

# **2015**

# **Local Elections In**

# **Ukraine: A View**

# **From Outside**

**Ukrainian Legislation on Local Elections and Its  
Application in the Elections on October 25, 2015**

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The publication contains general findings of an analysis of election process in Ukraine. The report is intended for a wide audience, including experts, policy makers and researchers.

The views expressed in this publication do not necessarily reflect the views of the European Commission and GIZ.

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# Executive summary

On October 25, Ukraine held elections to regional, district, city, town, and village councils, as well as elections of heads of cities, towns, and villages. Elections of regional, district, and city councils used what is, for Ukraine, a new version of the proportional election system, in which political party lists are divided into parts corresponding to territorial constituencies (equal to the number of mandates), and where each part may not include more than one candidate. Such a model created the illusion among voters that they are voting for specific candidates (as they would in the majority election system), while in reality their vote went primarily to political parties. Indeed, data shows that the majority of cast votes contributed not to the election of those candidates whose names were on the ballots.

Such a system distorts territorial representation. A significant number of territorial districts did not get a deputy, while in many districts two deputies were elected, and in some three. Large and medium-sized cities were the most disadvantaged in the regional council elections.

The proportional election system applied a high electoral threshold (5 %), which resulted in a significant loss of votes and reduced the level of representativeness in a number of elected councils.

In elections of the Heads of villages, towns, and cities with less than 90.000 voters, a relative majority system (i.e. plurality) was used, resulting in some candidates winning by receiving less than 30 % of the vote and with the opponent lagging behind by less than 2 %. Thus, there are serious doubts about the legitimacy of those elected Heads.

Also an issue was the fact that campaigns for different types of elections were held simultaneously, which complicated both voter choice and the work of election commissions. Another shortcoming were the very short durations of election campaigns.

Gender quotas were introduced in the elections with party lists, but they proved to be ineffective. The proportion of women in the elected regional and big city councils remains low.

More problems were identified in the processes of election commission formation, the registration of candidates, the legislative regulation of voter information and election campaigning, and the preparation of ballots. Steps should be taken to improve vote counting transparency.

There were several incidents during the process of determining the election results that cast doubt on the legitimacy of the elected bodies and officials. For example, in the second round of the election for the head of Kirovohrad, election results were altered by the legally questionable abolition of the voting results from two polling stations. In the elections of the Kyiv Regional Council, the distribution of seats did not follow the procedure prescribed by law.

To conclude, there is need for comprehensive reform of Ukraine's electoral legislation.

# Introduction

In the course of activities within the expert mission from October 13 to 27, 2015, I visited Kyiv, Kirovohrad, Odesa, Khmelnytskyi, Chernivtsi, and the urban village of Dobrovelychkivka (the district center of the Kirovohrad region), as well as the city of regional subordination, Pomoshnaya (Dobrovelychkivskyi district of Kirovohrad region).

During the visit, I attended a number of election commissions: Kyiv City, Kirovohrad Regional, Khmelnytskyi Regional, Khmelnytskyi City, Pervomaisk district commission in Chernivtsi City, and the Dobrovelychkovskyi district and village commissions. I also met with Mr. Chernenko A.M., deputy of the Verkhovna Rada of Ukraine; Mr. Stelmakh A.V., Head of the Service of the Administrator of the National Registry of Voters of the Central Election Commission of Ukraine; Mr. Chernovivanenko A.A., Head of the Kirovohrad Regional Council; Mr. Markovsky I.I., Kirovohrad City Council Secretary (deputy mayor of Kirovohrad); candidates for mayors of Kirovohrad City and the Dobrovelychkiv settlement; candidates for deputies of Kyiv City Council, Kirov regional and City Council, Odesa Regional Council, Khmelnytskyi City Council, and Chernivtsi City Council; representatives of political parties and non-governmental associations, including the Committee of Voters of Ukraine (CVU) and the Civil Network "OPORA", mass media, OSCE observation missions, ENEMO, and other experts.

My main task was to assess the electoral legislation (and especially the electoral system) and its actions in practice.

# 1. Circumstances of the new law adoption

Local elections in Ukraine on October 25, 2015, were carried out on the basis of Law # 595-VIII, "On Local Elections", dated July 14, 2015 (as amended in accordance with Law # 676-VIII, dated September 4, 2015). In other words, the elections were carried out according to a law adopted less than two months prior to the start of the election campaign.

The circumstances of the adoption of the new law are important for understanding the problems of electoral reform in Ukraine. Four alternative drafts of the law were submitted for consideration to the Verkhovna Rada in May 2015. One of them was prepared by the working group led by deputy A.M. Chernenko and created by the order of the Chairman of the Verkhovna Rada. This group was composed of deputies of Verkhovna Rada from several fractions, CVU, and representatives of the Civil Network "OPORA", and included such recognized experts in the field of election legislation as Yu. Kliuchkovskyyi, D. Kovryzhenko, and Ye. Radchenko.

However, in the course of the first reading, a different draft of the law was adopted, one which was prepared behind the scenes and submitted by a group of deputies from the factions "Bloc of Petro Poroshenko", "Narodnyi Front" ("People's Front"), and "Radical Party of Oleg Liashko". It was less developed than the other versions; in particular, it preserved many provisions of the former law, which has repeatedly been criticized by experts. At the adoption stage, in the second reading, the bill was substantially amended, but many amendments were suggested merely orally during the Verkhovna Rada session. Consequently, the law was rather imperfect.

It should be noted that the parliamentary majority rejected (in the course of the second reading) the idea of introducing open lists, which were a feature of the electoral programs of the parties "Batkivshchyna" ("Fatherland"),

"Petro Poroshenko Block", "Radical Party of Oleg Liashko", as well part of the coalition agreement. Some politicians attempted to misinform the public by claiming that the law provides for open lists, but the firm voices of a number of experts stopped the promulgation of this fraud.

## **2. The electoral system at the elections of representative bodies**

At the 2015 local elections, three electoral systems were used. Mayors of cities with over 90.000 voters were elected according to the system of absolute majority. Mayors of smaller cities, towns, and villages were elected according to the system of relative majority. Also elected according to the system of relative majority were deputies to settlements and village councils in single-member electoral districts.

The electoral system adopted for the election of regional, city, and district councils was almost identical to the one used in the election of the Legislative Assembly of St. Petersburg in 2007 and 2011. The elections were held by party lists exclusively; self-nomination was not an option. Single districts were divided into territorial districts, the number of which was equal to the number of mandates in the election district. There is not more than one candidate (but might not be anyone) in each part of the party lists of a particular district. In the central part of the list which is not linked to any district and mandated out of turn there is one candidate (so-called first candidate).

The ballot included a sequential number; the name of the local party organization (in large letters); the surname, name, and patronymic of the first candidate in the list of candidates (in small letters and in brackets); and the

surname, first name, and patronymic of the candidate for deputy, assigned to the territorial electoral constituency (in capital letters). Between the sequential number and the above information was an empty box where the voter was to place a mark, voting for this party.

During seats allocation within the list, as already mentioned above, at first mandate was earned by the candidate, not assigned to any territorial constituency. The rest of the mandates were handed to candidates in descending order of percentage of votes.

The essential point concerning the formation of territorial constituencies is the provision that the number of voters in them should be as close as possible to the average number of voters. At the same time, at least one electoral constituency should be formed at the regional council elections in the territory of each district or town of regional subordination. At the elections of district councils, the same rule applied to every village, town, or city of district subordination. Compliance with this requirement led to situations where the constituencies happened to be substantially unequal in the number of voters. This inequality was intensified by the decision of the Central Election Commission of Ukraine to allocate to major cities not more than 20 % of the constituencies, regardless of the percentage of voters who resided there. For example, the proportion of voters in the Kirovohrad region is 25 %, but Kirovohrad got 10 % of districts; the proportion of voters in Odesa is 41 %, but it got 19 % of districts. As a result, at the Kirovohrad regional council elections, the size of the constituency ranged from 5.892 to 18.172 voters.

