

## THIRD INTERIM REPORT ON THE PRE-ELECTION MONITORING OF THE LOCAL ELECTIONS – OCTOBER 2020

### EXECUTIVE SUMMARY

The local elections in Ukraine are taking place while the country is facing the first implementation of the new Electoral Code, a considerable strengthening of the political parties' role in the nomination phase, and the spread of COVID-19. This context puts a serious burden on the election commission members, other election process actors, law enforcement agencies, and the central and local authorities. In the run-up to the election, a key objective for the local authorities and election commissions remains to ensure safe voting conditions and secure funding to supply protective means. OPORA believes that the local authorities are still able to fully comply with the established anti-pandemic standards during the election, despite the unequal funding and provision of supplies to the polling stations and election commissions in different communities. Central and local authorities should use the time left before the voting day to ensure the safe election process and uniform voting standards.

In the reporting period, the Central Election Commission (CEC) acted professionally, paying considerable attention to the voter awareness raising and clarification of the election law. The National Police of Ukraine and other law enforcement agencies reported their interim results of investigations or prevention of attempts to buy votes, abuse the change of address procedures, and commit other election-related crimes. These reports have sent a positive signal to the public. OPORA believes that the society looks forward to the final results of the investigations and expects fair court decisions. Currently, there are reasons to believe that the improved Criminal Code of Ukraine helps the law enforcement agencies take a proactive stance, which is already a deterrent to election law offenders.

A priority for the law enforcement agencies is still to prevent vote buying in the final days of the campaign, while such illegal practices traditionally unfold as the voting day approaches. It is equally important to prevent violence against candidates or their representatives, as obstruction to the activities of electoral process actors has been widespread. Moreover, OPORA recognizes the need to investigate effectively all the attacks on candidates, damage to their property, or destruction of campaign materials. At the same time, the organization appreciates consistent efforts of the National Police of Ukraine to provide training to its officers who perform their duties at all stages of the election process.

Having analyzed the legal grounds for the poll to be held on October 25, 2020 on the initiative of the President of Ukraine Volodymyr Zelenskyi, OPORA calls on the President, all political parties, and law enforcement officers to avoid violations of the Electoral Code of Ukraine, as well as covert electioneering and voter mobilization for a particular political force during this poll. Moreover, the Servant of the People party should immediately disclose the sources of funding for the October 25, 2020 poll to ensure transparent financing of political activities. OPORA calls on the voters to avoid any forms of violence or other illegal actions during the polling.

According to the interim observations, OPORA sees a high electoral competition in the local elections. People have a wide choice of candidates who are actively competing for their support. In the election of local councilors and mayors, the following local party organizations have nominated the biggest number of candidates: the Servant of the People: 29,469 candidates

(10.9% of the total number of candidates); *Batkivshchyna* [Fatherland]: 28,491 (10.5%); *Za Maibutnie* [For the Future]: 26,602 (9.8%); European Solidarity: 22,763 (8.4%); and Opposition Platform — For Life: 19,176 (7.1%). In total, the local elections have more than 217,000 candidates, of whom 59.2% have been nominated under the proportional representation system.

The role of the Internet and social media has become decisive among the campaigning formats most used by the election participants. According to OPORA's estimates, various political forces and candidates spent approximately \$2.6 million (about UAH 70 million) on Facebook advertising during the campaign. Compared with the last parliamentary election, the number of Facebook ads has almost doubled. The uncontrolled dissemination of fake news stories, fabricated public opinion polls, and negative campaigning are the key challenges of the online campaign. Furthermore, the uncontrolled sources of funding for online campaigning provoke a rise in political corruption.

The 2020 local elections show the need for further serious discussions of the mechanisms for strengthening Ukraine's party institutions. This would help harmonize the election laws with the real development of party institutions. Despite a stronger role the parties play thanks to the proportional representation system introduced in the communities with 10,000+ voters, the vast majority of candidates is non-partisan. Independent candidates account for 76.1% of the total number of the nominees. For example, independent nominees make 96.9% of *Za Maibutnie* candidates, 95.3% of the Servant of the People candidates, 91.2% of *Holos* candidates, 54.9% of European Solidarity candidates, 54.7% of the Opposition Platform — For Life candidates, and 49.7% of *Batkivshchyna* candidates. The current Electoral Code has largely restricted self-nomination in the local election and encouraged local leaders to run for office with support of political parties, although their involvement in internal party processes and institutions is often minimal.

