, with the preparation of a punishment order, is established by a prosecutor for a period of one to five years with the deprivation of the right mentioned in the relevant article of the Special Part of this Law or the imposed ban. Also in Art. 44 of the Criminal Code of Latvia states that, taking into account the type and nature of the criminal act, in special cases the rights of a person may be restricted for a longer period, but not more than ten years. Thus, unlike Lithuania, in Latvia the restriction of rights may be imposed either by a court or by a prosecutor. The terms for establishing such a punishment coincide in both Lithuania and Latvia – from 1 to 5 years. However, in Latvia, as an exception, a term of restriction of rights of more than 5 years may be applied, but not more than 10 years. Such a thing is not foreseen in Lithuania.

The next feature of the legal regulation of the restriction of rights in Latvia is that the court may establish the restriction of rights also in cases where this punishment is not provided for by the sanction of the relevant article of the Special Part of the Criminal Code of Latvia. The court may also establish another restriction of rights, if the sanction of the article provided for such an additional punishment as a restriction of the rights of a person.

Thus, the features of the legal regulation of the restriction of rights in Latvia are as follows: 1) it is an element of the system of punishments; 2) is an additional punishment; 3) the range of persons to whom it is assigned: a person who has committed a crime; a person who has committed a criminal offense; 4) types of deprivation of public rights: 1) deprivation of certain rights, 2) establishment of a ban that does not allow a person to use certain rights, hold a certain position, carry out a certain professional activity or other type of activity, visit certain places or events; 5) may or may not be provided for in the sanctions of individual articles of the Criminal Code of Latvia; 6) the subject that assigns a punishment in the form of deprivation of public rights is a court or a prosecutor; 7) as a type of additional punishment it may also be assigned if the sanction of an article of the Criminal Code of Latvia does not provide for a punishment in the form of deprivation of a certain right; 8) is assigned if the subject of the crime committed a criminal act; 8) the term for which this punishment is imposed is from 1 to 5 years, in exceptional cases - no more than 10 years.

Conclusions.

The features of the legal regulation of deprivation of public rights and deprivation of the right to perform certain work or engage in certain activities in Lithuania are as follows: 1) is an element of the system of punishments; 2) is an additional punishment; 3) the range of persons to whom they are imposed: a person who committed a crime; 4) types of deprivation of public rights: 1) deprivation of the right to be elected to an elected position; 2) deprivation of the right to be appointed to a position in state or municipal institutions and agencies, business entities or non-state organizations; 5) deprivation of public rights is not established in the sanctions of individual articles of the Criminal Code of the Republic of Lithuania; 6) the entity that imposes a punishment in the form of deprivation of public rights is a court; 7) as a type of punishment, it is imposed only if the sanction of an article of the Criminal Code of the Republic of Lithuania provides for a punishment in the form of deprivation of the right to work in a certain position or engage in a certain type of activity; 8) it is imposed if the subject of a crime or criminal offense committed a criminal act in violation of public rights; 8) the term for which this punishment is imposed is from 1 to 5 years.

The features of the legal regulation of restrictions of rights in Latvia are as follows: 1) is an element of the system of penalties; 2) is an additional punishment; 3) the range of persons to whom they are

assigned: a person who has committed a crime; a person who has committed a criminal offense; 4) types of deprivation of public rights: 1) deprivation of certain rights, 2) establishment of a ban that does not allow a person to use certain rights, hold a certain position, carry out a certain professional activity or other type of activity, visit certain places or events; 5) may or may not be provided for in the sanctions of individual articles of the Criminal Code of Latvia; 6) the subject that assigns a punishment in the form of deprivation of public rights is a court or a prosecutor; 7) may be assigned as a type of additional punishment even if the sanction of an article of the Criminal Code of Latvia does not provide for a punishment in the form of deprivation of a certain right; 8) is assigned if the subject of the crime committed a criminal act; 8) the term for which this punishment is imposed is from 1 to 5 years, in exceptional cases - no more than 10 years.

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