Such a system can be regarded as an extreme (and extremely restrictive) version of the party lists system, which is widespread in Russia. In its milder forms, such a system has two advantages over the system of "linear" closed lists (where lists are not divided into groups). First, it provides not only political but also territorial representation. Two types of representation are combined, so that territorial representation is awarded to at least the most powerful party, and, ideally, to all of them. However, it is worth noting

that territorial representation is specifically important for national elections and elections to regional and district councils; for municipal council elections, it is not of great importance. Second, the system provides reasonable interparty competition, which prevents excessive centralization and bureaucratization of the parties, minimizes party corruption, and offers an advantage to candidates who enjoy the real support of the voters.

However, in the restricted version of the system, adopted for the local elections in Ukraine, these advantages are present to a lesser degree, and often turn into disadvantages. As theoretical analysis and Russian experience has shown, this system leads to a situation where territorial representation necessarily turns out to be perverted.

As the number of territorial constituencies is equal to the number of allocated seats, and as there is a so-called "first candidate" in each list (not assigned to the territorial groups and who earns mandate out of turn), it is easy to determine in advance that at least as many constituencies will remain without deputies as there are parties that pass to the council. However, as soon as the election system allows two or three candidates (from different parties) to be elected from one district, it also correspondingly increases the number of constituencies that remain without a deputy.

These predictions have all come true. Table below presents data on a large number of elections to regional councils and city councils of regional centers. Two districts of Kirovohrad were added, as well as, selectively (mainly from different regions), a number of districts and cities of regional and district subordination. This data does not take into account possible future withdrawal of the first candidates from the mandates<sup>1</sup> (among those there are acting mayors and deputies of Verkhovna Rada), and which might cause slight changes in the final scenario.

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1 In some cases, the retirement of the first candidates had already been taken into account in the data, which was posted on the CEC of Ukraine. Two candidates withdrew in Kharkov region, and one in the following: Ichnya City, Poltava region, Lubny and Melitopol district, Kharkiv, Oleksandria, Drohobych, Zhmerynka, Izmail, Kakhovka, Novodnistrovsk, Krolevets, and Nemyriv.

## TERRITORIAL REPRESENTATION ACCORDING TO THE RESULTS OF THE LOCAL 2015 ELECTION

Region, district, city	Number of seats	Parties past	Number of constituencies			Proportion of constitu- encies with- out deputy
			without deputy	with two deputies	with three deputies	

### Elections to the regional councils

Vinnitsia region	84	8	23	11	2	27 %
Volyn region	64	7	14	7	0	22 %
Dnipropetrovsk region	120	7	25	16	1	21 %
Zhytomyr region	64	8	21	13	0	33 %
Zakarpattia region	64	6	14	8	0	22 %
Zaporizhzhia region	84	8	20	10	1	24 %
Ivano-Frankivsk region	84	6	21	11	2	25 %
Kyiv region	84	8	26	16	1	31 %
Kirovohrad re- gion	64	8	21	11	1	33 %
Lviv region	84	9	22	13	0	26 %
Mykolaiv region	64	7	17	10	0	27 %
Odesa region	84	6	17	11	0	20 %
Poltava region	84	10	28	15	2	33 %
Rivne region	64	6	15	9	0	23 %
Sumy region	64	8	18	8	1	28 %
Ternopil region	64	8	16	8	0	25 %
Kharkiv region	120	6	27	23	0	23 %
Kherson region	64	7	17	8	1	27 %

Khmelnytskyi region	84	7	22	11	2	26 %
Cherkasy region	84	8	22	14	0	26 %
Chernihiv region	64	7	22	15	0	34 %
Chernivtsi region	64	10	21	11	0	33 %

Elections to the councils of regional centers

Vinnnytsia	54	6	14	6	1	26 %
Dnepropetrovsk	64	5	18	11	1	28 %
Zhytomyr	42	6	13	7	0	31 %
Zaporizhzhia	64	7	19	10	1	30 %
Ivano-Frankivsk	42	6	12	6	0	29 %
Kyiv	120	5	20	15	0	17 %
Kirovohrad	42	9	9	0	0	21 %
Lutsk	42	7	13	6	0	31 %
Lviv	64	7	16	7	1	25 %
Mykolaiv	54	4	11	7	0	20 %
Odesa	64	5	13	8	0	20 %
Poltava	42	7	15	8	0	36 %
Rivne	42	7	15	6	1	36 %
Sumy	42	6	14	6	1	33 %
Ternopil	42	7	12	5	0	29 %
Uzhhorod	36	9	16	5	1	44 %
Kharkiv	84	4	8	5	0	10 %
Kherson	54	8	17	7	1	31 %
Khmelnytskyi	42	6	9	3	0	21 %
Cherkasy	42	8	17	5	2	40 %
Chernihiv	42	7	11	4	0	26 %
Chernivtsi	42	6	11	5	0	26 %

Elections to the councils of other cities of regional subordination

Oleksandria	36	7	12	4	1	33 %
Berdychiv	36	8	13	5	0	36 %
Berdiansk	36	7	13	4	1	36 %
Vasylkiv	34	9	12	3	0	35 %
Dniprodzerzhynsk	42	9	15	6	0	36 %
Drohobych	36	8	11	4	0	31 %
Dubno	34	9	12	3	0	35 %
Zhmerynka	34	9	12	4	0	35 %
Izmail	36	2	4	3	0	11 %
Kalush	36	8	10	2	0	28 %
Kaniv	34	8	11	3	0	32 %
Kakhovka	34	8	12	5	0	35 %
Kovel	36	7	13	6	0	36 %
Kremenets	26	6	10	4	0	38 %
Kremenchuk	42	8	13	5	0	31 %
Kryvyi Rih	64	7	15	8	0	23 %
Lozova	36	9	13	4	0	36 %
Nizhyn	36	8	13	5	0	36 %
Netishyn	34	7	12	5	0	35 %
Novodnistrovsk	26	8	9	2	0	35 %
Ochakiv	26	7	8	1	0	31 %
Chop	26	6	9	3	0	35 %
Enerhodar	34	7	11	4	0	32 %

Elections to the councils of other cities of district subordination

Vylkovo	26	5	8	3	0	31 %
Zbarazh	26	7	9	2	0	35 %
Ichnya	26	7	10	5	0	38 %

Korsun-Shevchenkivsky	26	8	11	3	0	42 %
Krolevets	26	6	8	3	0	31 %
Nemyriv	26	6	11	6	0	42 %
Ovruch	26	9	12	3	0	46 %
Perechyn	26	6	6	0	0	23 %
Pidhorodne	26	8	11	1	1	42 %
Skadovsk	26	8	10	2	0	38 %

#### Elections to the councils of city districts

Kirovskyi district of Kirovohrad city	42	9	11	2	0	26 %
Leninskyi district of Kirovohrad city	36	8	10	2	0	28 %

#### Elections to the district councils

Dobrovelychkivskyi district of Kirovohrad region	34	6	12	6	0	35 %
Yelanets district of Mykolaiv region	26	5	9	4	0	35 %
Izyum district of Kharkiv region	26	6	8	2	0	31 %
Kitsman district of Chernivtsi region	36	6	8	2	0	22 %
Kolomyia district of Ivano-Frankivsk region	43	7	11	4	0	26 %

Letichevsk district of Khmelnytskyi region	34	7	13	6	0	38 %
Lubny district of Poltava region	34	6	9	4	0	26 %
Melitopol district of Zaporizhzhya region	34	5	6	2	0	18 %
Mena district of Chernihiv region	34	7	9	2	0	26 %
Peremyshliany district of Lviv region	34	10	12	2	0	35 %

As the table shows, the proportion of constituencies that remained without deputies was significant everywhere – in regions, districts, and cities. It is lowest in Kharkiv (10 %), Izmail (11 %), Kyiv (17 %), and Melitopol district (18 %). In other cases it is over 20 %, reaching 34 % in Chernihiv region, 38 % in Letychivsk region, 44 % in Uzhhorod, and 46 % in Ovruch. It is curious that only in two cities (Kirovohrad and Perechyn) no constituency has elected more than one deputy.

