

2019 Presidential Election in Ukraine: *Post-Election Report*

May 2019



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Executive summary

The presidential election in Ukraine held across two rounds on March 31st and April 21st represents an important electoral milestone for democracy in Ukraine. This was the first major national election held since the Central Election Commission (CEC) was renewed in September 2018. Observers from a diverse range of international and domestic monitoring missions stated that election day was carried out in a generally professional and smooth manner across the country. The efforts of all levels of election administration – as well as the large margin of victory for Volodymyr Zelenskyi – leave little doubt that this election represents a democratic achievement for all involved.

However, there are a number of outstanding issues that must be addressed both to improve future presidential elections as well as to prepare Ukraine for the anticipated parliamentary elections in only a few months. It is critical that election stakeholders reflect seriously on the 2019 presidential election to draw lessons learned and consider observer recommendations. The legal framework requires significant change to meet international standards and best practices. While the Presidential Election Law is arguably the least flawed of the laws governing elections, only a few of the recommendations for improvement by the Council of Europe’s Commission for Democracy through Law (Venice Commission), the Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and domestic observer missions have been addressed. The laws governing elections must be adapted and clarified in order to remove conflicting language, clarify key definitions and roles of electoral stakeholders, require sanctions for electoral offenses, and further bolster the democratic process to make it more inclusive and transparent.

In addition to legal shortcomings, a number of outstanding issues pertaining to the administration of the presidential election surfaced in domestic and international observer reports as well. Key areas of concern includes: the centralized nature and perceived lack of transparency of the CEC; the large composition of lower-level election commissions and the frequent replacement of their members, undermining their efficiency and professionalism; the lack of effective, proportionate and dissuasive sanctions for election-related offences; the cumbersome procedures for changing the place of voting without changing a voter’s address and de-facto introduction of active voter registration for certain groups of citizens; a general lack of accessibility for persons with disability at odds with Ukraine’s international commitments; short timelines for election dispute resolution; the lack of campaign finance transparency; negative campaigning; abuse of administrative resources and the lack of a level playing field in the coverage of the campaign in media; as well as the significant number of “technical” candidates standing for election.

Despite these issues and challenges, there were a number of significant improvements noted by observers and electoral stakeholders alike for this election. The major improvements noted by the observers include: better preparedness of the CEC and other authorities to combat cyber-attacks on key election infrastructure; a competitive campaign environment with respect for the fundamentals freedoms; lack of major violations during voting, vote counting and vote tabulation; the effective role of police in maintaining and protecting public order on election day; and high-quality wide-scale training of the election commissioners provided with IFES technical assistance. This report provides analysis of key electoral issues as well as achievements from the 2019 presidential election, and offers recommendations for stakeholders to improve future democratic processes.

Background

Under the Constitution, the President of Ukraine is elected for a five-year term and may serve two consecutive terms; there is no limitation on the number of nonconsecutive terms. The first presidential election after Euromaidan in 2014 was held on May 25, 2014, triggered by the early termination of office of ousted President Viktor Yanukovich, who fled to the Russian Federation in February that year. Early parliamentary elections were held in October the same year.

Following Euromaidan, Ukraine faced a number of serious challenges ranging from economic downturn to the illegal annexation of the Crimean Peninsula by the Russian Federation and de facto loss of control over parts of Donetsk and Luhansk oblasts to Russian-backed separatists. Aspirations for swift reforms inspired by Euromaidan have largely not materialized. Several reform initiatives launched since 2014 have never been fully or properly implemented, such as: decentralization, the fight against corruption and reform of the judiciary. The CEC that organized the notoriously flawed 2012 parliamentary elections continued to exercise its powers until 2018, even though the terms in office for most of its members expired in 2014. CEC members with expired terms were replaced only in September 2018. The lead up to the 2019 presidential election was marked by widespread loss of public trust in the political elite and state institutions, failed attempts to fundamentally change the electoral system and laws governing elections as well as the questionable introduction of martial law in late 2018 initiated by outgoing President Petro Poroshenko.

Legal framework

The preparation and conduct of a presidential election is regulated by the Presidential Election Law, which has undergone several amendments since its adoption in 1999. The last significant amendments were introduced in 2014 and 2015. Other aspects of the election process are governed by the 2001 Law on Political Parties in Ukraine, the 2004 Law on the Central Election Commission, and the 2007 Law on the State Register of Voters. Sanctions for election-related offenses are set out in the 2001 Criminal Code and the 1984 Code of Administrative Offences. Election disputes are resolved by courts (local courts of general jurisdiction and administrative courts) based on the 2004 Code of Administrative Adjudication. The CEC supplements the legal framework by adopting resolutions to specify certain provisions of the Presidential Election Law (including the procedures for campaign finance oversight, observer accreditation, compilation of vote count and tabulation protocols, and for resolving electoral disputes by lower-level election commissions).

The electoral legal framework overall remains fragmented and comprises a number of laws adopted at different times that sometimes contradict each other. ODIHR and the Venice Commission have repeatedly recommended to harmonize the electoral legal framework through the adoption of a consolidated Election Code, but their recommendation has not been fully implemented.

In November 2017, the Ukrainian parliament, the Verkhovna Rada, adopted a draft harmonized election code in the first reading. Prior to the second reading of the code, MPs proposed more than 4,000 amendments which were considered and further elaborated on by a working group established by the Rada's Committee on Legal Policy and the Judiciary (the Committee). While the working group has now accomplished the task of processing all the amendments to the draft code, the draft code is still required to be considered by the Committee and will need a majority of 226 votes to be adopted

in the second reading by the 423-member Verkhovna Rada. The code would enter legal force only if promulgated by the President. In the current political environment, there is a lack of consensus among MPs on such key elements of the draft code as the choice of electoral system for parliamentary and local elections, the procedure for establishing lower-level election commissions, as well as whether or not to fully enfranchise IDPs and mobile groups of citizens, among others. Thus, the prospect for adopting the election code well in advance of the 2019 October parliamentary elections is dwindling. **Given that the adoption of the draft election code well before the fall 2019 elections does not seem realistic and further will contradict the internationally recognized principle of stability of election laws, the Rada needs to focus on fixing the flaws in the existing laws governing elections in Ukraine.**

Election security

Despite serious external and internal security threats to the 2019 presidential election, for the most part these threats never materialized. The situation on the line of contact in the East between the Armed Forces of Ukraine and Russian-backed separatists remained the same as before the election and did not affect election preparations in the adjacent districts in government-controlled areas. This is a positive sign and increases the prospects for holding local elections in newly amalgamated communities in these areas. At an early stage of the election process, certain far-right para-military groups made statements that they would “protect” the election by force; these claims never materialized into concrete action. The role of the police during the first and second round in protecting public order received a positive response from election observers across the board.

