



EDPE Policy Alert – Electoral Reform in Ukraine #10

The European Platform for Democratic Elections (EPDE) monitors the progress of electoral reform in Ukraine. Issue no. 10 of the “EPDE Policy Alert - Electoral Reform in Ukraine” gives an outlook on next year’s presidential and parliamentary elections with a special focus on the lack of an effective system of legal liability for violations of the electoral law.

With 2019 just around the corner, Ukraine is preparing for two landmark elections next year. Presidential elections will take place on 31 March, 2019. Although the presidential election campaign and the registration of candidates officially starts only three months before election day, early campaigning has been observed already for several months. Recently, the EPDE member [Civil Network OPORA registered election campaigning in 18 regions](#) of the country, including multiple regional visits by prospective presidential candidates and the participation of local officials in these events. Since the presidential elections are expected to be very tight, existing polarizations in Ukraine are likely to intensify, especially with regard to an estimated run-off election in April.

Roughly seven months after the presidential elections, parliamentary elections are due to be held in October 2019. [Although it cannot be ruled out entirely that there will be attempts to change the electoral system after the presidential elections](#), parliamentary elections are likely to be held under the current mixed electoral system with half of the deputies of the Ukrainian Parliament elected by majority voting in single-member constituencies and the other half by proportional voting with closed party lists. In Ukraine, this electoral system is known to have numerous shortcomings and independent observers consistently record large numbers of violations of the electoral legislation. For instance, the majority voting in single-member constituencies in particular proved to be highly vulnerable to vote buying in the past. However, due to legal loopholes and small penalties, those who commit violations of the electoral legislation usually remain unpunished, or virtually unpunished. This leads not only to a sense of impunity in those who violate electoral provisions, it also contributes to a low level of trust among Ukrainians toward the institution of free and fair elections. Increasing voter confidence in the institution of free and fair elections is, however, particularly important in a polarized political environment. Therefore, election watchdogs in Ukraine have long been calling for the introduction of timely, proportionate, effective, and dissuasive penalties for electoral violations.

The basis to improve the current enforcement system and, therefore, a first step toward addressing impunity for electoral violations and raising the quality and fairness of elections in Ukraine, was laid earlier this year. In April, the Cabinet of Ministers of Ukraine submitted the Draft Law “On Introducing Amendments to Certain Legislative Acts of Ukraine Aimed to Strengthen the Liability for Violation of Electoral Legislation” (Draft Law No. [8270](#)) to the Parliament. The Draft Law was elaborated in close cooperation between the election watchdog Civil Network OPORA, the Ministry of Internal Affairs, the Ministry of Justice, the Prosecutor’s General Office, the Central Election Commission, and the National Police. The elaboration lasted for almost two years and underwent thorough discussions among stakeholders and election process experts in all regions of Ukraine. The Draft Law, which proposes to introduce amendments to the Criminal Code, the Code of Administrative Offences, and the national and local electoral legislation, aims to address impunity and to improve the current flawed enforcement system for electoral crimes by harmonizing legislation and strengthening sanctions for election violations. The Draft Law also aims to facilitate the prevention, investigation, and detection of electoral fraud. According to the Draft Law, tougher sanctions for election violations include, among other measures, up to two years of imprisonment for illegal use of ballot papers and ballot-box-stuffing; for violations of the secrecy of the vote committed by members of an election commission,



candidates, or observers; and for the unlawful receipt of benefits relating to the exercise of the right to vote or to stand as candidate. In this regard, the Draft Law also for the first time imposes criminal liability for the bribery of candidates, with the intention of countering the phenomenon of spoiler candidates. Moreover, the Draft Law proposes to increase the maximum prison sentence from three to six years for electoral offences such as direct and indirect bribery of voters and forgery of election documentation. On the other hand, the Draft Law proposes to decriminalize minor violations of the electoral legislation which have no impact on the elections results; under the new law, voters who conceal or destroy their own ballots would not be held on criminal charges. The Draft Law therefore also aims to save resources and to enable law enforcement officers to investigate major offences more effectively. Finally, the Draft Law aims to create preconditions to detect and investigate electoral fraud. This includes granting immunity to people who voluntarily report instances of vote bribery or election falsification, as well as enabling law enforcement officers to conduct secret surveillance during the election campaign.

Although it is unlikely that this bill will be adopted in time for the presidential elections, the Ukrainian Parliament should put the bill on its agenda at least in due time for the upcoming parliamentary elections. However, it is important—especially with regards to enabling law enforcement officers to conduct secret surveillance during the election campaign—that this bill not be misused as a pretext to weaken political opponents.

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This issue is part of a series of EPDE Policy Alerts to inform relevant stakeholders and decision makers in Ukraine, the European Union, and globally about reforms in the field of electoral legislation, the composition and performance of the election administration, and the positioning of the main political forces in Ukraine. Please feel free to forward and share our analysis.

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