It is important to realize that the constituencies left without deputies are not randomly scattered in the territory. Based on theoretical considerations, it is possible to see that constituencies with the most pluralistic voting have remained without deputies, and where each party gets a smaller share than in other constituencies. Most often these are urban areas. From this point of view, most interesting is the geographical distribution of deputies by constituencies at the election of regional councils. The situation with the representation of the regional centers is very different. Some cities got more deputies than the number of constituencies allocated to them, namely Lutsk, Mykolaiv, Ternopil, and Kharkiv (where voting was less pluralistic). Dnepropetrovsk and Khmelnytskyi received as many deputies as they had constituencies. In other regional centers, fewer deputies were

elected. Most disadvantaged in this regard were Kherson (5 deputies from 12 constituencies), Poltava (5 of 16), Chernivtsi (4 of 12), Cherkasy (3 of 16), Kirovohrad (2 of 12), Uzhhorod (1 of 6), and especially Chernihiv (not a single deputy from 12 constituencies).

Many medium-sized and smaller cities appear to have been disadvantaged as well. In particular, Kremenchuk of Poltava region (6 deputies from 12 constituencies), Kamyanets-Podilskyi of Khmelnytskyi region (1 of 6), Pervomaisk of Mykolaiv region, Nova Kakhovka of Kherson region (1 of 5), Enerhodar of Zaporizhzhia region (1 of 4), Novohrad-Volynskyi of Zhytomyr region, Voznesensk of Mykolaiv region, Lubny of Poltava region, Shepetivka of Khmelnytskyi region, and Irpin of Kyiv region (1 of 3). Without deputies remained the city of Kalush of Ivano-Frankivsk region; Izyum of Kharkiv region (4 constituencies in each); Lyubotyn of Kharkiv region; Starokostiantyniv of Khmelnytskyi region; and Vasylkiv, Obukhiv, and Fastiv of Kyiv region (2 constituencies in each).

The election system has additional attribute: the candidate whose party has taken first place in its territorial constituency may be "unelected" and a candidate whose party earned fewer votes may be elected in his or her place. In terms of proportional election logic, there is no need to dramatize this feature, but voters who trusted the logic of majority voting (see below) may find such results unfair.

I managed to obtain data containing the results of all the parties in all the territorial constituencies only for the election to the Chernivtsi City Council. For the election to the Chernivtsi Regional Council, I received data only for the parties committed to seats allocation. Therefore, I was able to check how often such a situation appeared only for these two elections.

In the election to Chernivtsi Regional Council, at constituency # 65, the elected candidate was ranked fifth; that is, four candidates who received more votes were left without seats. At constituencies # 30 and 33, the elected candidates each took fourth place. At constituencies # 1, 8, and 57, the elected candidates all took third place, bypassing candidates who came in

first and second. At constituencies # 25, 61, and 62, the elected candidates all took second place, and the highest-ranked candidates were left without seats. At constituencies # 5, 7, 9, and 17, the candidates took first and third places, and the candidates who took second place were left without seats. At constituency # 34, candidates who took second and fourth place were elected; the candidates who took first and third place were passed over. At constituency # 48, the elected candidates took second and fifth place, and the candidates who took first, third, and fourth place were not chosen. Such abnormalities occurred in 15 out of 43 constituencies in which deputies were elected.

Fewer abnormalities were observed in the elections to the Chernivtsi City Council. Here, at constituency # 33, the elected candidate was ranked sixth, and five others, who received more votes, were left without seats. At constituencies # 4 and 31, the elected candidates both took fourth place. At constituencies # 8, 12, 17, and 18, all the elected candidates took second place. At constituency # 29, candidates who took first and fourth place were elected, while those who took second and third place were left without seats. All in all: 8 anomalies for 31 constituencies where deputies were elected.

From the data on Chernivtsi City, one can see how a narrow majority in votes determined the outcome of the elections. For example, in the "Petro Poroshenko Bloc – Solidarnist" ("Solidarity"), mandate was earned by the candidate with 17.52 % of the votes, while the candidate with 17.28 % of the votes was left without mandate. The outcome was determined by 4 votes. In "Samopomich", mandate was received by the candidate with 11.54 % of the votes, but not by the candidate with 11.41 % (mandate fate was determined by 3 votes). In the election leader, party "Ridne misto" ("Native city"), mandate was received by the candidate with 22.84 % of the votes, but not by the candidate with 22.27 % (mandate fate was determined by 9 votes).

It is also important to note that, unlike in the majority system and some versions of the mixed system (which the above-described electoral sys-

tem superficially resembles), here the candidate who received significant voter support (and even took first place in his or her constituency) can fail to receive mandate because his or her party did not pass the threshold. I have no data on how often this occurred, but I mention as an example constituency # 1 in the election to the Chernivtsi City Council, where the candidate I.I. Gorash, nominated by the "Auto-Maidan" party, earned 21.0 % of the votes and took second place, but the party itself only earned 2.3 % of the votes.

Under these circumstances, inter-party competition took the form of a contest of financial and other resources rather than a competition of individuals and political programs. Unlike in the system of open lists, voters were not able to choose a candidate in the party list; rather, they simultaneously voted for a party and a party-nominated candidate. As a separate matter, the awarding of mandates in some sense depended on voters: in constituencies where more voters voted for a party, the candidate had a greater chance to receive a mandate. Thus, candidates were encouraged to work in their constituencies. But this has no concern with voter rights.

Such a system, and particularly the propaganda campaign around it, can easily disorient voters. The fact that in each constituency one candidate from different parties was listed, created the illusion of election by the majority system. In the course of the campaign, some politicians and experts offered voters the following advice: look for the candidate's name printed in large letters on the ballot, and if you like the candidate, then vote for his or her party. That is to say, they offered voters walk by the rules of elections, appropriate for the majority voted system. It was not explained to voters, however, that their vote could end up going to another candidate from the same party.

Election results provide an opportunity to assess what percentage of voters got as a result of voting for the party not that candidate, who was listed in the ballot paper. For this purpose, I summarized the results of elected

candidates for each party and divided the sum by the number of votes received by the party in all constituencies.

It turned out that the results exceeded 50 % only in a few cases. These are: the "Opposition Bloc" in the Mykolaiv region (62 %), Mykolaiv (52 %) and Kryvyi Rih (51 %), "Vidrodzhennia" ("Revival") in the Kharkiv region (81 %), Kharkiv (72 %), "Petro Poroshenko Block – Solidarity" in Kyiv (53 %), and "Doviriy dilam" ("Trust in deeds") in Odesa (55 %) – this was the case only with regard to the the leading parties in cities and regions and only in cases where they received a larger share of seats. In other cases, the quotient was less than 50 %, and often much less than that, which means that most of the voters did not receive the candidates for whom they voted (if, that is, they voted based on the candidate's personality rather than party preference).

Here are detailed data on the Kirovohrad region. Elected candidates from "Petro Poroshenko Block – Solidarity" earned 30 % of votes cast for the party; candidates from "Batkivshchyna" ("Fatherland") earned 35 % of the party votes; "Radical Party of Oleg Liashko" earned 11 %; the party UKROP earned 13 %; "Svoboda" ("Freedom") earned 11 %; the Party "Nash Kray" ("Our Land") earned 17 %; and the party "Samopomich" earned 9 %. Altogether, in the eight parties that passed, the elected candidates earned only 23 % of the votes cast for these parties. In other words, more than three quarters of the voters received candidates other than those for whom they voted.

This fact would not be so essential if the parties were monolithic groups of like-minded people. Probably, some parties are like that—in particular the "Samopomich" party. In this respect, it may be interesting to note this party's election results to the Chernivtsi City Council. The party nominated only 19 candidates; that is, from 42 constituencies, they did not have candidates in 24. It was found that the average result in constituencies where "Samopomich" had a candidate was 10.3 % of the party vote, and 8.8 % in constituencies where there was no candidate (less, but not by much). If

you rank the constituencies based on the percentage of votes for a party, it will be seen that the occupied and vacant constituencies alternate. So, the first two places (19.5 % and 16.7 %) were taken by constituencies # 34 and 29, where the party had candidates. But the third and fourth places (13.2 % and 12.8 %) were taken by constituencies # 3 and 4, where there were no candidates. Fifth place (12.6 %) was taken by constituency # 8, where there was a candidate, and sixth place (12.1 %) by constituency # 30, where there was no candidate. And so on. The last two places were taken by constituencies # 15 and 16 (4.6 % and 4.5 %), where the party had no candidate, and the third from the end by constituency # 18 (5.2 %), where there was a candidate. Thus we see that the main factor in the voting was the party brand and that the personality of candidates played a lesser role.