While cybersecurity attacks were an issue of concern during the 2014 elections, installment of the new cybersecurity equipment procured with IFES support, as well as cybersecurity trainings delivered to the CEC secretariat staff contributed to preventing any serious external interference in the electronic databases (voter registers, results management system, etc.) administered by the CEC. **The CEC should further continue its efforts aimed to ensure an appropriate level of cyber security protection of its electronic systems.**

Election administration

The Central Election Commission (CEC)

Under the Presidential Election Law, the presidential election is administered by a three-tier system of election commissions: the Central Election Commission (CEC), District Election Commissions (DECs), and Precinct Election Commissions (PECs). For the 2019 election, the CEC created 199 DECs and established 29,289 PECs in-country. No DECs or PECs were established in the non-government controlled areas of Donetsk and Luhansk oblasts, as well as in Russian-annexed Crimea and Sevastopol. For out-of-country voting, the CEC established 101 PECs at diplomatic and consular representations of Ukraine abroad. Due to security threats and based on a suggestion by the Ministry of Foreign Affairs, the CEC decided to close all polling stations in the Russian Federation and referred some 54,000 registered voters residing in Russia to vote at diplomatic representations of Ukraine in three neighboring states.

According to the assessment of most international election observers (including OSCE/ODIHR, NDI, and IRI), the CEC operated in a professional, collegial manner and met all legal deadlines. While CEC operations were assessed as transparent in general, international and domestic observers criticized

the practice of holding preliminary meetings behind closed doors to discuss draft CEC Resolutions; thereby reducing real discussions at the public sessions. Most decisions of the CEC were adopted unanimously. As in previous elections, the CEC did not initiate public consultations to discuss key draft resolutions with election stakeholders. **The CEC should consider establishing an expert council to discuss its key draft resolutions, introduce public consultations, and abstain from holding closed-door preparatory meetings.**

Ukrainian NGO Civil Network OPORA raised concerns about CEC attempts to question the presence of OPORA and other domestic observers at certain CEC sessions, in violation of the Presidential Election Law that allows domestic and international observers to be present at CEC meetings without an invitation or the Commission's consent. A lack of transparency has had consequences in terms of public perception. In some cases, the CEC did not effectively react to concerns raised by certain presidential candidates (for instance Anatoliy Hrytsenko) resulting in wide-scale and completely unreasonable speculations in the media. These speculations included that the CEC allegedly attempted to "legitimize vote buying," was attempting to falsify the election result by ordering the printing of double the amount of ballot papers needed for the first round, and that the State Register of Voters was of poor quality.

The CEC website still needs to be modernized to ensure enhanced accessibility for all voters, including voters with disabilities, to ensure that CEC decisions and voter information, as well as other data are fully accessible. The CEC de facto restricted access to information on campaign finance by rejecting requests by NGOs for access to data on the campaign expenses of presidential candidates (the CEC ruled that such data is covered by banking secret rules). Much can be done to increase the transparency of the CEC. Enhancing transparency of the CEC is crucial for building public trust and strengthening the credibility and accountability of the institution.



The CEC Chairperson Tatiana Slipachuk and the Head of Sector of Websites Functioning Volodymyr Som present a draft version of Commission's new website to the IT-experts and media representatives in December 2018.

As a legacy from the past, the CEC remains a highly centralized institution. While the Law on Central Election Commission allows the CEC to establish regional branches functioning on a permanent basis, these have never been established due to lack of budget, organizational and other resources. As in previous elections, any irregularity at district or even precinct level requires CEC action in Kyiv. Such centralization can hardly be considered necessary and undermines the collegial nature of the institution, as each CEC member is in charge of supervising elections in a particular region of Ukraine and has to intervene personally once irregularities occur in a particular region/district. **The Rada should consider changes to the Law on Central Election Commission to specify the mandates of the CEC branches in the regions, while the government should allocate resources needed to establish such branches.**

District Election Commissions (DECs)

Before the first round of the presidential election, the CEC formed DECs on time and based on nominations filed by the presidential candidates. While the Presidential Election Law establishes that the minimum composition of a DEC is 12 members, it does not impose any restrictions on the maximum members of a DEC. A presidential candidate is entitled to suggest one commissioner for each DEC subject to approval by the CEC if the proposed nominees comply with the legal requirements for DEC membership. The Presidential Election Law requires all DECs to be formed anew by the CEC within a short ten-day deadline before a potential second round based on submissions of the two presidential candidates running in the second round. Both candidates are entitled to nominate seven DEC members each, while the DEC is to comprise 14 members overall.

For the first round of the 2019 presidential election, the CEC initially registered 44 presidential candidates (of which five later withdrew their candidacy), most of whom nominated members to DECs. Due to the large number of nominees proposed, DECs on average included 37 members. The smallest DEC was No 105 in Luhansk oblast with 29 members, while the largest DECs included 41 members (DECs Nos 174 and 176 in Kharkiv oblast).

Large membership does not contribute to the effective performance of DECs and unnecessarily complicates election administration operations as most election-related documents must be signed by all the DEC members. Large DECs also result in overcrowding of their premises, a fact noted by most election observer groups as negatively affecting DEC operations and transparency during the tabulation of votes, since all DEC sessions can further be attended by observers, presidential candidates and their proxies, journalists, and members of the CEC. **The Presidential Election Law, therefore, should be reviewed to establish the maximum composition of the DECs to make sure they could effectively manage the election process.**

Before the second round, all DECs were created anew by the CEC and both presidential candidates, nominated candidates to most DECs as foreseen by the Presidential Election Law. Petro Poroshenko nominated seven members to all DECs, while Volodymyr Zelenskyi did not suggest any nominees in two election districts (Nos 57 and 58 in Mariupol). The vacant seats on these DECs were filled by the CEC based on the proposal of the CEC Chair, as envisaged by law. OPORA noted that the overall process of the DEC re-establishment before the second round was much better compared to the first round, and both presidential candidates received a balanced representation on the DECs, including DEC executive positions.

