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# СУБ'ЄКТИ НОМІНАЦІЇ В УКРАЇНІ: ПРАВОВІ АСПЕКТИ

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**Розглянуто проблему номінації в Україні. На основі аналізу вітчизняного виборчого законодавства показано еволюцію правового регулювання проблеми суб'єктів номінації як на президентських, так і на парламентських виборах в Україні.**

**Ключові слова:** *вибори, номінація, суб'єкти номінації, виборче законодавство, Україна.*

## SUBJECTS OF THE NOMINATION IN UKRAINE: LEGAL ASPECTS

**Mykola Buchyn, Halyna Ihnatiuk**

**The article dwells on the problem of nomination in Ukraine as an important constituent part of democratic and alternative nature of elections. The authors highlight the issue of nomination as defining a range of subjects which are able to nominate candidates for holding office in authoritative bodies. Evolution of the legal regulation of the issue of nomination subjects in Ukraine is shown based on analysis of the national electoral legislation. Taking into account the fact that subjects of nomination are different according to the type of elections and electoral systems, legal analysis of both, the electoral legislation of Ukraine regulating conduction of Parliamentary elections and the electoral legislation which is basic for electing the head of the state, is conducted separately.**

**Authors prove that the Ukrainian electoral legislation at initial stages of independence allowed existance of of quite a wide range of nomination subjects which, along with the ones traditional for international electoral practices, included labor groups, community organisations, etc. This was indicative of the influence traditions of the Soviet elctoral legislation have on the legislation process in Ukraine. At the same time, at the modern stage, the issue of nomination subjects is mainly regulated properly by the national legislation and meets world standards, i.e. subjects of the nomination are political parties, as well as a candidate him/herself (the procedure of selfnomination).**

**Drawbacks of the national legislation on nomination subjects are as follows: absence of a procedure for nomination of candidates by meetings of voters does not fully substitute the procedure of self-nomination and, to some extent, restricts fulfillment of passive suffrage; absense of requirenments to political parties as nomination subjects allws malversation creating artificial political parties for a specific election campaign; if the system of proportional representation is reestablished in Ukraine, we will have party qualification restricting possiblities for fulfillment of the passive suffrage.**

**Keywords:** *elections, nomination, subjects of nomination, electoral legislation, Ukraine.*

Democratic transformations in Ukraine are inextricably connected with transformation of political nstitutions as well as mechanisms of formation and realisation of people's power. The institution of democratic elections has a promiment place among them. It is generally accepted that elections have to be free, equal, common, secret, and direct. However, scientists pay little attention to the fact that one more inheren attribute of elections' democratic nature is their alternativity defined, particularly, by the procedure of candidates nomination. It determines the range of those people who will be elected as political elite by the citizens. It is worth mentioning that despite all formal features of democratic elections in the USSR, it was absense of alternativity and nomination of only one candidate who was a representative of a rulling party that

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brought to nought all other democratic norms of the electoral legislation. Under such conditions, elections existed without the real possibility to elect. Considering the foundation of democratic elections institution in Ukraine, unfinished search for the best options for legal regulation of the nomination procedure, including defining the range of nomination subjects, proposed theme under the research is highly topical.

The problem of legal regulation of the nomination process during elections in Ukraine was researched by such scientists as O. Kovalchuk, M. Stavniychuk, V. Pohorilko, Ye. Radchenko, M. Riabets, etc. [1; 2; 12; 13]. It is also worth noting that the mentioned scientists considered the procedure of nomination and registration of candidates through the prism of electoral process stages, neglecting analysis of the nomination process as an important condition for alternative and democratic nature of elections.

**The objective** of the publication is to trace the evolution of legal regulation of nomination subjects in the electoral legislation of Ukraine.

As mentioned before, the procedure of nomination and registration of candidates significantly influences democratic nature and alternativity of elections. First and foremost, it concerns subjects of nomination. Citizens' possibility to be elected and exercising the right to participate and be involved into this process are highly dependent on whom the legislation grants the right to nominate candidates. Subjects of nomination depend on the type of elections and are different for the presidential and parliamentary elections. Thus, we find as appropriate to cosider evolution of the candidate nomination process during the elections of the President of Ukraine and Parliamentary elections in our state separately.

During the parliamentary elections 1990, the legislator defined the following subjects which were able to nominate candidates for people's deputies: labour groups, community organisations, staff of vocational, secondary specialised, and higher educational institutions, meetings of voters, military personnel [3].

Labour groups and staff of educational institutions had the right to nominate candidates at the meetings (conferences) in case they ennumerated not less than 200 people. If agreed with the respective election commission, the groups with lower number of members could hold united meetings with not less than 200 participants.

