



Electoral reform in Ukraine: last chance for implementing

Introduction of a proportional election system

One of the key aspects of the electoral reform in Ukraine is the abolition of the parallel election system which should be replaced by a fully proportional parliamentary election system with open party lists.

The application of a parallel system with a majoritarian component leads to preservation of an old political elite, thus the current parliament have no will to replace it. Other negative consequences of the current electoral system are the lack of intraparty democracy, possible ways for buying seats in party lists, vote bribery and the use of state funds for private campaigning in majoritarian districts.

Since 2012, the introduction of a proportional election system with open party lists has been recommended by the Venice Commission and the Parliamentary Assembly of the Council of Europe.

A bill on new Electoral Code introducing proportional election system has recently passed the first reading in the parliament. It should be noted that the bill is based on the draft law, which was prepared in 2010. However, most of its key technical regulations, as an example, to voter registration, election funds and appeal procedures are outdated and not in line with current legislation.

In addition, there are problematic aspects in the electoral system itself, for instance the number of MPs elected in a constituency corresponds to the voters' turnout rather than to the number of registered voters at this constituency, which violates the principle of equality. Thus, the draft law needs to be substantially reviewed.

4400 amendments were submitted for the consideration of the Parliament before the 2nd reading. Now a special working group is working on this. This group consists of MPs from different political parties. However, today, the processes taking place around the discussion and preparation of the Electoral Code are not perceived in a very optimistic way.

The first thing to mention is that the working group does not have an official representative status. The meetings usually gather 5 MPs out of 24 group members, who often represent their own points of view in the working group, but not a joint position of the political group they represent. During one and a half summer month there was no meeting, which means that not only the parliament or the profile committee, but even this working group will not be able to finish its work until October (one year before the parliamentary elections).

Secondly, the working group often takes decisions that directly contradict the recommendations of the international community. Thus, the group refused to approve amendments related to the

election rights for IDPs at local elections or increasing accessibility for persons with disabilities. Also the proposal to improve procedures for collecting and spending election funds is rejected, and to our biggest regret MPs have excluded a provision regarding the interim financial reporting of parties and candidates that is a part of the current legislation fully in line with GRECO requirements. Thus, in spite of some progressive proposals (such as the prohibition of outdoor and TV advertising), some materials prepared by the working group does not improve but even worsen the current legislation.

Last but not least, the work of the group is not aimed to gain some results since currently there is no majority in the parliament to support proportional election system and this particular draft law on Electoral Code.

Harmonization of election laws

In case of a probably failed adoption of the new Electoral Code, it is necessary to at least harmonize the existing law. For instance, there is no common approach in the existing law toward the regulation of political campaigning, campaign financing, vote counting and the procedures for establishing election commissions.

Election management body (EMB) reform

The replacement of the CEC commissioners is one of the top and most crucial steps that would bring certainty and independence to the CEC operations.

As you know, the terms of office of 12 out of the 15 members of the Central Election Commission ended 4 years ago, the plenary powers of another CEC member ended in February 2017.

To be independent and in line with the Venice Commission's Code, the future CEC must include at least one representative of each parliamentary faction. By the law, the CEC is approved by the Parliament upon the submission of the President. Currently, there are no representatives of the Opposition bloc in the submission letter. Also, the President submitted 14 candidates for 13 seats, which adds uncertainty to most political faction and gives the Batkivshchyna party reason to fear that their only candidate may not be supported by the parliamentary majority. The new composition of the CEC shall be accomplished ahead of the upcoming presidential elections in 2019.

Effective penalties for violations of election laws and effective investigation of offences.

A large number of violations during elections and the lack of prosecution lead to public distrust in electoral process. A poll funded by the Council of Europe (with the OPORA expert support), issued in 2017, confirms that 68% of the respondents are not satisfied with fairness of elections in Ukraine, and only 19% are willing to report a voters bribery to a law enforcement bodies. According to the research conducted by OPORA, only voters who have received a reward or small bribe organizers are being prosecuted. Since 2014, only one candidate has been convicted and another one case is currently in court.

OPORA experts, together with the Ministry of Internal Affairs, developed the draft law on amendments to some legislative acts of Ukraine on the strengthening of responsibility for violation of electoral law. The draft law extends the opportunity for investigative actions and the collection of proper evidence of election fraud, motivate people cooperate with police.

Despite the fact that the bill was registered as a governmental one, it might not be adopted before the election campaign because of political reasons. Because of bill strengthens the powers of the police, and the Minister of Internal Affairs represents the political force actually being in the opposition to the President.

Political participation of women, IDPs, internal labor migrants and people with disabilities

While the Political Party Law requires parties to include one-third of women on their party lists, there are no penalties for noncompliance, therefore this norm is not practically implemented.

The political rights of people with disabilities are not effectively ensured in Ukraine. Most polling stations are not accessible to voters with disabilities. Moreover, people with disabilities have a restricted access to election-related information.

While the number of IDPs in Ukraine exceeds 1.6 million they cannot effectively exercise their voting rights in the local election. Similar voting challenges are faced by internal labor migrants. The Draft Law No. 6240, which was developed by non-governmental organizations and solves this problem, was not even submitted to the profile committee one and a half years after its registration.

Political finance reform

Very low sanctions (up to 200 EUR) are applied to parties or candidates who fail to submit their financial reports. This is a key reason why only two-thirds of more than 350 registered political parties file their quarterly reports to the NACP. Therefore, the system of penalizing political finance violations should be strengthened.

Also Local Election Law should be correspondingly amended to regulate campaign finance in local elections as it does for national elections.

GRECO recommends to clearly delineate the powers of the NACP and other agencies (such as Accounting Chamber, CEC, Fiscal Service and other) to avoid duplication of efforts and to increase the overall effectiveness of political finance monitoring. But this recommendations was not fulfilled.

Conclusion

Thus, most of the goals and commitments that the authorities have in the context of the electoral reform have not been achieved at the moment, while only half a year remains before the Presidential elections, and a little more than a year before the parliamentary ones. However, a political compromise is still possible both with regard to the CEC formation, as well as on the updating of electoral legislation, and the establishment of an effective criminal liability system.