



Election Deposit During the National Elections: Ukrainian and International Experience

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The Constitution of Ukraine establishes the right of citizens to be elected to the state and local self-government authorities. At the same time, the Constitution of Ukraine also establishes certain restrictions for candidates at the elections. Those include age qualification, requirement of the residence, state language proficiency, and others. These requirements and qualifications are not discriminatory in nature, but some restrictions may also be used for discriminatory purposes. In this aspect, consideration should be given to the requirement for an election deposit, which in Ukraine is of a record-breaking amount compared to other countries. This discussion paper outlines the amount and approaches to election deposits for the registration of candidates for national elections in Ukraine. The international experience of regulating such procedures has also been analyzed; recommendations for improving the electoral legislation of Ukraine are presented in this paper.

Ukrainian experience

Previously, in the presidential elections of 1991, 1994 and 1999, the registration standard in support of the applicant was the collection of voters' signatures, initially – 100,000 signatures, in 1999 – 1 million signatures of voters. In 2004, 500,000 voters were to support the applicant's candidacy, at the same time, there was an election deposit established in the amount UAH 500,000 (which at that time corresponded to USD 100,000). Later, in 2009, the requirement of collecting the signatures was completely abolished. This institute discredited itself in Ukraine: the collection of signatures turned into a mechanism for preventing the registration of opposition candidates by announcing the violation of election legislation (claiming the fraud with signature letters, etc.), and, on the other hand, pro-government candidates submitted openly fake signatures.

Today, for a person to register as a candidate for the President of Ukraine, he or she, or the party nominat-

ing him/her must secure a deposit in the amount of UAH 2,500,000 (USD 90,000). At the parliamentary elections for a party with a list in a national constituency, the amount of a deposit is a thousand times the minimum wage (UAH 4,173,000 or USD 150,000). For a self-nominated or a party-nominated candidate in a single-member constituency – 10 minimum wages (USD 41,730 or USD 1,500), respectively.

Definitely, the election deposit has its advantages. First, it is considered as a requirement to ensure that the candidate has serious intentions as to his/her nomination. The state, by granting the right to be elected to the authorities, ensures that persons who have the support and the probability of being elected become the candidates. Secondly, the budget of the country is replenished with the deposits.

However, the deposit institute has its disadvantages, too. Firstly, the deposit is excessively high, and

as a result, only parties and citizens with sufficiently large funds can participate in the elections. Particularly, the amount of the deposit for the presidential candidate in Ukraine is 270 times (!) higher than the average monthly salary in the country. That is, a person who earns an average salary needs to work for 23 years only in order to earn the sum required for the election deposit. This is a huge amount of money.

Secondly, the deposit by its nature is a monetary amount, which is returned to the candidate who showed a credible result during the elections. Instead, in Ukraine, the deposit is in fact a payment for participation in the elections, since it is rarely returned. Particularly, the election deposit is returned only if a person is elected as the President of Ukraine or is included in the ballot for repeat voting. At the elections to the Verkhovna Rada, the deposit is returned only if the relevant parties or majority candidates receive people's deputy mandates. In other cases, the election deposit is not returned and is transferred to the State Budget of Ukraine.

Thirdly, the deposit institute was introduced in Ukraine as a safety lock mechanism – so that the number of candidates in the elections was not excessive. After all, too many candidates, as well as the nomination of “twin” candidates (candidates with the same name) can become a significant obstacle to free and democratic elections. However, the deposit does not function as a “filter” of the number of candidates. Moreover, the number of those seeking the president's chair is only rising. If in 2010, 18 people claimed the presidency, in 2014, there were already 21, then in 2019, we have a record number – 44 candidates have provided the election deposit. This is way more than in developed democracies.

Undoubtedly, effective restrictions as to the number of candidates are needed. However, the mechanism of the election deposit that exists now, is essentially a payment for participation in the elections, and extremely large amount thereof actually restricts access to politics.