Unfortunately, I was not able to do a similar analysis for other successful parties. But, according to some data, the majority of the Ukrainian parties fragmented and not cohesive. In this campaign the party lists often provided a conglomerate of different interest groups. To illustrate, I refer to an article published in a Kirovohrad newspaper, where we read: *"Recent irreconcilable opponents, who mercilessly exchange the abuse in social networks and on paper, suddenly happened to be teammates. Rolled into one flask, that is to say lists, "maidanovtsy" and "regionaly", "vatniki" and "vyshivatniki", corruptionists and their castigators – what kind of ideology can one talk about here?"*<sup>2</sup> Under such conditions, it is important for the voter to be able to choose not just a particular party, but a specific candidate in it as well. But this is possible in case of open lists only. The system used at the elections in Ukraine may thus not lead to an accurate reflection of the will of the voters. Furthermore, I believe that this system, which encourages candidates to comport themselves under the principle of "every man for himself", contributes to even greater disintegration of the parties and thereby reduces possibilities for the political representation of voters.

Another important feature of the system used in the elections to regional, district, and city councils is that it did not give independent candidates the

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2. Marmer E. The parade of big snouts / Ukraine Center, 13.10.2015, (uc.kr.ua/parad).

opportunity to participate. Parallel elections were organized for township and village councils according to the majority system, and independent (self-nominated) candidates not only participated in this election but had the most success in them. Thus, according to the Central Election Commission of Ukraine, as of November 20, 2015, 117,371 deputies were elected to village councils, and 11,259 deputies to settlement councils, totaling 128,630 deputies. Out of these, 112,397 are self-nominated candidates. Self-nominated candidates thus constitute 87.4 % of all candidates elected to township and village councils.

Meanwhile, the difference between settlements and cities of district subordination is not very great, and it is easy to assume that if self-nomination at the municipal level were permitted, independent candidates would dominate. A large number of self-nominees would likely successfully participate, where possible, in the election to district and regional councils. Supporters of the proportional system often put forth in its favor the argument that this system promotes the development of political parties. However, the lack of opportunities for independent candidates to participate in the elections<sup>3</sup> contributes to the trend of candidates joining parties for pragmatic rather than ideological reasons, and thus leads to further disintegration of the parties.

I believe that the Ukrainian expert community needs to initiate a professional discussion in order to choose the electoral system best suited to the current political situation. It is important not to be limited to one or two options, but to consider a wide range of well-known electoral systems.

Certainly, open lists system should be considered as the most promising option. However, when using this system it is necessary to consider the rules governing inter-party competition, as the system contributes to the consolidation of parties on a political basis, but not to their break-up. It is also important to make this system transparent to voters. In addition, it

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3 It is worth noting that, in principle, participation of independent candidates is possible in the proportional system, and in some countries they are granted this right. However, such candidates cannot compete on equal terms with political parties, and mass voting for them in this case leads to a significant "loss" of votes.

must be kept in mind that open lists do not solve the problem of independent candidates.

A system of lists divided into territorial groups should not be immediately rejected. It is desirable, however, to sidetrack its extreme version, where a single constituency is split into a number of territorial constituencies. This option is used in the Russian Federation at the State Duma election, where in the parties themselves have an opportunity to determine (within the established frameworks of the territories) to which territorial groups the lists are attached.

I consider also as perspective a mixed-member electoral system, similar to those used in Germany and New Zealand. It simultaneously provides proportional party representation, territorial representation, and the opportunity for independent candidate participation.

In addition, it is important to understand that different electoral systems may be optimal for different levels of elections. In particular, territorial representation is important in Verkhovna Rada regional and district councils, but can be ignored in the City councils, especially for smaller cities. Therefore, it is possible to choose different systems for different levels of the election.

### **3. Election system at the cities, settlements and villages heads elections**

As mentioned above, the electoral system for the election of city mayors depended on the number of voters in each city. If this number was equal to

or greater than 90.000, the electoral system of absolute majority was used; if it was less than 90.000, a relative majority system was used. The relative majority system was also implemented in the elections of settlement and village heads.

It is not quite clear why the number 90.000 was chosen for the threshold. In addition, the law does not specify the date when the number of voters is to be ascertained. This was an issue with the "Pavlodar casus". When the elections were called, the number of voters in Pavlohrad, a city in the Dnipropetrovsk region, exceeded 90.000, but after the first voting it happened to be less. Based on this, the Central Election Commission of Ukraine adopted a clarification, on October 27, 2015, according to which the second voting in the city should not be carried out, and the results of the elections should be brought into line in accordance with the system of relative majority.

Meanwhile, it is obvious that the threshold of 90.000 has a only a technical nature while the electoral system – a fundamental nature. Changing the electoral system after calling an election, and even more so after the first vote has been cast, is absolutely unacceptable – not least because both the candidates (in their campaign tactics) and the voters (in their choice at the first voting) are guided by the electoral system; if the system had been different, the voting results are likely to have been different as well.

Under these circumstances, the Kyiv Administrative Court of Appeal passed the right verdict on October 29, 2015, having recognized the CEC justification as illegal.

Nevertheless, a reasonable question remains: why different electoral systems should be applied depending on the number of voters. Use of the absolute majority system in the city mayoral elections is conditioned upon the fact the Mayor needs to win the support of an absolute majority of voters for the sake of legitimacy. The degree of competition and the level of support for the candidates at the first voting has little to do with the number of voters in the city, but is determined almost exclusively by the political situation in it.

There are several examples of cities where the mayoral elections on October 26, 2015 passed in 1 round. Thus, in the mayoral elections in Svetlovodsk, in the Kirovohrad region, the elected candidate was V.V. Koziarchuk, who earned only 15.8 % of the votes, while second place went to Yu.N. Kotenko, who won 14.1 % of the votes. Similarly, in the mayoral elections in Novomoskovsk, in Dnipropetrovsk oblast, V. I. Litvischenko was elected with 22.7 % of votes, while second place went to A.M. Barsuk, who earned 21.5 % of the votes. In the mayoral elections in Kovel, in the Volyn region, the winner was O.A. Kinder with 29.8 % of the votes, while his main rival, S.D. Kosharuk, earned 29.1 %. The legitimacy of the listed mayors causes serious doubt.

## **4. Combining the elections of different levels**

Traditionally, in Ukraine, all local elections are held simultaneously. The elections of October 25, 2015, were not an exception. Voters in the towns of district subordination, townships, and villages voted simultaneously in four elections: for the head of the city, town, or village; for deputies of the city, settlement, or village council; deputies of the district council; and deputies of the regional council. City voters (where cities have district councils) also voted in four elections: in Dnepropetrovsk, Kryvyi Rih, Zhytomyr, Kirovohrad, Poltava, Kherson, and Chernihiv (for the head of the city, deputies of the district council, deputies of the city council, and deputies of the regional council). In the remaining cities of regional subordination, voters voted simultaneously in three elections (for city mayor, deputies of the city council, and deputies of the regional council). Kyiv was an exception, with

only two simultaneous elections (for City Mayor and deputies of the City Council).

Such a large number of elections creates complications for voters, political parties, candidates, and election commissions. It is difficult for voters to make conscious choices in so many nominations, and they invariably pay more attention to one election, voting in others almost randomly. In addition, they often cannot keep track of which candidate is running in which election. Under such conditions, it is more complicated for parties and candidates (especially in less popular elections) to communicate their positions to voters, and the political campaigns become even more lapidary (simplified). In addition, many candidates have to run simultaneously for several positions, which confuses voters and leads to withdrawals from mandates.