The approach towards establishment of the DECs laid down in the Presidential Election Law is problematic in a number of aspects. Complete re-establishment of DECs for the second round might have a negative impact on the level of professionalism of DEC commissioners, as the narrow timeframes between the rounds do not allow for sufficient time to properly train new DEC members. Further, if candidates decide not to propose any nominees to certain DECs, it might be difficult for the CEC to identify enough prospective commissioners and bring into question the principle of equal representation on the commission. Furthermore, the formation of DECs and, subsequently, PECs may then suffer from significant delays that would negatively impact preparations for the second round. **For these reasons, the provision in the Presidential Election Law requiring complete re-appointment of election commissioners shortly before a potential second round should be reconsidered.**

According to the preliminary statement of the International Election Observation Mission (IEOM)¹, some interlocutors alleged so-called ‘technical’ candidates who are in fact affiliated with the leading candidates had registered in part to obtain seats in lower-level commissions, which undermined the principle of equal representation as well as the purpose of the proportional allocation of executive positions. Some nominees for election commissions were not aware they had been proposed to be a member of the election commission. While no such issues were reported in the second round, **the role of “technical candidates” in proposing nominees to lower level election commissions should be significantly restricted.**

The Presidential Election Law fails to set a deadline for replacements of commissioners at lower-level election commissions; presidential candidates are free to replace election commissioners appointed by them at any time, including before, during and after election day. According to the IEOM, 39 percent of the initially appointed members of DEC members established for the April 21 first round were replaced by the presidential candidates who nominated them or on their own initiative before election day. The lack of any restriction on the right to replace members of election commissions has been repeatedly criticized by the OSCE/ODIHR, the Venice Commission, and IFES as it has a negative impact on the professionalism of the election commissions. After the initial formation of DEC members for the second round, candidates submitted requests for changing 8 percent of the initially appointed members. These replacements were criticized by domestic and international observers, including for rendering training provided to DEC members less effective.

According to the Civil Network OPORA, 65 percent of the DEC members initially appointed before the first round previously served on an election commission. This figure is somewhat lower compared to the 2010 presidential election (78 percent of the commissioners had previous election experience) and the 2014 presidential election (72 percent had previous experience). The share of DEC members appointed for the second round with previous election experience increased to 69 percent, indicating that 31 percent of the second round DEC commissioners were not commission members during the first round.



IFES in cooperation with the CEC and the joint IFES-CEC Training Center organized a five-day training of trainers (TOT), who in turn conducted 106 regional trainings for more than 3,000 District Election Commission (DEC) members.

The CEC, with IFES’ technical assistance and through the CEC Training Center, organized a wide-scale training of DEC and PEC members before the first round to ensure that they could effectively exercise their duties and were aware of key election procedures. However, the fact that presidential candidates can appoint untrained commissioners to serve on election commissions in both the first and second round, their frequent and unrestricted replacement of commissioners, and the narrow timeframes for establishing the DEC members and PEC members for the second round vote still poses a significant risk and may have a negative impact on the professionalism and performance of election commissioners in future

¹ *The International Election Observation Mission (IEOM) was a joint effort of the long-term OSCE/ODIHR Election Observation Mission and short-term observer delegations from the OSCE Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe, the European Parliament and the NATO Parliamentary Assembly.*

elections. **The laws governing presidential, parliamentary and local elections should be amended to exclude the possibility of appointing untrained commissioners and to provide for their mandatory certification by the CEC Training Center before appointment to the DEC and PECs.**

Gender balance was ensured during the initial appointment to the DEC: 55 percent of the DEC members were women. Women were also largely represented in leadership positions on DEC: some 58 percent of these positions were held by women, according to OPORA. This level of representation is a welcome step to ensure a balanced representation of women and men on the DEC. **Parties and candidates participating in elections should continue their efforts aimed to ensure a balanced representation of women on DEC and PECs.**

Both domestic and international observers noted that DEC – both before the first and the second round – performed their tasks adequately. Some DEC, however, lacked operational resources and adequate office premises. This reduced the transparency of DEC operations including during the tabulation of votes on election day where candidate, domestic and international observers had difficulties following the tabulation process. **The CEC needs to ensure that in future elections DEC have sufficient financial, technical and other resources to implement their mandates and ensure transparency of their operations, including during the tabulation of votes on election day.**

Transparency of DEC operations remains an issue, as many DEC opt not to transmit the legally required data (such as copies of the decisions made by the DEC) to the CEC for central publication on the CEC website. Similar cases were noted during previous nationwide elections in 2012 and 2014. **All election laws should provide for measures aimed at ensuring that all DEC decisions are available on the CEC website. The CEC should ensure that DEC have the equipment and resources necessary to enable them to promptly transmit their decisions and other legally required data to the CEC through the “Vybery” electronic system.**

Precinct Election Commissions (PECs)

Under the Presidential Election Law, the procedure for establishing PECs is the same as for the DEC in both the first and second round, whereby each presidential candidate is entitled to nominate a certain number of PEC members (first round candidates can nominate one PEC member each, while second round candidates can nominate from six to eight commissioners to each PEC depending on the size of the precinct in terms of registered voters). Candidates are entitled to replace PEC members they have nominated at will at any time. As with DEC, the Presidential Election Law does not envisage mandatory training for PEC members or require previous experience for being appointed to a PEC. As with DEC, PECs must be entirely renewed for the second round, and DEC must reestablish the PECs in their election district within five days prior to the second round vote.



Members of a precinct election commission in Kyiv prepare the polling station for opening on March 31, 2019.

Domestic and international observer reports confirmed that all PECs for the first round were established by DEC chairs within the legal deadline. The average number of commissioners on each PEC amounted to 14 members. In the second round, most PECs were formed in time; however, delays occurred in six DEC chairs that were struggling to find enough prospective commissioners when the candidates failed to nominate them in the required numbers. According to OPORA, on average, 15 percent of PEC members were appointed based on proposals of DEC chairs, with some being appointed after the official deadline. In both rounds, the executive positions on PECs were generally distributed equally between the candidates, in line with legal requirements.