Community organisations could nominate candidates at conventions, conferences, plenary meetings, general meetings of bodies at different levels. Concerning meetings of voters, they could nominate candidates according to the place of residence. Such meetings, according to the legislation, could be convened by respective councils or their presidia in cooperation with district election commissions. At the same time, voters could be convened on the initiative of respective councils, as well as the proposal of public town, village, street, quarter, house committees. Such a proposal was considered by a council (or its presidium) together with the district election commission within a three-day period. In case of a positive decision, a date, time, and place for holding the elections were established and announced to the voters in advance. Meetings of voters were rightful if they enumerated not less than 200 electors. In case the proposal on holding elections had been refused, the initiator of the meeting received a grounded decision. Such a decision could be appealed by law within a three-day period in the Central Election Commission whose decision was definitive. Finally, the nomination could be conducted on meetings of the military personnel convened by the Command of military units [3].

An interesting fact: if for elections of labour groups, staff of educational institutions, and meetings of voters according to the place of residence the legislator requires not less than 200 participant, such a requirenment to the number of participants of community organisations and military personnel is absent. We consider this fact as a drawback to some extent, since this put the subjects of nomination in an unequal position. Such a phenomena, in our view, belongs to Communist legacy. Moreover, regulating the character of nomination, the legislator makes the subjects unequal once more: community organisations could nominate unlimited number of candidates when other subjects could nominate only one person. Concerning the very procedure of nomination, it could be conducted by both, secret and open voting (voting procedure was established by the very meeting or body of a community organisation). To be nominated, a candidate had to receive support from more than a half of voters. According to results of the nomination, a special protocol was composed and sent to a district election commission. The very candidate was informed on the made decision within a two-day period [3].

During the parliamentary elections 1994, the legislator significantly decreased the range of subjects of nomination for people's deputies. According to the regulatory act, candidates could be nominated by political parties (blocs), labour groups, and meetings of electors. Political parties (blocs), after their registration in the Central Electoral Commission, were able to put forward one candidate for a district through their local centres. This nomination was held during a meeting (a conference) of political party's (bloc's) regional department upon presence of 2/3 of the regional

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department. If the regional department had not less than 100 party members, nomination could be held with the presence of not less than 50 delegates. Nomination of a candidate by a meeting of voters was regarded as lawful in case of presense of not less than ten electors residing within the constituency where the candidate ran for elections. At the same time, voters signed the statement with the data about themselves. In case of nomination by a labour group, such a statement was signed on the behalf of the group by a person who was authorised by the conference [3]. We consider the above-mentioned changes as having a positive aspect since the legislator, keeping up with the world traditions, brought political parties to the top spot in the nomination process. However, such a subject of nomination as labour groups remains a rarity.

In 1998, along with subjects of nomination mentioned in the previous law, the legislator enabled excercising of passive suffrage through self-nomination. In addition, due to introducing of mixed electoral system, political parties gained the possibility to nominate both party lists in multiple members constituencies and separate candidates in single member ones [6].

However, regulation of the nomination process during the parliamentary elections 1998 was declarative in many respects. M. Riabets, ex-Head of the Central Election Commission, rightly pointed out, "And again, imperfection of the electoral law rebounded. This law has absolutely declaratively proclaimed that this right is exercised through self-nomination, through political parties, electoral blocs of parties, as well as meetings of voters and labour groups, in the manner prescribed by law. But let us look at this manner prescribed by law. Exercising of the right through self-nomination and through political parties, electoral blocs of parties is due by law. At the same time, nothing is said in what way to exercise the right to nomination by meetings of citizens and labour groups [13, p. 21]".

In 2002, during the parliamentary elections, the legislation defined only two ways of nomination: through political parties (blocs) and self-nomination [4]. Such attitude seems to us relevant to some extent since nomination by community organisations and labour groups is not considered as reasonable, and nomination by meetings of voters partially duplicates the procedure of self-nomination. However, the possibility of nomination through both self-nomination and nomination by meetings of voters will definately conribute to exercising the electoral rights of citizens.

The legislator expresses one waring: a candidate can be nominated only by a political party which is legally registered not later than a year before the election day. An electoral bloc could be a subject of nomination only if it included political parties registered not later than a year before the election day [4]. Though somehow restricting the right to passive suffrage, such a norm seems to us to be justified since it enabled avoiding artificial creation of political parties for promotion for a specific electoral campaign. In addition, if a party functions less than a year, it is unlikely that voters will have a chance to familiarise themselves with its activity and people who are its members and, thus, exercise a rational act of will expression. One more positive thesis by the legislator concerned a possibility for a political party (bloc) to nominate both a person who was its member and a non-party citizen.

After the transfer to the system of proportional representativeness during the parliamentary elections 2006, political parties (blocs) became the only subject of nomination. Nomination is conducted at the conference (convention, meeting) with participation of not less than 200 delegates. In addition, the legislator tried to make the process of candidates nomination more transparent: a political party (bloc) had to inform the Central Election Commission and mass media about a place and date of holding the meeting (conference). Respectively, representatives of mass media and the Central Election Commission could be present at the convention (meetings) of parties (blocs) [10].