In addition, the electoral commissions are overworked, resulting in mistakes both at the stage of election preparation (registration of candidates, ballot paper text approval) and during voting and vote counting. The process of summarizing results drags on, which reduces the credibility of the elections.

Additional problems are created by the use of different electoral systems in different elections—which complicates both voter choice and the work of parties and electoral commissions. Thus, a majority system might be used in elections to one council, and a proportional system in elections to another council. As noted in Section 2, different electoral systems may be optimal for different types and levels of elections, so one should not aim for unification.

In this regard, it is advisable—particularly in view of extending decentralization, accompanied by a reform of the administrative-territorial division of the country—to separate different types of elections, and at least to separate elections to district and regional councils from city, town, and village council elections.

## 5. Threshold

Following the example of the parliamentary elections, the threshold in the new law on local elections was raised from 3 % to 5 %. This reduced the level of representation of many elected councils.

Table below, which covers the elections to regional councils and city councils of regional centers, provides one of the main indicators of representativeness: the total share of votes earned by parties who participated in the distribution of mandates. It should be noted that, under these conditions, this index is clearly associated with the well-known Luzmor-Henbi disproportionality index, where the share of votes earned by parties that passed to the council commonly constitutes 100 %.

In addition, the table shows the number of parties involved in the distribution of mandates, as well as the effective number of parties, characterizing both the real level of competition and the degree of party fragmentation (Laakso-Taagepera index). Unfortunately, in three cases (Ternopil, Ivano-Frankivsk, and Mykolaiv region) we failed to calculate major indexes due to incomplete data on the website of the CEC of Ukraine.

### COMPETITION AND REPRESENTATION INDEXES FOR LOCAL ELECTIONS 2015

Region, city	Number of parties			Share of votes for parties passed
	involved	Effective*	passed	
Vinnytsia	12	6.48	8	90.9 %
Volyn	15	7.63	7	84.3 %
Dnipropetrovsk	13	5.60	7	88.6 %
Zhytomyr	16	8.89	8	82.4 %
Zakarpattia	16	7.84	6	77.1 %
Zaporizhzhia	13	7.05	8	87.1 %

Ivano-Frankivsk	15	7.90	6	78.3 %
Kyiv	14	8.10	8	87.0 %
Kirovohrad	12	7.24	8	90.5 %
Lviv	16	8.78	9	88.2 %
Mykolaiv	12	7.31	7	84.7 %
Odesa	16	7.78	6	78.4 %
Poltava	17	11.01	10	88.4 %
Rivne	15	8.22	6	74.3 %
Sumy	15	9.64	8	80.1 %
Ternopil	12	?	8	?
Kharkiv	15	5.45	6	84.9 %
Kherson	15	8.50	7	79.2 %
Khmelnyskyi	14	8.68	7	83.2 %
Cherkasy	15	9.45	8	83.5 %
Chernivtsi	15	8.55	10	91.9 %
Chernihiv	12	7.78	7	88.7 %
Kyiv	40	8.29	5	63.8 %
Vinnytsia	18	7.56	6	74.5 %
Dnipropetrovsk	20	5.57	5	78.2 %
Zhytomyr	19	8.63	6	76.2 %
Zaporizhzhia	23	8.70	7	78.9 %
Ivano-Frankivsk	16	?	6	?
Kirovohrad	16	9.15	9	89.2 %
Lutsk	18	6.33	7	87.3 %
Lviv	17	6.56	7	83.1 %
Mykolaiv	17	?	4	?
Odesa	20	5.66	5	77.9 %
Poltava	21	12.15	7	69.5 %
Rivne	18	10.33	7	76.0 %

Sumy	22	9.10	6	61.6 %
Ternopil	18	7.89	7	80.1 %
Uzhhorod	21	11.84	9	75.4 %
Kharkiv	20	3.18	4	78.9 %
Kherson	17	9.71	8	82.9 %
Khmelnyskyi	19	9.45	6	73.7 %
Cherkasy	20	11.56	8	77.4 %
Chernivtsi	20	9.74	6	71.8 %
Chernihiv	16	8.04	7	78.3 %

The effective number of parties (Laakso-Taagepera index) is calculated according to the formula  $1/\sum v_i^2$ , where  $v_i$  is the share of votes (of the number of valid ballots) earned by each party involved in elections.

Though the party fragmentation in the majority of cases was quite high, the low degree of representativeness was due, first of all, to the unreasonably high threshold.

Thus, "Partiya Rishuchych Hromadian" ("Party of determined citizens") won 4.8 % of the vote, the "Opposition Bloc" won 4.8 %, and "Democratic Alliance" won 4.6 % and did not pass to the city council in Kyiv. It follows, then, that in the case of a 4 % threshold, the degree of representation would not be 63.8 %, but rather 78.0 %. In the case of a 3 % threshold, "Ruch za Reformy" ("Reform-seeking movement") would pass with 3.1 %, and the degree of representation would increase to 81.2 %.

In Poltava, four parties were in the 4 %-5 % range: UKROP (4.9 %), "Syla Liudey" ("Power of people") (4.4 %), "Radical party of Oleg Liashko" (4.2 %), and "Opposition Bloc" (4.0 %). Here too, at a 4 % threshold, the degree of representation would be much higher: 87.1 % instead of 69.5 %.

In Sumy, raising the threshold to 3 % would add six parties: "Volia Naroda" ("People's Will") (4.9 %), the "Radical Party of Oleg Liashko" (4.7 %), UKROP

(4.4 %), "Vidrodzhennia" ("Revival") (3.9 %), the "Partiya Prostykh Liudey Sergiya Kaplina" (Party of common people of Sergei Kaplin) (3.3 %), and "Nash Kray" ("Our Land") (3.2 %). The degree of representativeness would increase from 61.6 % to 86.0 %.

## 6. Gender quotas

Like many countries, Ukraine faces the problem of gender imbalance in government positions. In 2013, the National Democratic Institute for International Affairs carried out research and found out that the proportion of women constituted 12 % of positions in regional councils, 23 % in district councils, 46 % in village councils, and 51 % in rural councils. In other words, at the lower level (villages and settlements) it was possible to talk about gender parity, while there was a clear imbalance in the regions and especially the cities. In addition, it was found that the gender imbalance grows as the election levels increase.

To address this problem, Ukrainian lawmakers have opted for the standard method in European countries: gender quotas in party lists. In respect to party lists, the law states: "Representation of the individuals of the same sex in the electoral lists of candidates for deputies of local councils in multi-member constituencies should constitute at least 30 percent of the total number of candidates in the electoral list".

However, the law does not provide for non-compliance sanctions. The reasons for this are not entirely clear. Possibly the fact of the matter is that the law was adopted in a hurry and the lawmakers simply forgot to prescribe sanctions. But it may happen that they made the omission consciously, for fear that the sanctions will prove more dangerous than the violations. I can understand such caution: for example, the introduction of gender quotas in Russia along with sanctions in the form of denial or cancel of registration

of the party lists would give fresh impetus to the technology of the knocking-out the candidates from the party lists.

According to CVU, at the elections in Kyiv and in regional centers in seven of the eight main parties, the total share of women in the lists exceeded 30 %, ranging from 30.4 % to 33.7 %. Only in "Petro Poroshenko Block – Solidarity" is this number lower, 27.3 %. In most cities the proportion is greater than 30 %: from 30.1 % to 36 % in Zaporizhzhia, but less than 30 % in Ivano-Frankivsk (29.7 %), Rivne (28.5 %), and Cherkasy (27 %). Thus, each city has at least one list with violations. Altogether the quota was observed in 72 % of lists.<sup>4</sup>

There were more violations in the elections to the regional councils. Only in 8 regions was the total percentage of women in the lists above 30 % (with the greatest percentage in the Poltava region, 33 %), while in 14 regions the number was lower than 30 % (with the smallest figure in the Rivne region, 26.3 %). Altogether, the quota was observed in 61 % of lists.<sup>5</sup>

It is worth noting an important point: practically nowhere (exclusive of some small lists) did the percentage of women greatly exceed the statute-established quota. It proves that the parties perceived this quota as an encumbrance, which should be implemented in the most minimum way.