The IEOM noted other factors that negatively affected the establishment of PECs, including “poor quality of nomination documents submitted by candidates to the DEC chairs and shortfall of nominees” as well as the “over-involvement of candidate proxies when allocating executive positions” on the PECs. In the first round, OPORA observers noted a number of cases in which the PEC commissioners proposed by candidates were rejected by DEC chairs for this reason. In some cases, commissioners were unaware of their appointment to serve on a PEC and many subsequently filed a request for withdrawal from the commission.

Similar issues were reported by the IEOM in the second round. In most cases, these vacancies were filled by members nominated by the DEC chair to serve on the PECs. The Presidential Election Law, for instance, may give the leading role in establishing the DEC chairs and PECs to the parties that passed the electoral threshold in the most recent parliamentary elections to prevent frivolous candidates from receiving representation on DEC chairs. **The Criminal Code should provide for sanctions for proposing nominees for membership of election commissions without their consent or based on falsified nomination documents.**

After being established, PECs faced similar problems as the DEC chairs: PEC members were frequently replaced on the initiative of the candidates who nominated them; in many cases, they were replaced by new members with little or no election experience. This was especially the case in the second round, although the number of replacements of initially commission members at PEC level is not known for the first or second round.

Given the similarities in procedures for establishing PECs and DEC chairs, the recommendations outlined above for improving the formation and operation of DEC chairs are also relevant to PECs.

Voter registration

The procedure for voter registration is governed by the Law on State Register of Voters, while the procedures for the compilation and distribution of preliminary and updated voter lists for each election event are governed by the respective election law. Voter registration is passive and continuous, whereby all eligible citizens of Ukraine are included into the State Registry of Voters (SRV) based on information on citizen status (birth, death, conscription, imprisonment, etc.) provided by various public authorities (the State Migration Service, Ministry of Interior, Ministry of Defense, Ministry of Justice and others). These authorities are in charge of updating SRV data on voters, both before and during the election period. Voter registration is centralized; the SRV is administered by the CEC while the updates and changes to SRV data are made by the voter register maintenance bodies (RMBs) at rayon level.

Before the legally established deadline, the RMBs must produce preliminary voter lists for each election precinct (the territory of a polling station) based on the SRV data and deliver them to the respective PEC. The Presidential Election Law provides that the PEC must display the preliminary voter lists in the polling station for public scrutiny. Voters are entitled to challenge inaccuracies on the preliminary voter lists to the PECs, courts, and RMBs. PECs must forward each received complaint to the relevant RMB for further consideration, while the courts must obtain the relevant RMB opinion on the complaint before adopting any decision to correct the voter lists. The voter should also be able to access the state voter register online to check their individual registration but cannot apply for corrections or challenge incorrect registrations online. The updated voter lists are to be delivered to the PECs no later than two days before the vote. The updated voter lists reflect changes to civil registration data, deceased voters, those who have turned 18 years of age, and corrections requested by voters. No changes to the updated voter lists (except corrections of misspelled names and similar technical errors) are allowed on election day.

While domestic and international election observers did not note serious issues related to the quality of the voter lists and the overall voter registration process, the procedure for updating the SRV data may raise concerns in future elections. This is due to the fact that the primary responsibility for registering the place of residence of citizens rests on local self-governance bodies, which often fail to transmit data on changes in residency registration to SRV and other state registers in a timely manner. Such failure is rooted in insufficient financial, human and technical resources at the local level and modest sanctions for failure to submit the required data to SRV. **Local self-government bodies should be sufficiently resourced to allow for timely (continuous) transmission of relevant data on citizens' place of residence in Ukraine to the SRV. A system of sanctions for delayed/incomplete transmission of such data to the SRV could be considered to ensure that the SRV data is accurate and up-to-date.**

Voters who cannot vote at their assigned polling station, such as internally displaced persons (IDPs), economic migrants, and others, can change their place of voting without changing their place of residence in order to vote at another polling station. To do so, a voter must file a written application to the relevant RMB no later than five days prior to the vote. The procedure for changing the place of voting is the only option available for election participation of voters who are registered in the non-government controlled areas of Ukraine in Crimea and Donbas where no RMBs, PECs, and DECAs have been formed. This means that eligible Ukrainian citizens (whether they have official IDP status or not) must undergo this procedure in order to exercise their constitutional right to vote. Before the second round, 325,604 voters temporarily changed their place of voting, including 75,607 IDPs. The total number of IDPs on voter lists for the second round was near similar to the first round (130 IDP voters less than in first round).

The procedure for changing the place of voting without changing the electoral address (place of official residence) proved to be problematic for a number of reasons. First and foremost, IDPs and economic migrants must undergo the procedure to change their place of voting without changing their electoral address before each election event in which they want to take part. In practice, this means that the governing principle of passive voter registration does not extend to these categories of citizens.

The IEOM stated that “the need for voters to renew ... requests [to change the place of voting without changing the electoral address] represents an unnecessary burden, especially for internally displaced persons (IDPs), voters abroad, and persons with disabilities.” Before the second round, voters had only eight days to change their place of voting before election day, in contrast to more than 80 days

available for the procedure prior to the first round. This calls for reform of the current voter registration system as laid out in the Law on State Register of Voters.

The voter registration system strongly depends on residence registration, which, despite attempts at reform, is still fundamentally based on the discriminatory Soviet “propiska” system. The “propiska” system is permission based rather than declaration based (a citizen has to obtain permission from the authorities to change their place of residence). Many eligible citizens are barred from changing their registered place of residence to their actual place of residence, and thus only have the option to temporarily change their place of voting ahead of each election event in order to exercise their right to vote. Barriers to change the place of official residence are well-documented in reports of NGOs and especially affect voters who rent or lease their accommodation due to resistance of the owners to grant permission or provide the documents that will allow the voter to officially obtain residence registration at the place where they actually reside. **In the long-term, the government should reform the overall system of residence registration in Ukraine towards a declarative approach for residency registration to be in line with international standards.**

In local elections and in the single-mandate constituency component of parliamentary elections, there is no option to temporarily change one’s place of voting without changing one’s electoral address, leaving IDPs and economic migrants practically disenfranchised in these respective elections unless they somehow manage to register at their place of actual residence. This may be considered discriminatory to these groups of otherwise eligible voters. The issue is properly addressed in Draft Law No 6240. This draft law aims to simplify the voter registration system, remove existing legal and practical barriers created by the outdated residence registration system, and enfranchise IDPs and economic migrants in all elections at the place where they actually reside. **The Rada needs to accelerate the consideration of Draft Law No 6240 and adopt it into law well in advance of the next parliamentary elections in October 2019. In the long term, the overall system of residence registration should be brought in compliance with international standards.**

While the Presidential Election Law does not require IDPs to substantiate the reasons for changing their place of voting, other voters are required to file documents supporting the requested change in voting place. This is an unnecessary and cumbersome requirement, which might prevent many voters from changing their place of voting simply because they do not possess the necessary documents to support their request. **Given that changing the place of voting cannot result in multiple voting of the same voter at different polling stations or multiple inclusion of the voter on different voter lists, the Law on State Register of Voters should not require voters to file documents supporting their request for changing place of voting without changing their electoral address (residence registration).**



A female voter is making up her mind in the first round of the presidential election.

