

Electoral reform in Ukraine: key issues

Introduction of a proportional election system

One of the key aspects of the electoral reform of Ukraine is the abolition of the mixed system which should be replaced by a fully proportional parliamentary election system with open party lists. Since 2012, the introduction of a proportional election system 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.

The bill on Electoral Code is based on the draft law, which was prepared in 2010. Most of its key regulations regarding, among others, to voter registration, election funds and appeal procedures are outdated and not in line with current legislation. In addition, the draft law does not provide for a proper procedure to transfer votes into mandates, implying that the number of MPs elected in a constituency corresponds to the voters' turnout rather than to the number of registered voters at this constituency. Thus, the draft law needs to be substantially reviewed.

Last but not least, 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 failed adoption of the new Electoral Code, it is necessary to at least harmonize the existing law. Currently three electoral laws regulate the same election procedures in different ways. Also, 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.

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, only 19% are satisfied. Only 19% of citizens are willing to report a bribe to a law enforcement bodies. According to the survey conducted by OPORA, hardly any person responsible for election fraud has been punished.

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 (bill no. # 8270). The draft law extends the opportunity for investigative actions and the collection of proper evidence of election fraud. The draft law also introduces liability for the bribing of candidates and voters.

Election management body (EMB) reform

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.

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. To be independent and in line with the Venice Commission's Code of Good Practice in Electoral Matters, the future CEC must include at least one representative of each parliamentary faction.

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 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.

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

In Ukraine, the overall representation of women in parliament is one of the lowest in the region. While the Political Party Law requires parties to include one-third of women on their party lists, there are no penalties for noncompliance.

The political rights of people with disabilities are not effectively ensured in Ukraine. The premises of precinct election commissions in most cases are not accessible to voters with disabilities. Moreover, people with disabilities have a restricted access to election-related information (as accessible formats are not used by the CEC and subordinated election commissions) and blind, or low-vision voters face challenges in selecting their candidates on Election Day. Tactile ballot guide templates are foreseen only for parliamentary elections, but in fact, the CEC does not produce them for technical reasons. The Ministry of Social Policy has prepared a draft law aimed to ensure voting rights of people with disabilities, which is currently pending in Parliament.

While the number of internally displaced persons (IDPs) in Ukraine exceeds 1.6 million (according to UN estimates), IDPs residing in Ukraine-controlled territory cannot effectively exercise their voting rights. Similar voting challenges are faced by internal labor migrants and other categories of voters residing in areas of Ukraine that differ from their domicile registration. The overall concept of voter (and domicile) registration should be reviewed to ensure that all voters have the right to vote in all the elections held within the territory of their factual residence. IFES works closely with the Group of Influence and Civil Network OPORA on legal changes aimed to ensure voting rights of IDPs and other "mobile" citizens. This cooperation resulted in the registration of the Draft Law No 6240 on Amendments to Certain Laws of Ukraine Related to Electoral Rights of Internally Displaced Persons and Other "Mobile" Groups of Ukrainian Citizens. If adopted, it would amend the Law on State Register of Voters, along with other relevant legislation, to guarantee full voting rights for millions of Ukrainians who are displaced by conflict or are voluntarily residing in places that differ from their registered places of residence by enabling them to vote in their actual places of residence.

Political finance reform

Ukraine's current system of penalizing political finance violations is not effective.

Parties' or candidates' failure to submit timely financial reports to the NAPC or respective election commissions is punishable by a small fine of up to 200 EUR, while the repeated failure to file the reports entail the same fines. This is a key reason why only two-thirds of more than 350 registered political parties file their quarterly reports to the NAPC. Therefore, the system of penalizing political finance violations should be strengthened.

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

The 2015 Political Finance Reform Law requires all political parties that receive annual public funding or participated in national or local elections undergo an independent external audit on an annual basis. Such audits are expensive for many new or small political parties with low incomes. The auditing requirement should be reviewed to make sure that only those parties whose income exceeds certain legally established levels, who participated in the regular or pre-term presidential and parliamentary elections or received public funding, are subject to mandatory independent auditing. Auditing requirement should not apply to parties that nominated candidates in rolling local elections.

GRECO and others have also recommended to clearly delineate the powers of the NAPC and other agencies (such as Accounting Chamber, CEC, Fiscal Service and other) involved in political finance regulation to avoid duplication of efforts and to increase the overall effectiveness of political finance monitoring. This recommendation has yet to be addressed in the current legal framework.

One of the reasons for strong dependence of political parties on wealthy donors is the absence of instruments aimed to limit campaign spending by parties and candidates in elections. As such, OSCE/ODIHR and the Venice Commission have recommended the introduction of campaign spending limits for all elections. Many civil society organizations, including IFES-supported RPR Election Group, also advocate for restrictions on television/radio and outdoor political advertising, as advertising-related expenses constitute a lion's share of the budgets of electoral contestants. The need to restrict campaign expenses, which could include the introduction of spending limits and/or restrictions on political advertising, should therefore be carefully considered.

Professional electoral administration

One of the key issues in organizing and holding elections is a low level of professionalism of members of election commissions and the replacement of commission members (including the election day) when the party which is a subject of submission replaces a member of the commission who has at least elementary training with another one with no preparation.

The laws governing the elections in Ukraine should be correspondingly amended to introduce mandatory certification of all candidates for election commissioners by the CEC, namely by the CEC Training Center.

Adoption of a new national referendum law

On November 6, 2012, Ukraine adopted a law on a national referendum that did not comply with international standards. In 2018, the law was declared non-constitutional after the work of the renewed Constitutional Court began.

NGO coalition named, "For Fair Referendum", together with select MPs, drafted a new National Referendum Law (draft reg. No 2145a of June 23, 2015) aimed to replace the current flawed law and to bring the legislation governing the national referendums in Ukraine in compliance with democratic standards and good practice.

Conclusion

While the reform and harmonization of Ukraine's current electoral systems for parliamentary and local elections remain a key reform priority, political inaction on this front must not hold other reform priorities hostage. In addition to electoral system reform and harmonization of the election laws, the

advocacy campaign aimed to implement the election law reform should include a variety of changes which would strengthen the country's electoral processes, including:

- harmonization of election laws;
- introduction of timely, proportionate, effective and dissuasive penalties for electoral violations;
- replacement of CEC commissioners with expired terms;
- implementation of structural and operational reforms of the CEC;
- ensuring the electoral rights of underrepresented and disenfranchised groups (IDPs, internal economic migrants, women, people with disabilities);
- replacing the 2012 National Referendum Law;
- establishment of an electronic declaration system for party and campaign financial reports;
- considering restrictions on campaign spending and advertising;
- harmonization of political finance provisions for local elections.
- mandatory certification of election commissioners;

Recommendations for international community

- International community shall insist on the Introduction of the proportional electoral system in Ukraine
- International community shall push forward the adoption of the law on sanctions against election fraud
- International community shall demand the new composition of the Central Election Commission on the basis of the proportional representation of the parliamentary faction

Key issues of this analysis was developed jointly by International Foundation for Electoral Systems (FES) and Civil Network OPORA :

<https://www.epde.org/files/EPDE/RESSOURCES/2017%20Ukraine%20electoral%20law/IFES-OPORA%20Electoral%20Legal%20Reform%20in%20Ukraine%20v1%202017-06-15%20Eng.pdf>