Nevertheless, in spite of violations and the absence of sanctions for them, the interim goal was achieved. The overall proportion of women in the lists in elections to the regional councils constituted 29 %, and in elections to the Kyiv and regional centers city councils 32.1 %. However, in achieving the final objective (increase of proportion of women in elected councils), quotas proved ineffective.

According to CVU data, women constituted 15 % of elected deputies of regional councils. The fact that this figure has increased compared to the previous convocation, when it was 12 %, is a poor consolation. The difference may not be called essential. The maximum percentage was in the

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4 [issuu.com/8612157/docs/cvu\\_statement\\_gender\\_monitoring\\_eng](https://issuu.com/8612157/docs/cvu_statement_gender_monitoring_eng)

5 [issuu.com/press.kvu.kyiv/docs/cvu\\_statement\\_2\\_gender\\_monitoring\\_e](https://issuu.com/press.kvu.kyiv/docs/cvu_statement_2_gender_monitoring_e)

Sumy region (21.9 %), and the minimum in the Odesa region (9.5 %).<sup>6</sup> In the Kyiv and regional center city council elections, the proportion of women was 18 %. Thus, only in Chernihiv did this figure exceed 30 % (constituting 33.3 %), followed by Lviv (25 %). The lowest proportion of women was recorded in Uzhhorod (8.3 %).<sup>7</sup>

For councils at other levels, I made sample calculations: in each region I randomly selected one district, one city of regional subordination (which is not a regional center), one town of district subordination, one settlement, and one village. The result: the average proportion of women in district councils is 22 %, in councils of cities of regional subordination it is 24 %, in councils of cities of district subordination it is 28 %, in settlement councils it is 43 %, and in rural councils 52 %. In the settlement councils there is a sufficient (though not very large) proportion of party nominees, and among them the proportion of women constitutes 39 %.

Separately, I made calculations for Chernivtsi, for which I have complete electoral statistics. The average result of male candidates is 6.4 %, and of female candidates 4.8 %. According to the results of parties that passed to city council, the average men's result is 13.1 % and women's 10.7 %. For parties that did not pass to city council, the average men's result is 2.7 % and the women's 2.0 %.

In other words, Ukrainians vote for women slightly less frequent than for men. But then the mechanisms similar to that of majoritarian system come into effect: while the share of the vote among women is 25 % lower than that of men, the men get 8 times more mandates.

CVU also published the results of its monitoring, according to which the presence of female candidates in outdoor advertising (billboards, posters, advertising in the media) constituted 15 % of the participation of men.<sup>8</sup>

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6 [issuu.com/8612157/docs/cvu\\_statement\\_5\\_gender\\_monitoring\\_e](https://issuu.com/8612157/docs/cvu_statement_5_gender_monitoring_e)

7 [issuu.com/8612157/docs/cvu\\_statement\\_4\\_gender\\_monitoring\\_e](https://issuu.com/8612157/docs/cvu_statement_4_gender_monitoring_e)

8 [issuu.com/8612157/docs/cvu\\_statement\\_3\\_gender\\_monitoring\\_e](https://issuu.com/8612157/docs/cvu_statement_3_gender_monitoring_e)

**Therefore, the following facts may be considered as established.**

1. Gender imbalance increases with the level of elections. There is a complete parity at the level of rural councils: both men and women about 50 %. At the settlement level, the proportion of women drops to 40 %; at the level of cities of district subordination, it is around 30 %; at the level of district and regional centers it is about 20 %; and at the regional level it is 15 %.
2. Gender quotas, imposed by acting law, turned out to be ineffective. Law-makers have ensured the proportion of women on party lists to be at least 30 %. However, the proportion of women elected to councils was everywhere less than their share on the lists.
3. In the majority of party lists the proportion of women is about 30 %. This means that the parties strived to comply with the law only in a minimal way.
4. According to the CVU assessment, female candidates were generally less active in agitation campaigns than their male counterparts.
5. Calculations made on the basis of data of electoral statistics available to me show that female candidates on average earn fewer votes than male candidates (by 20-25 %).

**The following are some possible explanations for these facts.**

1. Voters (including women) more readily vote for male candidates. It is not clear, however, why this does not also happened at the level of village councils.
2. Women are less active and less motivated to fight for deputy seats. Again, it is not clear why this does not apply to lower-level councils.
3. Party leaders, among whom dominate men, consciously discriminate women. Prior to the introduction of gender quotas and the system of lists broken down by territorial districts, this explanation might have seemed (and apparently was) correct. As of now, additional details in regard to discrimination are required. Option One: women were nominated to less

promising constituencies. However, it is doubtful that the party leadership would be able to foresee which constituencies are more and which less promising, especially in municipal council elections. Option Two: parties gave female candidates less money for campaigning. This is also doubtful. To the best of my knowledge, the parties leveled the financial capacity of the candidates rather than strengthened financial inequality.

4. Based on the view that political candidates obtained much of their campaign funding from independent sources, it might be legitimate to assume that business investors, among whom men prevail, are in general less willing to finance campaigns of female candidates. This version better than others explains why the gender imbalance increases with the rise of the level of elections: because of the corresponding increase in the role of the financial component. However, setting up this factor as the main reason for the gender imbalance is tantamount to admitting that money plays a decisive role in Ukrainian elections.

As there is yet no clear explanation for the gender imbalance, it is necessary to continue to study the available data, including surveys of direct participants in the elections. Only on the basis of such studies will it be possible to make informed decisions regarding the appropriate ways to amend the electoral legislation.

Nevertheless, it is meanwhile possible to discuss common approaches to gender equality. In particular, when it comes to possible sanctions for non-compliance with gender quotas in party lists, my opinion is that one should not take recourse to extreme measures such as denial or revocation of registration. Sanctions should be milder, such as cutting dominant-sex candidates from party lists in cases where lists include an excess of candidates.

As for quotas and their effectiveness, the solution to this problem is strongly associated with the electoral system. Thus, in case of closed "linear" lists the problem is solved simply by introducing the rules that persons of the

same sex should not take in the list more than two successive positions.<sup>9</sup> In the case of a system of lists split into territorial groups, it is acceptable, in my opinion, that dominant-sex candidates who exceed the quota should yield their spots to candidates from the opposite sex ranked below them.

As for the open lists system, there is hope that it will allow for dispensing with strict quota rules. If gender representation is important to voters, they will be able to select the appropriate candidates from the party lists.

## **7. Election campaign duration and terms of election actions**

According to the law, regular local elections are called no later than 90 days before the Election Day. The election process starts 50 days prior to Election Day.

I believe that the duration of the election campaign is unjustifiably reduced. This applies especially to the current campaign, which used the new election system, and to which all participants had to adapt.

Furthermore, according to the law the nomination of the candidates started only 34 days prior the voting day, so that the real duration of the campaign was reduced for another 16 days. Submission of documents for registration ended 24 days prior to Election Day, i.e. only 10 days were given for the nomination of candidates. The relevant election commission should make

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<sup>9</sup> However, if the requirement is perceived by the parties as an excessive encumbrance, they will try to bypass it through withdrawal of candidates from lists and/or withdrawal from a mandate. This will then require the introduction of additional sanctions and generally lead to negative rather than positive consequences.

a decision on registration, or issue a refusal to register, no later than three days after the receipt of registration documents, and no later than 23 days before Election Day. Thus, for the registration of candidates who submitted documents on the last day, only one day was given. There is no doubt that such short terms were one of the reasons behind the multiple mistakes in the registration process, and then in the preparation of ballot papers. As a result, only 22 days were provided for the election campaign.

## **8. Election commissions**

One long-standing problem of Ukrainian elections is the order of the election commissions' formation. Though the principle of forming commissions from representatives of competing parties is designed to ensure the independence of the commissions, in practice this goal is not always achieved due to the large number of "technical" candidates and parties. Thus, a considerable number of commission members are poorly trained and incompetent, aided by the law that allows rotation of committee members—including directly on the eve of Election Day.