Both domestic and international observers reported long queues of voters wishing to change their place of voting near the RMBs, especially in the last days before the deadline. **The CEC should take**

further steps to increase voter awareness of the procedure for changing one's place of voting and encourage RMBs to introduce a queue management system to simplify the process.

The legal timelines for updating voter lists/changing the place of voting temporarily, for ballot printing, and for the formation of PECs are interdependent but do not appear to be harmonized in practice. While ballot papers are printed with 0.5 percent surplus for each polling station based on SRV information about the preliminary number of voters registered in the precinct, the Presidential Election Law de facto envisages procedures that may substantially alter the final number of voters in the precinct after the printing of ballots: voters may request to temporarily change their place of voting and updates to the voter lists may continue even after ballot papers have been delivered to the polling station. In this election, several polling stations had fewer ballots than registered voters on the updated voter lists. Even though a 100 percent turnout is uncommon, an increase in turnout combined with a large discrepancy between the final number of voters and the amount of printed ballots might result in voters not being able to exercise their right to vote simply due to the shortage of ballot papers in some precincts.

In the second round, the deadline for formation of PECs coincides with the deadline for temporarily changing the place of voting. Late establishment of PECs for the second round effectively prevents members appointed late from changing their place of voting. This may potentially disenfranchise PEC members who serve away from the precinct where they are on the voter list. **The legal timelines for printing ballot papers, for the formation of PECs, and for updating voter lists/temporarily changing the place of voting should be harmonized for the reasons indicated above.**

Pursuant to the Code of Administrative Adjudication, courts must consider all lawsuits related to inaccuracies in voter lists no later than two days prior to election day and deliver their decisions to the PECs for them to update the voter list before the beginning of the vote. However, in more complicated cases, such decisions may be delivered later, especially if the court for some reason did not receive the RMB's opinion on the complaint in time. While court decisions are mandatory and failure to implement them may entail criminal liability, the election laws do not permit any changes to the voter list after the opening of polls on election day. Any room for conflicting interpretations should be eliminated from the legal framework. **The Code of Administrative Adjudication should be clarified to provide that court decisions in cases related to voter list inaccuracies must be delivered to the PECs before the opening of polls on election day.**

During both rounds of the presidential election, observers noted isolated cases of inaccuracies on the voter lists, such as the inclusion of deceased voters and non-inclusion of eligible voters with residence in the precinct. While the Presidential Election Law makes it clear that no changes to the voter lists are allowed after the opening of polls on election day, it fails to provide any guidance for PECs as to how to react to obvious inaccuracies or to cases where voters arrive to the polling station after the opening of polls with a valid court ruling that they are to be placed on the voter list for the election at this particular precinct.

Candidate nomination and registration

The right to stand for president is granted to any voter who has reached 35 years of age, resided in Ukraine for the 10 years before the election, and have command of the state language. The prospective candidate must also pay an electoral deposit of UAH 2.5 million. The Venice Commission

and ODIHR have repeatedly criticized the residency requirement for being unreasonably restrictive, contradicting international standards and best practice. While the Constitutional Court of Ukraine ruled that the electoral deposit does not violate the right to be elected enshrined in the Constitution, the Venice Commission and ODIHR repeatedly stated that the size of the deposit is substantial and as such represents a restriction on candidacy. They recommended that the Presidential Election Law should establish a clear threshold for its partial or full refund, for instance, in the form of a percentage of votes cast for a particular candidate. Significant monetary requirements can also have a disproportionate negative affect on people from historically excluded or under-represented groups, such as women, minorities, and other identities. Out of the 44 initially registered presidential candidates, only four of these were women.

The Presidential Election Law should clearly specify the criteria and the approach for calculating the term of residence in Ukraine for presidential and parliamentary candidates. The Rada should consider decreasing the size of the electoral deposit to be paid to run for election or provide for the possibility of filing lists of signatures in support of candidacy as an alternative option to the monetary deposit (e.g., a certain number of voter signatures, or signatures of members of parliament or local councils). In addition to those candidates who currently qualify for the return of the deposit, the deposit should be fully or partially reimbursable also to those unsuccessful candidates who receive a certain percentage of the votes cast.



In the first round of the presidential election on March 31, 2019, a record number of 39 presidential candidates were on the 80-centimeters-long ballot: 35 men and four women.

Before the first round, the CEC initially registered 44 presidential candidates. 47 applicants were rejected on various grounds, most commonly for failure to pay the monetary deposit. Five candidates withdrew before the first round, resulting in 39 candidates on the ballot including four women, 20 self-nominated candidates, and 19 party-nominated candidates. In the second round, incumbent President Petro Poroshenko (independent) lost to the first-round frontrunner Volodymyr Zelenskyi (the Servant of the People Party). Domestic and international observers did not report significant irregularities during candidate nomination and registration.

Election campaigning and media coverage of elections

The Presidential Election Law provides for several instruments aimed at ensuring a level playing field during the election campaign: political advertising must be clearly marked; media must announce the rates for each minute/second of political advertising and ensure equal conditions for all the candidates while placing their election advertising; candidates can launch their election campaign only once they have been registered for the election; and there is a provision for free airtime on public TV/radio for election campaigning purposes.