For the first time, the laws of Ukraine require strict observance of the gender representation on the party lists (at least two persons of each gender in each party list of five). Although this innovative requirement might be violated at the community level, the local election is the first strong signal that the government works to implement an inclusive approach in the political and electoral process. According to OPORA's estimates, 44% of local councilor/mayor candidates are women. This figure is 43.1% in the regional council elections, 44% in raion council elections, 45.2% in the local council elections in the communities with 10,000+ voters, and 43.9% in the communities with fewer than 10,000 voters. The lowest representation of women is in mayoral elections, only 16.3%. This proves the need to pursue a public policy for strengthening equal representation of men and women in all walks of public life. OPORA calls on the political parties to promote inclusive political processes in their internal procedures after the election.

As to the key campaign violations reported in the past month, failures to comply with legal campaigning requirements dominated, with over 700 verified violations reported for the entire observation period as of October 22. Financial incentives for voters and misuse of administrative resources were less common, but these types of violations had the most adverse impact on the overall election process. As expected, the current election procedures, i.e. the establishment of constituencies and election commissions as well as ballot printing, saw errors and procedural abuses by the election administration authorities. Observers have revealed more than 80 verified cases.

We should note that public activities of the parties and candidates, even after the official launch of election campaigns, involved typical abuses and violations of the election standards. This has

negatively affected the generally competitive nature of the election process. Various forms of misuse of administrative resources were not criticized publicly by the election participants themselves, and were tolerated at different levels as an acceptable way of electioneering by incumbent officials and legislators. There is no clear regulatory framework governing the activities of elected officials and civil servants in the election process, which would effectively introduce the established international practices based on the prevailing democratic standards, therefore the election participants have actually misused administrative resources much more often than the statistics says.

High-profile response to vote buying techniques and, at the same time, the lowered intensity of such campaign abuses over the past month point to the positive impact of current legislative restrictions and sanctions, as well as the important role played by the law enforcement agencies to prevent abuse. However, only effective investigations into the detected election offenses can prevent such abuses in the future and encourage the election participants to adhere to lawful and legitimate campaigning methods. Another problem is that even in this context, indirect vote buying has not disappeared, but has become more covert.

## OPORA'S VIEW OF THE PUBLIC POLL TO BE CONDUCTED ON THE PRESIDENT'S INITIATIVE ON THE 2020 LOCAL ELECTION VOTING DAY

A public poll will be held on October 25, 2020, following President Zelenskyi's initiative. The poll is to survey public opinion regarding some country development issues. On the eve of the local election, Volodymyr Zelenskyi announced his intention to survey public opinion regarding the feasibility of introduction of life imprisonment for large scale corruption; introduction of a free economic area in the government controlled territories of Donetsk and Luhansk oblasts; reducing the number of Ukrainian parliament members to 300; legalization of medical cannabis; and whether Ukraine should raise the issue of meeting the commitments undertaken by the Budapest Memorandum signatory states.

The Servant of the People political party has announced its decision to fully fund the initiative of the President of Ukraine, citing the right of political parties to hold exit polls outside polling stations and without campaigning on the election day.

At the time of publication of this report, OPORA observers received information about recruitment of interviewers to conduct the President's public poll in various regions of Ukraine. According to initial information, the persons involved in the survey may be paid UAH 1,200 under a civil law contract, while the survey itself will be conducted by one of the polling companies. As there are different views of the public regarding the President's initiative, the National Police of Ukraine urged voters not to interfere with the poll.

After the President of Ukraine's recent public address, OPORA promptly prepared and published its own position regarding the survey (the analytical report is available at: [https://www.oporua.org/news/vybory/mistsevi-vybory/mistsevi\\_2020/opytuvanya](https://www.oporua.org/news/vybory/mistsevi-vybory/mistsevi_2020/opytuvanya))

OPORA's key views regarding the poll initiated by the President of Ukraine include:

- ***The institute of the national poll and the procedure for conducting it as a form of exercising power by the citizens of Ukraine are not established by the Constitution of Ukraine, the Electoral Code of Ukraine, or any other law.***

At the same time, any form of direct democracy shall be carried out in the manner prescribed by the Constitution of Ukraine and the laws of Ukraine. Conducting a poll unforeseen by the Ukrainian law could potentially discredit the mechanisms of direct democracy and encourage political groups to manipulate them.