In 2002, the institute of the election deposit was the subject of a study by the Constitutional Court of Ukraine and was considered exclusively in the context of property qualification. The Law of Ukraine “On Elections of People's Deputies” at that time pro-

vided for the deposit of UAH 255,000 (\$ 48,000) for a party with a list and UAH 1,020 UAH (USD 190) for candidates in the majority constituency. The court recognized the aforementioned provision compliant with the Constitution and emphasized the different legal nature of the property qualification and of the election deposit, saying that the property qualification was a qualifying condition for the availability of the right to vote, while the deposit was only a condition for the candidate's registration. In the Court's opinion, an election deposit cannot be considered as a restriction of passive electoral rights of citizens on the basis of its property status.

At the same time, in this decision, the Constitutional Court stated that the size of the property deposit is determined depending on the property capacity of the majority of population. Violation of this requirement may significantly limit the number of applicants for seats in the parliament, especially of those from financially deprived parties and candidates for people's deputies. However, the definition of the socially beneficial size of the election deposit is a matter of political expediency and does not fall within the jurisdiction of the Court.

The European Court of Human Rights in *Sukhovetsky v. Ukraine case*¹ assessed the election deposit during the elections in majoritarian constituencies (*at the time of the court proceeding, it amounted to UAH 1,041 – about USD 190*) as a permissible measure, noting that it was pursuing a “legitimate goal of ensuring the right to an effective, well-organized representation, increasing the responsibility of those who put forward their candidacy for elections, and limiting the election to credible candidates, while avoiding unwarranted spending of public funds.” However, the Court also noted the need to “establish a delicate balance between conflicting interests: on the one hand, prevent fake candidates to get into elections; and on the other hand, the possibility of registering credible candidates, including those who may be in a difficult economic situation, “thereby drawing attention to the inadmissibility of discrimination under the property criterion through the establishment of excessively high deposit. It should be noted that the European Court did not consider the deposit for political parties, which is the largest in the world – in this case, its decision could have been different.

International experience

Registration as a candidate for the post of President

The election deposit does not play a significant role in the presidential elections in European countries. President is elected through the direct elections in 12 European Union countries, which include Austria, Bulgaria, Lithuania, Romania, Slovakia, Slovenia, Cyprus, Poland, Portugal, Finland, France and the Czech

Republic. Neither of these countries record an election deposit of such a size as in Ukraine, or it is not used at all.

Singapore

For a candidate for President, the amount of the deposit is USD 32,000.

¹ Case ‘Sukhovetsky v. Ukraine’ / ECtHR. Access: http://zakon.rada.gov.ua/laws/show/974_106

France

The election deposit amounts to around 2,000 Euro, and it is not the main challenge. It is also required to collect 500 signatures of elected officials of the national and local levels (members of parliament, council of Paris, territorial assemblies, mayors) from possible 42,000 (1.2% of the total), considering that each of them can support only one candidate. Geographically, these signatures should represent a third of the administrative-territorial units of France. This signature collection mechanism serves as a preliminary selection of candidates, a kind of recommendation from individuals already endowed with credibility by voters. As a result, during the French presidential elections in 2012, 10 candidates were registered, in 2017 – 11 candidates.

Poland

The election deposit is not used. The nominee collects 100,000 signatures of voters to get registered as the candidate.

Austria

A candidate for the Federal President of Austria provides USD 4,070 of deposit.

Georgia

The nomination of a candidate for the President of Georgia is confirmed by signatures not less than 25,000 voters (0.75% of the total number of voters).

Registration of candidates to parliaments

The financial guarantee for parliamentary elections is envisaged by the laws of Japan, Armenia, South Korea and Singapore. In the UK, Estonia and Latvia, this amount is small. While according to the laws of Belgium, Georgia, Denmark, Poland, Finland, the Federal Republic of Germany and in many other countries, registration of candidates (list of candidates) is carried out on the basis of collecting signatures of voters.

