

OPORA STATEMENT ON PRELIMINARY RESULTS OF OBSERVATION IN 2020 LOCAL ELECTIONS

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Based on the preliminary results of its election observation, OPORA notes a highly competitive nature of the local elections, which were generally in compliance with the legislation of Ukraine. Citizens could choose from a wide variety of candidates (political parties) who had been provided with adequate conditions and resources to conduct wide-ranging election campaigning.

Although the violations documented by observers could have had a significant effect on the expression of voters' will in some territorial communities, their causes were varied, the responsibility for them should be shared by different subjects of the election process, and none of them were engineered centrally within the country. That being said, OPORA did document rather widespread violations of the election and campaign procedures, instances of non-compliance with the procedure of campaigning and attempts of vote buying, abuse of the advantages of incumbency, and distortions of the procedure for changing the voting address. Some of these violations, including the procedural ones, could have been avoided if the Government had made arrangements early for implementing the new Electoral Code, amendments to the Criminal Code and the Code of Administrative Offenses, and for proper education of the election commissioners, political parties, and voters. OPORA also notes that the National Police of Ukraine, despite the limited time for training, took active steps to detect and prevent election violations, as well as improve the skills of its officers.

In view of inadequate coordination and planning of the epidemic prevention measures during the elections, the Government failed to demonstrate its full potential for ensuring the security of citizens in the crisis. According to OPORA, the measures to mitigate COVID-19 incidence were not applied uniformly across the regions of Ukraine nor did they often have a sufficient financial and logistical support. This points to the need for the Government of Ukraine to conduct a detailed review of the experience gained in conducting elections during a pandemic for future consideration.

OPORA notes the effort taken by the Government to strengthen the standards of ensuring the citizens' voting rights and the inclusivity of the electoral process. The Ukrainian Parliament played an important role here, introducing mandatory mechanisms to secure equal participation of men and women in the elections and providing guarantees of voting rights to the internally displaced persons and internal migrant workers. Equally important in the process was the CEC's proactive position in ensuring the voting rights of citizens at the level of by-laws and their practical application, as well as in introducing innovative approaches to voter education.

Against the background of the Government 's progress in ensuring the voting rights of certain categories of citizens, one of the negative manifestations of the campaign was the decision to not hold elections in 18 communities of Donetsk and Luhansk oblasts (about 550,000 voters), which was never properly justified and had signs of violations of the constitutional rights. In our opinion, such challenge to the voting rights of citizens should be addressed immediately by the Verkhovna Rada of Ukraine.

OPORA notes that the strong involvement of President Volodymyr Zelenskyi in the campaign led by the Servant of the People political party has taken a toll on the promotion of recognized democratic standards for the separation of state and political party interests, as well as the prevention of abuse of administrative resources at various levels. Although the legal basis for such activity of the Head of State may be questioned, as well as opinions thereof, it is obvious that the state and its central authorities lost the opportunity to demonstrate a fresh approach to secure appropriate election standards at the level of political practice. It is in the same spirit that the organization assesses the initiative of the President of Ukraine to conduct an informal opinion poll next to the polling stations on October 25, 2020. The details of its organization, conduct and financing may discredit the instruments of democracy in Ukraine in the future and create preconditions for some socially dangerous manipulations by a wide range of political forces.

The CEC exercised its powers regarding local elections highly professionally and in compliance with the legislation of Ukraine, having improved its external communications and educational activities. While the election legislation is not perfect, the Commission succeeded in carrying out well its elucidatory functions, and also in responding promptly to the legal problems identified in the organization and conduct of elections. By contrast, at the level of TECs and PECs, problems that are traditional for administration of elections in Ukraine have emerged because of the commissions' fluid composition and lack of time for quality training, low official pay of the commissioners, and the persistence of politically motivated and shady funding in their work. The above issues demonstrate yet again the need to find new approaches to the administration of elections in Ukraine, which may be established as a result of an all-round and non-partisan discussion at the level of the leading parliamentary committee, engaging the CEC, national and international experts.