- ***The President of Ukraine does not have the powers to initiate an all-Ukrainian poll, and the Head of State is obliged to act only on the basis and within the powers and in the manner prescribed by the Constitution of Ukraine.*** Volodymyr Zelenskyi has announced his intention to conduct the poll using the official communication channels of the Office of the President of Ukraine while holding the status of the Head of State, which may indicate that he has stepped outside the powers set by the Constitution.
- ***Volodymyr Zelenskyi repeatedly used election slogans and campaign messages of the local organizations of the Servant of the People party when addressing Ukrainian citizens regarding the poll.*** Such actions by the Head of State show signs of covert campaigning in support of a particular political party, which may be a violation of the equal opportunity principle for all participants of the election process.
- ***Lack of a public methodology for conducting the poll and information about the implementors negatively affects the ability of law enforcement agencies to plan measures to support law and order and creates an additional burden for them. This is an important challenge in the context of law enforcement agencies' duty to not only support the legitimacy of the election process, but also to monitor compliance with the lockdown restrictions.***
- ***In the context of the aggravation and spread of the COVID 19, conducting a public poll in parallel with the voting process in the local election creates new risks for the epidemiological situation in the country.*** According to some data, up to 60,000 people may be involved in the poll, while the time spent by the voters in places of mass gatherings is increasing.
- ***Although the poll is to be conducted outside the polling stations, its quasi-official status, based on the initiative of the President, can promote mobilization technologies of a particular political party in violation of the equal opportunity standards for candidates and parties, despite prohibition of any election day campaigning.*** This prospect is exacerbated by the fact that the poll is funded by a political party whose local organizations participate in local elections.
- ***Lack of a legal basis for holding the poll and its political controversy can provoke violent confrontations between citizens, to which the National Police of Ukraine will have to respond.*** An appropriate law enforcement response will require involvement of additional personnel and logistics.
- ***Funding of the poll by the Servant of the People political party violates, albeit indirectly, the requirements of the Electoral Code regarding election campaign financing at the expense of the election funds and the conduct of campaigns within the legally stipulated timeframe.*** Formally, the Servant of the People party is not a participant of the electoral process, but its local organizations are. Nonetheless, the public link between the President of Ukraine, the Servant of the People party, and its local organizations, as well as Zelenskyi's participation in the presentations of local party teams, and the use of slogans of the same political force during the poll creates conditions for *de facto* violation of the standards for replenishing and use of the election funds in the relevant elections.

In connection with the risks to the election process associated with holding of an informal poll on the initiative of the President, OPORA calls upon:

- The President of Ukraine to refrain from any form of direct or indirect campaigning at the final stage of the election process, including when commenting on the progress of the poll initiated by him.
- The National Police of Ukraine to provide adequate response to possible cases of legally prohibited campaigning during the polling.
- The Servant of the People Party to:
  - Ensure strict compliance with the requirements of the Electoral Code regarding the ban on election day campaigning, as well as refrain from attempts to use indirect campaigning techniques. Implementation of this recommendation will help establish equal conditions for participation in the election process for all the participants.
  - Immediately disclose the methodology of the survey, as well as the sources of funding and the implementors or contractors of such an initiative (despite the formal deadlines for submitting regular reports to NACP).
- The citizens of Ukraine to refrain from any illegal acts or acts of violence against the interviewers participating in the poll initiated by the President of Ukraine.

## RECOMMENDATIONS

### **To the President of Ukraine Volodymyr Zelenskyi**

- Refrain from any form of direct or indirect campaigning at the final stage of the election process, including when commenting on the progress of the poll initiated by him.

### **To the National Police of Ukraine**

- Promptly investigate any incident of attacks on the candidates, damage or destruction of their property or campaign materials as well as established vote-buying incidents, and inform the public of the investigation results.

### **To the Cabinet of Ministers of Ukraine, local state administrations and local self-governments**

- Ensure complete and uniform application throughout the Ukrainian regions of the Government Resolution on counter-epidemic measures in the course of the local election.
- Develop direct, transparent and effective communication with the election commissions to promptly assess their needs and respond to their requests covered by the Government Resolution.

### **To political parties, their local organizations, and candidates**

- Refrain from any form of direct or indirect campaigning at the time when this is prohibited by law, including during the poll conducted on the initiative of the President of Ukraine.