The remuneration of members of electoral commissions is apparently insufficient. In addition, commission members are sometimes partially or fully paid by the party that appointed them. In that context, commission members are focused not on compliance with the legislation requirements but on the protection of party interests, often through violations of the law on unprincipled confederacy.

I believe the procedure for forming election commissions needs to be reformed. To ensure their independence, the most reasonable solution is to form commissions composed of representatives of parties that enjoy the greatest voter support in the relevant territory (not only the parliamentary parties or parties passed into the appropriate council, but from a wider

range). Thus, it is possible to minimize the participation of “technical” parties that sell their seats in election commissions. Such an approach will also allow forming electoral commissions before the election campaign begins, and with a tenure of up to 5 years, which would make them more competent and professional. It is also necessary to limit the option of replacing commission members and to prohibit members from receiving money from election campaign participants (but at the same time to increase their remuneration from the budget).

## **9. Candidates nomination and registration**

Some provisions of the law relating to the nomination and registration of candidates and party lists are not entirely thought out, which led to conflicts. The current law provides for a number of quite reasonable restrictions on the simultaneous participation of citizens as candidates in multiple elections, and for sanctions in the form of revocation of registration. However, the Central Election Commission of Ukraine did not include in its database candidates for settlement and village councils, which made it difficult to verify compliance with these prohibitions, so that multiple violations went unpunished. On the other hand, the law is interpreted in such a way that the registration of the candidate is canceled in all elections where he or she was registered (a measure not explicitly described in the law). I believe that this is excessive: in one election the registration of the candidate may be saved.

The law requires that candidates submit a large number of documents; the absence of any single document can be the basis for refusal to register. Although the law states that errors and omissions in registration documents may be corrected and are not sufficient grounds for refusal to register, in

practice, according to CVU, there were cases of denial of registration due to improperly executed documents, specifically a biographical note (apparently, the improper formatting of the document was interpreted as an absence of the document). In addition, the law does not provide the candidate with the opportunity to return with the missing or improperly formatted document, nor does it provide opportunities for election commissions to inform candidates about problems with their paperwork.

The law reasonably provides for the registration of candidates and party lists on the basis of deposits. However, the terms of deposit return are doubtful: in case of valid elections, the deposit is returned only to the candidate elected (in elections under the majority system) or to the party that participated in the allocation of seats (in elections under the proportional system). I believe that the collateral return basis must be expanded for the majority system: collateral should be returned to candidates who earned sufficient support from the voters (more than 10 %, say, or even more than 5 %). In elections under the proportional system, deposits may be returned to parties that earned more than 2 %. Under such conditions, the amount of collateral may be extended, and the deposit will encourage the participation of serious candidates and parties and restrict non-serious and "technical" ones.

## **10. Providing of information to voters and election campaigning**

There are unreasonable standards and gaps in the regulation of campaigning and the providing of information to voters.

The law defines political advertising as a form of election campaigning. *De facto* political advertising is a more comprehensive notion, however, as it pertains to activities carried out by parties not only during the election campaign but also in the period between elections, whereas election campaigning proper is limited by the time frame of the election campaign. In this regard, the law does not clearly define how to qualify those elements of political advertising that were created and posted before the start of the campaign, but that continue to operate (spread) in the course of the campaign.

Mass media representatives complained of contradictions in regulations for the allocation of political advertisements. Thus, in accordance with Part 6 of Article 57, media outlets that provided broadcast time or print space to one candidate may not refuse to provide broadcast time or print space on the same conditions to another candidate at corresponding local elections. However, in accordance with Part 6 of the same article, a broadcast spot for political advertising on radio or television may not exceed 20 % of the actual broadcast time during the astronomical day; similarly, the area allocated in print media for political advertising during the electoral process may not exceed 20 % of the printed area of each issue of the publication or its supplement. As a result, it is often the case that print media are unable to allocate advertising for all interested candidates or parties without a significant increase in the volume of its publications, and this increase is not always possible due to technological reasons. As for broadcast time, it is simply impossible to increase it. Such problems should be regulated in a different way.

Part 8 of Article 60 states that "all the campaigning materials must be separated from other materials and labeled as such". This very general formulation leads to a situation where this requirement is implemented only formally, and when reading the newspapers it is not always clear which materials are campaign materials, who ordered them, and who paid for them. It is better to require that all campaign materials be accompanied by information about the funds that financed them.

According to Part 4 of Article 56, posters, stands, leaflets, and other printed campaign materials (other than materials posted on outdoor advertisement spaces) are to be posted only in places designated and equipped by local government or local self-governing bodies, and no later than 45 days prior to Election Day. De facto, this requirement is not carried out, and cannot be carried out, as the designated spaces are insufficient to accommodate all candidates and parties, especially when three or four campaigns are going on simultaneously. Moreover, in the case of subordination of candidates and parties to this restriction, they become heavily dependent on local authorities or local governments that can fail to perform their duty to equip the designated spaces, either due to negligence or political intent.

Part 11 of Article 60 requires that all election campaign materials be removed within 24 hours on the last Friday before Election Day by local executive bodies and local self-governing bodies. I believe that such a requirement is feasible only in respect to materials placed on outdoor advertisement spaces. All the leaflets placed in other locations, in reality, cannot be deleted, and my observation shows that a significant number of them are still around on Election Day. I believe the damage such materials cause to the election process is negligible; however, more damage arises, first, from the fact of non-compliance with the law, and second, when the leaflets of some parties are preserved and those of other parties removed. In this regard, I consider it expedient to limit the requirement of removal only in respect to materials placed on outdoor advertising spaces.

The current law stipulates that only posters explaining the voting procedure and repercussions for violating election legislation may be exhibited at polling stations. As a result, no information was posted at polling stations about the candidates and parties participating in the elections (including the composition of party lists), which significantly complicated decision making for voters.

# 11. Getting ready to vote, voting, vote counting, and election results

During past elections there were many problems with the preparation of ballot papers. In particular, there were many mistakes in the texts of the ballots, and which were most likely associated with the low qualification of members and heads of electoral commissions. At the same time, in some cases (Krasnoarmiysk and Mariupol, for example) problems and conflicts arose over the choice of the ballot printing office, and as a result the integrity of the elections was compromised. Evidently, this issue should be addressed in the law.

In my opinion, the most egregious problems in vote counting and the synthesis of election results have to do with the non-transparency of the whole process. The publication of voting results for each polling station was neither stipulated by law nor practiced in reality. This prevents election participants and the public from ensuring that the results of the election are correct.

Moreover, the Central Election Commission of Ukraine does not even publish the full results of territorial constituency votes, or present sufficient data to assure proper seat allocation. Only information about the number of votes received by each party was published,<sup>10</sup> as well as the number of votes earned by the parties committed to the distribution of seats in the constituencies from which their candidates were elected. This complicates the election results analysis and makes it possible to hide many negative issues.

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<sup>10</sup> Thus in the few cases (Ternopil region, Ivano-Frankivsk, Kirovohrad, Mykolaiv) was published data only by parties admitted to distribution of seats, which does not allow even calculating the percentage of votes cast for the party.

In particular, for elections to the Kyiv regional council, the CEC website published information according to which "Opposition Bloc" earned 25.5 % of votes in constituency # 49, 8.1 % of the votes in constituency # 64, and so on. In accordance with this data, candidates N.G. Furdychka, Yu.A. Cherednichenko, and others were elected. However, from this same data does not tell us, for example, that Yu.V. Hrytsun earned 15.5 % of votes in constituency # 54, R.A. Pirskyi earned 13.4 % in constituency # 82, V.M. Hlamazda earned 12.6 % in constituency # 55, and G.I. Bondarenko earned 9.0 % in constituency # 24. These four candidates have written (presumably under pressure) statements of withdrawal from mandate, due to which their mandates went to Yu.A. Cherednichenko and others.<sup>11</sup> Withdrawal of elected candidates from mandates is an extremely negative phenomenon that shows disrespect for voters and greatly devalues even the few advantages that the electoral system currently has.

In general, lack of transparency in vote counting reduces public confidence in the election results and generates doubt and suspicion even in cases where the vote counting was performed conscientiously.