The election campaign was largely peaceful and competitive, and candidates were generally able to campaign freely without undue restrictions, according to the IEOM. However, the campaign was marred by instances of negative campaigning and abuse of state resources, as well as cases of vote-buying and involvement of public institutions and officials in the election campaign. **Police need to take further action to ensure that those who committed criminal and administrative offenses related to election campaigning are effectively prosecuted and do not enjoy impunity. State bodies should issue clear instructions to public officials and other employees setting standards for their behavior during the election to prevent the abuse of administrative resources and public office.**

The Presidential Election Law provides only a vague definition of what is considered election campaigning and fails to draw a clear line between the campaign activities of the incumbent and activities related to the exercise of his/her official duties as president during the campaign. Poroshenko utilized this legal flaw effectively by de facto using his office for campaigning purposes (i.e. during the so-called *Tomos* tour and similar events). The lack of clear legal definitions of what is considered campaign activities has repeatedly been criticized by ODIHR. **The Presidential Election Law should provide clear guidance on what should be considered informational coverage of the election, election campaigning, and official activities of public office holders who run as candidates.**

In the 2019 election, most prospective candidates began their election campaign before their official registration as candidates by the CEC. They also placed political advertising during the campaign silence period including on election day and afterwards, prior to the calling of the second round. **The Presidential Election Law should introduce effective measures to deter prospective presidential candidates from starting their campaigning early or in violation of campaign silence provisions.** Such measures could include introducing a formal registration procedure that obliges prospective candidates to register as presidential nominees, combined with a prohibition to place political advertising prior to their registration as prospective candidates as well as effective, proportionate, and dissuasive sanctions for failure to comply.

Media coverage of the campaign was far from balanced. During the first round, media coverage mainly focused on seven candidates, according to the IEOM. Debates, talk shows, and current affairs programs were mainly used by candidates to discredit their opponents rather than to present the program for their presidency. Certain TV channels gave most of their coverage to only one candidate. Unmarked promotional materials on media, also known as “jeansa” or “hidden political advertising,” were widely used during this election. The reasons for the unbalanced media coverage of the campaign are rooted in the concentration of media ownership in the hands of a few oligarchs, lack of proper state oversight over media campaign coverage, as well as a lack of proportionate, effective and dissuasive sanctions for media violations and low journalistic standards. **The Rada should consider strengthening the independence and expanding the mandate of the National Broadcasting Council to become an effective media oversight body. The Rada should also consider providing for the establishment of an independent media council in charge of providing recommendations and guidance to the media as to how to cover campaign events, and establishing effective, proportionate and dissuasive sanctions for violations. The Presidential Election Law should be amended to provide for a clear definition of “hidden political advertising.”**

The Presidential Election Law provides for mandatory debates in the second round between the two presidential candidates. These debates should be organized by a public service broadcaster on the last Friday before the runoff election day during prime time. All expenses related to such debates are

covered by the state budget. If one of the candidates refuses to participate in the debates, all airtime is given to the other candidate. Holding such debates does not exclude the possibility other debates between the candidates provided that the expenses for such debates are covered from the candidates' election funds. Poroshenko and Zelenskyi held a debate organized and agreed on by both candidates' campaign teams at Olimpiyskyi stadium in Kyiv on Friday April 19, but Zelenskyi declined to participate in the official debate organized by the public service broadcaster later the same day; hence, the full airtime was allocated to Poroshenko. Holding mandatory debates on the evening before the day of campaign silence does not allow voters the time to properly analyze the respective candidates' platforms and statements, or to comment on their positions. This reduces the ability of the public to make an informed choice. **The Presidential Election Law should be changed to require that the state-funded debates before the second round are held at least three to four days before the election to allow the voters to make an informed choice. to comment on their positions. This reduces the ability of the public to make an informed choice**

Campaign finance

In 2015, the Rada adopted the Political Finance Reform Law that introduced a number of amendments to the existing legislation governing political and campaign finance in Ukraine. While the new law increased the transparency of political and campaign finance, remaining shortcomings identified by the Group of States Against Corruption (GRECO), ODIHR, and the Venice Commission (such as lack of regulation of "third-party" funding, lack of restrictions on excessive funding of campaigns and other) limited its effectiveness in regulating the role of money in election campaigns.

Both domestic and international EOMs concluded that funding of the presidential election campaign was not transparent: supporters of the candidates donated offices, paid for fuel and printed campaign materials with funds being declared as third-party donations or donations-in-kind by the respective candidates; some candidates did not pay for their YouTube campaigns, organized free concerts not labeled as campaign events and/or allegedly made unofficial payments to members of election commissions, observers and media.

The Presidential Election Law, as amended by the Political Finance Reform Law, provides that candidates and the parties which nominated them can transfer money to campaign accounts without any limits in terms of amount and number of transactions, contrary to Venice Commission recommendations whereby a party's/candidate's own donations should not exceed a certain value. **Consideration should be given by the Rada to impose restrictions on the value of permissible donations transferred not only by private donors but also by candidates themselves or by the parties that nominated the candidates.**

There are no spending limits in presidential elections. The absence of spending limits creates an incentive for candidates to increase their campaign expenditures from one election to another. Both the Venice Commission and ODIHR have repeatedly recommended setting a ceiling on campaign expenses to prevent excessive use of funds and create a level playing field. Failure to address this recommendation has led political parties and candidates to become increasingly dependent on wealthy donors, which poses a risk of political corruption. Research from UNDP and others indicate that increased spending and contributions by wealthy donors can have an adverse impact on the representation of women in elected office; the more campaigning costs, the fewer women have the

resources to compete on a level playing field with men. **The Rada should consider the possibility of either introducing campaign spending limits or imposing restrictions on costly types of campaigning, such as TV and/or radio advertising during an election.**

In contrast to the 2014 presidential election, the amended Presidential Election Law required that candidates in the 2019 presidential election had to submit not only post-election campaign finance reports but also pre-election financial reports. These reports must specify all information on donors, donations, and expenses and must be fully published (except for personal data) on the websites of the CEC and National Agency for Prevention of Corruption (NAPC). Preliminary reports must be published before election day. Before the first round, all 44 presidential candidates (including the five that had withdrawn) filed their pre-election reports to the CEC and NAPC in a timely manner. As required by law, Volodymyr Zelenskyi and Petro Poroshenko filed an additional pre-election report before the second round vote. Given that there is no requirement in the legal framework that candidates must file a post-election report after the first round, the second-round report covers only the limited period from April 7 to 13. However, it is common that the majority of campaign expenses are made in the last days of the campaign, which are not covered by any interim financial report. Thus, voters do not have access to any information about the spending of the second round candidates in the last days of the first-round campaign, the period from March 19 to 29. Although the candidates' campaigns possess information about income and expenditure during this period, they are not under a legal obligation to disclose it: this period is covered in the final report that is submitted and published only after the election. This limits the effectiveness of the pre-election finance reports. **The Presidential Election Law should provide for filing post-election financial reports not only after the second round but also after the first round. The reporting period covered by the financial reports should be as extensive as possible, including covering income and expenses on the last day of the first round campaign.**