Direct and indirect vote buying was again a challenge to fair elections in some communities, but the changes to the Criminal Code of Ukraine and the active involvement of the National Police of Ukraine and other law enforcement agencies acted as a deterrent to potential abuses and unscrupulous candidates. While a key issue remains to make sure that the ongoing investigations end up in court trials, the 2020 local elections have shown some preconditions for improving the situation with prosecuting those responsible for electoral violations. The organization is planning to ensure a systemic public scrutiny over the investigations into violations during the 2020 local elections.

OPORA draws the attention of law enforcement agencies to the need to investigate systemically the abuse of the procedures of changing one's voting address, which could have affected the outcome of elections in some local communities. An effective investigation into such incidents is crucial for preventing any would-be organized abuse of the progressive procedures the Government implements to properly ensure citizens' voting rights. Investigations into incidents of obstruction of the legitimate activities of candidates and attacks on some of them, which were documented in different regions of Ukraine, will also require an effective completion.

Abusing the advantages of incumbency in the course of elections was a significant factor in the campaign on account of the mass-scale nominations of incumbent local government and local executive officials. The nature of these abuses was typically that of violating democratic standards of public administration and was characteristic of representatives of various political parties. This issue was particularly acute in the election of city, village and settlement mayors, in which the incumbents of local self-government were running.

OPORA observers note that the evidence of direct pressure on the voters by public officials is generally lacking, and that during the elections, the top-down systems at the national, regional and local levels were diversified among different political forces. At the same time, OPORA emphasizes that, given the instability of democratic institutions and practices in Ukraine, the requirements for the activities of public officials, in particular the President of Ukraine, should not be limited only to some formal restrictions and arbitrary interpretation of the current legislation. Their practical activities should be based on the broader standards of preventing the misuse of administrative resources in the interests of certain political forces or candidates. An example of good practice and requirements for the conduct of public officials and civil servants in the election process is the Code of Ethical Conduct for Elections that OPORA has developed on the basis of democratic standards.

The problem of insufficient transparency and accountability of electoral and political finances, which manifested itself vividly during premature campaigning as well as in the official election process, is still in need of a final solution. During these local elections in Ukraine, incidents with signs of illegal campaigning have become the commonest violation identified and verified by OPORA observers. The lack of effective control over election funding, in particular due to the limited potential of TECs and NACP, not only created risks of a shadow funding of candidates' and political parties' election campaigns, but also negatively affected the principle of equal opportunities for the candidates and political parties.

The interim results of OPORA's non-partisan observation of the October 25, 2020 local elections indicate the need for Ukraine's further progress towards full compliance with the democratic standards, despite the competitive nature of the electoral process and the existing conditions for the citizens to express their will.

TYPICAL VIOLATIONS ON THE VOTING DAY

On the voting day of October 25, 2020, the Civil Network OPORA carried out a comprehensive assessment of compliance with the legislation and the course of all key electoral procedures, starting from the preparatory meetings and the opening of polling stations, throughout the voting period and the stage of counting votes and transporting PEC documents to the territorial election commissions. Official observers of OPORA conducted continuous monitoring based on

a representative number of polling stations for the whole of Ukraine; its result was the generalization and presentation of statistically reliable data on the key problems and typical violations of the electoral law, as well as the voter activity. As of the morning of October 26, monitoring of the vote counting process and the collection of relevant data are continuing.

The main violation, given the number of recorded incidents, were the attempts to illegally receive ballots by voters and issue them by the precinct election commissions. Such cases, which were not wide-scale, were recorded on 10.04% of PECs all over Ukraine (the error is 2.3%). In the 2015 regular local election in Ukraine, this type of violation had also been predominant, but it manifested itself on a much larger scale – it was recorded at 17.7% of PECs. Observers estimate that at 0.29% of PECs such abuses were not singular.