At the same time, in the course of determining the election results, there were several cases that could be regarded as a serious breach of the letter and spirit of the law, and as a result of which the election results do not correspond to the will of the voters. I know two of such cases.

At the elections to the Kyiv regional council, in accordance with the votes earned by the parties and the current mandate allocation procedure, the following distribution of seats should have been obtained: "Petro Poroshenko Block – Solidarity" – 22 seats; "Batkivshchyna" ("Fatherland") – 17 seats; "Samopomich" – 9 seats; the Radical Party of Oleg Liashko – 9 seats; UKROP – 8 seats; "Nash Kray" ("Our Land") – 7 seats; "Svoboda" – 7 seats"; the "Opposition Bloc" – 5 seats. However, in the protocol adopted by the Re-

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11 Melnik O. Godfather. Former team-mates of Victor Yanukovich splitted due to redistribution of mandates of Kyiv Regional Council // KyivVlast, 11/24/2015 (kievvlst.com.ua/text/krestnij\_otec\_bivshih\_soratnikov\_viktora\_janukovicha\_na\_kievshhine\_raskoloL\_peredeL\_mandatov\_kievoblsoveta33066.html).

gional Election Commission, the results were otherwise: "Petro Poroshenko Block – Solidarity" – 22 seats; "Fatherland" – 16 seats; "Samopomich" – 10 seats; the Radical Party of Oleg Liashko – 9 seats; UKROP – 7 seats; "Nash Kray" ("Our Land") – 7 seats; "Svoboda" – 7 seats; the "Opposition Bloc" – 6 seats. In other words, the Regional Electoral Commission illegally added one mandate to "Samopomich" and the "Opposition Bloc" at the expense of "Batkivshchyna" and "UKROP".<sup>12</sup>

As noted in the decision of the Kyiv County Administrative Court # 826/24626/15, dated November 6, 2015,<sup>13</sup> it was found that actions specified in Part 7 of Article 86 of Law # 595-VIII were *de facto* not carried out by the Commission, and that voting results were computed by a program developed by an employee of the defendant. In addition, the Chairman of the defendant, when representing the draft of the protocol under appeal to the members of the commission, stated on the availability of mathematical discrepancies in distribution of additional deputies' seats. However, after reviewing the draft by commission members, the chairman of the defendant brought up the question for the decision of the Commission. No other protocol options were introduced for discussion and the voting of election commission members. Decision on approval of the protocol under appeal was adopted according to the results of the committee members' vote.

In other words, the election commission initially failed to discharge of its functions, entrusting the most important calculations to a computer program, and then adopted the protocol by majority of votes in spite of information suggesting that the results of the calculation do not comply with the law—that is, they did not bother to independently verify the accuracy of the protocol.

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12 According to the website of the CEC of Ukraine, the Chairman of the regional election commission represented the party "Fatherland", and the secretary – The Opposition Bloc. 12 out of 18 members of the commission members were representing five parliamentary parties participating in the elections to the regional parliament (3 each from "Solidarity" and "Fatherland", 2 each from "Samopomich", the Radical Party of Oleg Liashko and Opposition Bloc) and 6 – parties, not participating in the elections to the regional parliament.

13 [reyestr.court.gov.ua/review/53242624](http://reyestr.court.gov.ua/review/53242624)

The regional organization of the party "Batkivshchyna" ("Fatherland") has filed a lawsuit against the regional election commission to the County Administrative Court of Kyiv. In a court session, the party's claims were supported by representatives of UKROP, "Freedom" ("Svoboda"), and the Radical Party of Oleg Liashko, as well as by two representatives of the defendant (the Chairman and a member of the Regional Election Commission). Among those who objected to the allegations were a representative of the defendant and representatives of "Opposition Bloc", "Samopomich", and "Nash Kray" ("Our Land").

Despite the obvious lawlessness of the protocol under appeal, the court decided that the plaintiff elected the wrong way of redressing their violated rights and interests, since the protocol is just the document that establishes the results of certain actions, carried out by the Commission. According to the Court, only the actions or decisions that are fixed in such a protocol can be the subject of an appeal. The Court drew attention to the defendant's actions for implementation; in particular, Part 7 of Article 86 of Law # 595-VIII may be the subject of an appeal. However, the specified was not the subject of the administrative suit in case # 826/24626/15. The court also noted that the Commission, in virtue of the provisions of Part 12 of Article 89 of the Act, must make a decision on voting results and election results, which may be the subject of an appeal in virtue of the provisions of Article 94 of Law # 595-VIII. The court further explained that it cannot exceed the limits of claims under the lawsuit. Consequently, the satisfaction of absolutely legitimate claims failed.

Legal controversy continued, but the overall result was a failure to litigate against the absolutely illegitimate decision of the regional election commission. This is a sad and dangerous precedent: since the provisions of the law on the allocation of seats come down to a simple sequence of arithmetical operations with a unique result, their unpunished violation builds a culture of permissiveness.

In this regard, the rules governing the order of appeal of decisions of the election commissions on the election results should be reviewed and, if necessary, revised.

In the Kirovohrad mayoral elections, both candidates approximately tied at the repeat of voting. A.O. Strizhakov was leading with 25,069 votes, followed by A.P. Raikovych with 24,814 votes; the gap between them was only 255 votes. The headquarters of candidate Raikovych suspected that, at several ballot stations where Strizhakov received the greatest support, results were achieved by illegal means (stuffing, bribery of voters, etc.). Particularly suspect were constituencies # 350861 and 350867, where Strizhakov earned, respectively, 67.9 % and 76.3 % of the vote, and where the gap between Strizhakov and Raikovych was 299 and 334 votes, respectively.

Paper ballot recounts in these two constituencies showed no significant inconsistencies with the original protocols (in one case, the recount results coincided with the protocol; in another, five ballots were found to be invalid). If Strizhakov achieved his results by stuffing and bribery, no inconsistencies were detected at the recount. However, Raikovych's headquarters did not submit any evidence of such violations. In addition, these constituencies are located in a territory where Strizhakov was previously elected deputy of the city council, which makes the election results understandable. Here it should be added that during Election Day and immediately after, representatives of both candidates' headquarters stated that the elections were fair and without violations.

Nevertheless, voting results at polling stations # 350861 and 350867 were invalidated; the reasons given were minor violations (frequent in Ukrainian practice) that could not significantly affect voting results. Thus the commission # 350867 made a decision on invalidation of the voting results after all 8 members from the candidate Raikovych and two members – representatives of Strizhakov were dismissed and replaced (most of the former commission members were opposed to the invalidation). In other words, the decision was made by people who did not work during the voting.

According to the final protocol of the city election commission, A.P. Raikovych earned 24.435 votes and A.O. Strizhakov 24.057 votes, whereby Raikovych was recognized as the elected city mayor.

Thus, a decisive influence on the elections invalidated the results at two ballot stations, which is highly questionable from a legal point of view.

In addition, legal logic dictates that if the invalidation of election results at one or more constituencies leads to a change in the winner, then it follows that we are unable to evidenciate the real will of the voters, and it is hence necessary to recognize the election results as invalid.

This logic governed the 2004 presidential elections in Ukraine, when repeat voting results were declared to be invalid. However, in subsequent years, Ukrainian electoral law never was settled the question of the recognition of the election results as invalid.

## **12. Conclusion**

This analysis of Ukrainian election legislation and its practical applications leads to the conclusion that substantial electoral reform is necessary. The best option for such reform would be the adoption of an Electoral Code regulating the organization and carrying out of elections.

Such a Code would, on the one hand, establish uniform rules for all elections in those matters that require unification. On the other hand, the Code should take into account the specifics of elections at various levels. In particular, it should accommodate the possibility of establishing different electoral systems for elections to regional, district, and city councils.

In addition, it is necessary to take measures for the proper application of the electoral law. For instance, it is important to reform the procedure for forming election commissions, as well as for the replacement of election

commission members, which would make the commissions more independent and competent. It is also important to improve the procedure for the resolution of electoral disputes.

**Problematic aspects of Local elections in Ukraine:  
a view from outside**

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and Its Application in the Elections on October 25, 2015

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