Japan

A candidate for the lower or upper chamber of parliament must make a deposit in the amount of USD 27,200. The deposit for a party for a proportional seat in both chambers is USD 54,400.

Armenia

The party provides the election deposit in the amount of 10,000 minimum wages (about USD 20,500) to participate in the parliamentary elections in Armenia. The electoral threshold for parties is 5%, and the deposit is returned if the party received 4% or more of the votes.

South Korea

A candidate for election to the National Assembly must make a deposit of USD 13,300.

Singapore

At the 2015 parliamentary elections, the amount of the deposit for each candidate was USD 10,700.

United Kingdom

A candidate for a member of parliament must make the deposit in the amount of 500 pounds sterling (USD 645), which returns if the candidate gets more than 5% of the votes.

Estonia

The size of the election deposit for each nominated

candidate is the same and equals to one minimum wage established in the election year.

Latvia

The parties make a deposit of 1,400 Euro, which gives them the right to submit their lists of candidates in constituencies. The deposit is returned if the party gets at least 2% of the votes in the country. Otherwise, the deposit is transferred to the state budget.

Canada

In Canada, the court abolished the election deposit in federal elections, as this requirement violated Section 3 of the Canadian Charter of Rights and Freedoms. Prior to this decision, a candidate for a parliament member was required to make the deposit of USD 750.

Poland

In each of the 41 constituencies of the country, depending on their size, 7 to 19 deputies of the Sejm are elected. The party may submit one list of candidates in any number of constituencies. The election deposit is not applied, but each party must collect 5,000 signatures in the county to support its list.

Georgia

The party must provide a list of at least 1,000 voters supporting its participation in the Georgian parliamentary elections if it is an electoral entity and, if it is not an electoral entity – at least 25,000 voters (this number should not exceed 1% of the total number of voters).

Germany

Candidates for the Bundestag must collect at least 200 signatures of voters in the respective constituency. This also applies to parties not represented in the parliament, who must receive additional support of 2,000 signatures of voters.

Recommendations

Ukraine has the highest election deposit in the world. Also, the rules for returning a deposit are very conservative, which makes it virtually a payment for participation in elections. At the same time, the deposit does not effectively perform its function of limiting the number and quality of candidates. On the one hand, the number of candidates in the recent presidential elections has been a record-breaking. On the other hand, the registration of technical candidates and the candidates with the same name or even 'twin' candidates is very easy for multi-millionaires. At the same time, the participation of candidates and parties that do not have access to multimillion budgets is limited. In this regard, we propose to consider the following recommendations:

1. In our opinion, it is advisable to reduce the amount of the election deposit in Ukraine, which is the largest in the world, as well as to consider other non-monetary methods of limiting the participation in elections in order to ensure the credibility of candidates.
2. The deposit must be returned to all credible candidates, especially when its amount is extremely high. The result that confirms such credibility is the following: for a candidate for the President of Ukraine – 5% or more votes; for a party with a list in a multi-mandate constituency – 2% of the votes; a candidate from a party or a self-nominee in a single-member constituency – 5% or more votes, respectively. The essence of the deposit is to prove that a person is a real candidate, worthy to fight for a position, and not to prove that you are the winner. The deposit must filter out those who have no chance of winning, and those who are not credible candidates at the first place.
3. To register a candidate for the presidential election in Ukraine, consider introducing a “French model” for collecting signatures from elected officials (deputies of the Supreme Council of Ukraine and regional councils). The number of signatures should not be large (0.5-1% of all). Otherwise, too many signatures could become a barrier for the opposition.
4. Consider granting preferences to parliamentary parties – that is, those parties that have their factions in the Verkhovna Rada of Ukraine. This is already a sufficient demonstration of the level of credibility of the electoral entity. For example, parliamentary parties can register candidates without making a deposit. For other parties, a deposit or collection of signatures may be established. Such advantages for parliamentary parties are applied in many democratic countries of the world and are not considered to be a violation of the principle of equality.