Third party donations, i.e. donations made in support of a particular candidate by a third party (often without the consent of or informing the recipient), as well as donations in-kind are not properly regulated by the laws. **NAPC should approve the procedure regulating donations in-kind and clarify how they are reported on by the parties and candidates in election.**

Both the pre- and post-election financial reports must be analyzed by the campaign finance oversight bodies, the CEC and the NAPC, which are obliged to publish the result of this analysis on their websites. The IEOM concluded from the published reports that both campaign finance oversight bodies refrain from accepting a mandate to determine any circumvention of transparency rules, including the misuse of state resources, and also noted that the bodies lack investigatory powers. Their analyses of financial reports were mainly technical in accordance with the established procedures. They found that the reports of 17 first round candidates revealed signs of campaign finance violations such as accepting donations from persons with tax debts or providing incomplete financial information. The fact that the CEC and NAPC combined their efforts to evaluate campaign finance reports is a welcome development. However, **NAPC and CEC should improve the quality of analysis of the financial reports with an increased focus on major violations, such as shadow financing and unreported expenses, that could undermine the fairness of the election. The election laws should also clearly delineate the oversight mandates of the CEC and NAPC to avoid duplication of efforts and ensure effective campaign finance oversight. In the mid-term, the Rada should take steps to strengthen the independence, accountability and resources of the NAPC whose role as political finance regulator remains insufficient.**

Civil society and media lacked day-to-day access to information about candidates' incomes and expenditures, as the CEC has ruled that this information falls under the bank secrecy clause. The public has access to this information, but only after the reports are published, i.e. shortly before election day (which leaves no time for the public to analyze the published information) or after the election (when the analysis has a limited effect). Consequently, voters do not have the opportunity to make a fully informed choice when they go to the polls. **The election laws, including the Presidential Election Law, should be amended to state that all information contained in the financial reports/election fund bank accounts that are subject to publication by the CEC and NAPC can be provided to any stakeholder upon request prior to the official publication, and that such information should not be covered by the bank secrecy clause.**

Current sanctions for failure to comply with the campaign finance requirements can hardly be considered proportionate, effective, or dissuasive, as most campaign finance violations are only subject to the issuance of a warning to the candidate in question or to an administrative fine ranging from UAH 5,100 – 6,800 (equivalent of USD 192-256). Furthermore, sanctions are difficult to impose due to short statutes of limitations (after this period expires, the court cannot consider the case). **The Criminal Code and Code of Administrative Offences should be changed to introduce effective, proportionate and dissuasive sanctions for political/campaign finance violations.**

Election dispute resolution

Depending on its type, a complaint/lawsuit may be filed with the CEC, a DEC or a PEC, or to a local court of general jurisdiction, a District Administrative Court, the respective administrative court of appeals or the Supreme Court. Most types of disputes can be filed with an election commission and/or with a court at the discretion of the complainant. Although such overlapping jurisdictions are foreseen in Constitution, which entitles anyone to challenge any irregularity at a court directly, it has in practice not caused any significant problems in recent elections. There have been no cases when the same complaint on the same subject matter has been heard in parallel by a court and an election commission. Despite this, overlapping jurisdictions have been repeatedly criticized by the Venice Commission and ODIHR, who jointly recommended to remove it from the legal framework. **While introducing amendments to the Constitution of Ukraine, the Rada should consider changes aimed to eliminate the possibility of parallel consideration of the same complaint by the courts and administrative/executive bodies such as election commissions.**

A complaint to an election commission must be filed within five days of the violation (with a few exceptions depending on the type of the case). Lawsuits regarding violations committed before election day must be filed within five days of the violation (except for lawsuits against inaccuracies on the voter lists), while lawsuits against violations committed on election day and afterward must be filed within two days of the violation. In almost all cases, the CEC, DEC, PEC or court are required to provide a decision within two days of receiving the complaint. The Code of Administrative Adjudication provides that all court decisions can be challenged to the respective next instance court (i.e., to an administrative court of appeals or the Supreme Court/Grand Chamber of the Supreme Court, depending on the court that considered the case in the first instance). An appeal must usually be filed within two days following the day when the first court decision was announced.

While the IEOM noted that courts adhered to the two-day deadline for resolving disputes, such a narrow deadline may cause difficulties if the allegation is complex and/or requires investigation. On the other hand, the five-day deadline for filing complaints can potentially derail the election process in the second round, as the CEC cannot proceed with second round preparations until all election disputed have been resolved by the courts. In some cases, resolution of disputes related to the first round outcome may take up to 8-11 days or even more, while the CEC is required to establish the first and second round results within ten days following the election. Any delay with establishing the first round results caused by election disputes pending in courts may delay the formation of DEC's and PEC's and thus render it practically impossible to hold the second round vote within three weeks of the first round vote, as required by law. **The timelines for filing election-related complaints and resolving election disputes should be reviewed to allow courts sufficient time to resolve complex cases without derailing preparations for second round.**

A complaint/lawsuit must comply with detailed requirements set forth in the Presidential Election Law (if filed to an election commission) or the Code of Administrative Adjudication (if filed to court). The list of mandatory requirements includes full contact details of all the parties to a case, the substance of the violation, motivation, and evidence, precisely formulated claims and description of the decision to be adopted in the case, among other things. Failure to comply with any of these requirements may result in the lawsuit/complaint being sent back to the complainant for correction without being considered on its merits. The CEC received more than 130 complaints in the first round and 43 in the second round, most of which were rejected by private letter from an individual CEC commissioner (rather than by the entire commission) for technical reasons (i.e. failure to meet the formal requirements to a complaint). Most second round complaints were rejected by the CEC for this reason. The practice of rejecting complaints on technical grounds has been criticized by ODIHR for years as it denies the complainant an effective remedy against administrative action, contrary to OSCE commitments. **The Presidential Election Law should provide that if a complaint fails to comply with technical requirements but contains the necessary data to allow the violation to be identified and verified/investigated, such a complaint must be further investigated by the relevant election commission.**