We would like to express our opinion regarding the influence of the system of proportional representativeness on exercising the right to passive suffrage. Despite the fact that the Ukrainian legislation presupposes the possibility of nomination by political parties (blocs) of non-party individuals, yet such a procedure significantly restricts electoral rights in two dimensions. On the one hand, passive suffrage is restricted since to have a chance for bring elected, a person has to be a member of a political party or "bargain" a place on an election list. On the other hand, the right of citizens to nominate candidates is restricted since it belongs exclusively to members of political parties who constitute insignificant share of the electorate.

During the parliamentary elections 2012, this aspect underwent significant changes. Firstly, due to transfer to the system of mixed representativeness, subjects of nomination have changed. Blocs of parties were no longer subjects of nomination since they had lost the status of objects of electing. On the other hand, the legislator forsaw a possibility of candidates' self-nomination in single member constituencies. Secondly, the character of candidates nomination through political parties also changed. In particular, any political parties became subjects of nomination regardless the time of their creation (in previous wordings of the law, only

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parties created not later than a year before the election day could be subjects of nomination) [5]. Such a situation has remained unchanged till nowadays and, in our opinion, is not optimal since it enables using dirty political technologies in the form of creation of artificial election projects directed towards neutralisation of political opponents during elections.

During the parliamentary elections 2012, the legislator also abolished the requirenment of minimum number of delegates to a convention of a party necessary for nomination of candidates. The procedure of nomination is defined by a statute of the very political party [5]. Such a norm, in our opinion, is not deprived of certain logic.

Presidential elections have their specifics in terms of candidates nomination. In 1991, the legislator declared the right of citizens to exercise nomination of candidate through political parties (blocs) and through meetings of voters. In the first case, the right of nomination belonged to parties (blocs) enumerating not less than 1000 members. For this, they had to be registered in the Central Election Commission. If their registration had been denied, such a decision, according to the legislature, could be appealed to the Supreme Court of Ukrainewithin the ten-day period. Candidates were nominated at the convention of a political party (bloc) if 2/3 (but not less than 200) of elected delegates were present [8].

Concerning the second case, the right to nominate candidates belonged to meetings of electors with participation of not less than 500 citizens who have the right to vote. Such meetings could be held in the place of residence or at enterprises, institutions, organisations. The legislator obliged initiators of such meetings to inform district electoral commissions and local authorities about the place and time of holding the meetings to enable control over the process of candidates nomination according to the legilation [8]. Such a provision definately contributed to transparency of the nomination procedure conducted by meetings of voters. However, apparently, implementation of this provision was necessary for the process of candidates nomination by political parties (blocs) as well.

In addition, the legislator regulated and elaborated the procedure of candidates nomination by meeting of the voters who were granted the right to discuss unlimited nuber of candidates. A person was regarded as nominated if 2/3 participants of a meeting voted for him/her [8]. However, absense of such a way of candidates nomination as self-nomination indicated a significant disadvantage of the legislation and restriction of passive suffrage.

During the presidential elections 1994, the process of candidates nomination remained unchanged. In 1999 during ellection of the President, the procedure of candidates' self-nomination was introduced; however, it was not an independent way of nomination, but an element of nomination by meetings of voters. This situation, in fact, left the procedure of nomination unchanged. The only alteration was granting the right to political parties (blocs) to nominate candidates for the post of the President not only out of party members, but also non-party individuals [7].

In 2004 during the presidential elections, the legislator leaves only two ways of nomination: through political parties (blocs) and self-nomination. The latter one is already a seperate institute, not mediated through meetings of voters. Concerning political parties (blocs), they could take part in candidates nomination only if created not later than a year before elections [9].

During the presidential elections 2014, the procedure of nomination was changed. Particularly, the legislator deforced political blocs the right to nominate. At the same time, all political parties can be subjects of nomination without restrictions. In addition, some changes for increasing the level of transparency of the nomination procedure are introduced. In particular, the legislator obliged organisers of the event on candidates nomination to inform mass media about their time and place in advance [11].

Considering subjects of nomination defined by the current presidential legislation, at first glance it may seem that the legislator unreasonably restricts electoral rights of citizens making impossible the possibility for meetings of voters to be a subject of nomination. However, the nature of self-nomination does not significantly differ from nomination by meetings of voters and active citizens can freely address a person they want to see as the President with a request to nominate him/herself. That is why the problem is not very topical, though, of course, availability of both the procedure of nomination by meetings of voters and the procedure of self-nomination contribute to more complete implementation of citizens' participation in defining the range of potential political elite.

To summarize, we want to note that the current national electoral legislation adequately regulates the issue of defining the range of nomination subjects at both presidential and parliamentary elections. At the same time, in case of possible return to the system of proportional representativeness, participation of citizens in nomination of candidates for people's deputies will be significantly restricted. Similarly, one more obstacle for exercising passive suffrage will be peculiar party qualification. It becomes understandable that problems arising during exercising passive suffrage are caused not by omissions concerning the regulation of nomination subjects, but by other aspects of the procedure, such as support of

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nomination initiative, registration of candidates, etc. These aspects of electoral legislation are considered to be a prospective direction of our further scientific research.

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