Another equally common type of violations at the polling stations were the voters voting outside the voting booth and other types of unlawful behavior that resulted in the voters' disclosing the results of their will (for example, displaying a ballot). Such incidents occurred in 7.52% of PECs. In this context, the situation remains unchanged compared to 2015, when such abuses were detected in 7.5% of PECs in the local election. Attempts to take pictures of the ballots were recorded by observers at 1.6% of the polling stations (in 2015, they were detected at 1.9% of PECs).

Compared to the latest local election, the problem of manipulating ballots during the voting was somewhat less pronounced, in particular, attempts to illegally throw in the ballots were detected at 0.64% of polling stations, while the 2015 figure was 1.5% of PECs.

Despite numerous problematic incidents that were recorded by OPORA during the voting day, observers did not find any violations at 89.7% of polling stations (an error of 2.71%) which, in their opinion, could affect the voting results. Instead, on 9.4% of PECs, the observers reported minor violations, mainly of a procedural type. Significant violations, according to the observers, took place at 0.8% of PECs.

OPORA observers had a generally positive assessment of the preparatory meetings and the beginning of voting, signaling certain procedural problems and organizational difficulties in the work of the precinct election commissions (related to the printing of ballots and information posters, the arrangement of precincts, and material and technical problems). At the time of the preparatory meetings and the opening of the polling stations, the official observers were able to monitor the course of all the electoral procedures without hindrance. Individual incidents that prevented the observers from making a full record of the key procedures at this stage occurred at 1.1% of PECs. For comparison, in the regular local election in 2015, this problem had been more common and manifested itself in 3% of PECs. As part of the voting day preparation, members of the precinct election commissions held morning meetings in the manner prescribed by law and with strict compliance with the deadlines (no earlier than at 7:15 AM) at the vast majority of PECs. Meanwhile, at 14.3% of PECs (an error of 3.17%), the preparatory meetings were held somewhat earlier than the established time, which did not negatively affect the voting preparation but created difficulties for the election participants in monitoring and controlling that stage of the election.

The election commissions started their work as usual, and the observers did not record critical problems with attendance of the meetings and the organization of the voting process in the context of counter-epidemic measures. Only 1.4% of PECs did not have quorum on time at the morning meeting. 7% of the precinct election commissions did not ensure that the minutes of

the morning session were kept. The vast majority of polling stations (79.9%) opened on time, within the timeframe clearly established by law. However, 19% of PECs started voting earlier than 8:00 AM.

In the last hours of voting, according to the observers, the election commissions became more organized, and the number of typical procedural errors and abuses decreased compared to the previous hours. Voting ended in a usual mode, and there were neither queues nor crowds of voters in the PEC premises as of 20:00 at 97.4% of the stations. Such queues were recorded, however, at 2.6% of PECs.

VOTER ACTIVITY ON THE VOTING DAY (ACCORDING TO THE CIVIL NETWORK OPORA)

On the voting day of October 25, 2020, the Civil Network OPORA also calculated the voter turnout based on a statistically representative national sample of polling stations where the organization's official observers were located. The data was recorded at 12:00, 16:00, and 20:00.

As of 20:00, OPORA calculations showed that the indicator of voter activity on the voting day within Ukraine was 35.94% (with an error of 1.14%). In the 2015 local election, the official voter turnout was 46.5%, and 48.7% in 2010.

RECOMMENDATIONS

National Police of Ukraine

- Ensure systemic response to the attempts by PEC members to illegally amend the vote counting protocols at the polling stations and ensure proper security of the TECs responsible for determining the election outcomes and results.
- Provide regular information to the citizens about the interim results of the investigation of violations identified in the local election in Ukraine.

Local organizations of political parties, candidates for local elections, social and political associations

- Avoid any violence within the electoral process and not interfere with the activities of the election participants.

Verkhovna Rada of Ukraine

- Provide a comprehensive legislative regulation of the process of establishing the impossibility of holding national and local elections in specific territories, that would make non-transparent, unjustified, or politically motivated decision-making impossible.

Servant of the People Party

- Regardless of the formal deadlines for submitting reports to the NACP, publish full information on the sources, volumes, and methods of using funds for conducting the informal survey at the initiative of the President of Ukraine on October 25, 2020.