IFES conducted comprehensive training exercises for judges of all administrative courts (both district and administrative courts of appeals) before the first round of the election. Despite the fact that the judiciary overall managed to resolve cases related to the presidential election in line with legal requirements and international standards, the IEOM noted that some court judgments lacked a sound legal basis, thereby limiting the access to an effective remedy for violations of electoral rights and casting doubts about the independence of the judiciary. According to the IEOM, the cases concerned included several unsuccessful cases against the incumbent over alleged misuse of official position and state resources, and one case against Zelenskyi for allegedly bypassing campaign



Judges of administrative courts take part in an interactive training for trainers (TOT) jointly organized by IFES and the National School of Judges on January 30, 2019.

finance rules by featuring extensively in his role as comedian and actor as well as cases of conflicting decisions delivered by the same courts. **The Supreme Court of Ukraine should carefully review the election-related court practice and issue official clarifications as to how cases with conflicting decisions should be resolved in future elections. The international community should continue efforts to strengthen the independence and professionalism of the judiciary.**

The current legal framework governing liability for election-related offenses remains deeply flawed. Some violations, such as the distribution of goods and services to voters in relation to election campaigning is formally prohibited but punished only by the issuance of a warning. Falsifying signatures in nomination papers for election commission membership is not punishable at all. Many administrative fines and criminal penalties are too modest to ensure effective enforcement. **The Rada should accelerate consideration of the Draft Law No 8270 aimed to strengthen the system of sanctions for election-related offenses and adopt this bill into law well in advance of the 2019 parliamentary elections.**

In relation to the 2019 presidential election, the police received more than 3,000 complaints and launched 90 criminal investigations. Civil Network OPORA reported that police had some difficulties correctly documenting administrative offenses in the first round; no such issues were reported in the second round. The role of police during the election overall received positive feedback from all election stakeholders and observer missions. Before the first round, OPORA and IFES conducted a series of regional training exercises for police



Police officers take part in a training jointly organized by IFES Ukraine and Civil Network OPORA.

officers on the role and powers of police on election day and issued a pocket handbook for police officers on how to adequately respond in specific situations, including violations of the election laws. **The National Police, with assistance from the international counterparts, should continue efforts aimed to strengthen the professionalism of police in the sphere of elections. The Prosecutor General's Office should consider conducting training for prosecutors on election-related matters. The National School of Judges should consider training for judges of local courts on criminal and administrative liability for election related offenses.**

Voting, vote counting and vote tabulation

For both the first and second round, the CEC established election results in a timely manner. The final results were published by the CEC in the official gazettes on May 3, 2019. Both the first and second round election days were conducted without major violations reported during voting in polling stations. OPORA and international election observation missions noted isolated incidents, including voters allowed to vote without presenting proper ID, voters taking photos of their marked ballots (potentially indicating vote buying schemes), and a few instances of PECs beginning opening procedures prior to 7:15am or not allowing observer presence at their opening session. EOMs concluded that voting on March 31 and April 21 took place in a competitive environment and in

accordance with international standards. The isolated instances of electoral violations did not become a critical obstacle for citizens in exercising their voting rights.

The secrecy of vote became an issue during second-round voting as the ballots were small and voters did not fold them before casting them into the transparent ballot boxes; it was easy for observers and election commissioners (as well as other voters) to see how a particular voter voted. To ensure the secrecy of vote during the next election, **the Presidential Election Law should either provide for using translucent ballot boxes or require the CEC to issue instructions that require ballot issuing officers to pre-fold the ballot paper and voters to fold the marked ballots before leaving the booth to ensure the secrecy of the vote. The introduction of these measures should be accompanied by a comprehensive information campaign prior to election day.**

All election laws envisage a procedure whereby voters who spoil a ballot paper is entitled to a replacement. In practice, this procedure does not apply to voters who vote at their place of stay (homebound voters): the election laws provide that the number of ballots that are issued to the PEC members who perform homebound voting must be equal to the number of voters on the excerpt from the voter list used for homebound voting. **The election laws should be amended to entitle PEC members who perform homebound voting to bring a reasonable surplus of ballot papers to cater for homebound voters who accidentally spoil their ballot and need a replacement.** The number of ballot papers that accompany the mobile ballot box must be strictly accounted for (their number announced and entered into the PEC journal prior to the departure of the mobile ballot box).



A senior citizen votes in the second round of the presidential election at a polling station in Kyiv.

As in previous elections, some polling stations were overcrowded on election day, especially during the first round. **The Presidential Election Law should require PECs to identify PEC commissioner(s) who would be in charge of maintaining order and managing a queue at the polling station.**

The Presidential Election Law tolerates a certain level of fraud by stating that the precinct results can be invalidated only if the number of documented cases of fraud (ballot stuffing, illegal issuance of a ballot to the voter, etc.) exceeds 5 percent. Such a threshold was repeatedly criticized by the Venice Commission and ODIHR as inconsistent with international standards and best practices. **The Presidential Election Law should be amended to state that the result of the vote in a precinct can be invalidated if the violation affects the election outcome in a precinct at a level whereby the genuine will of the voters cannot be reliably determined. The criteria for invalidating the vote in the precinct should be listed in the law.**

Isolated cases of ballot stuffing were noted in both rounds of the election. In all cases, the stuffed ballots were intercepted and invalidated, thereby not affecting the outcome of the vote in the precinct. PECs, however, faced difficulties in deciding how to record the intercepted ballots – as invalid ballots or as ballots that are not to be taken into account. **The Presidential Election Law should specify**

how a PEC that intercepts stuffed ballots during the vote count should record them in the PEC protocol.

The tabulation at the DEC and the establishment of the election results by the CEC were properly managed by the respective election commissions, according to most election observation missions. At times, the DEC tabulation process lacked transparency due to inadequate premises or poor organization, compounded by the huge number of authorized persons, especially in the first round. **The CEC should take measures to ensure that DEC's have adequate premises and that the tabulation of PEC results is sufficiently transparent for all present, including official observers. Establishing an effective queue management system and use of a projector to display the results are measures that could be considered to enhance the transparency of the DEC vote tabulation.**

Vote tabulation procedures for DEC's should be reviewed. Currently, they open up the possibility for arbitrary vote recounts and unauthorized corrections in the protocols. **The law should provide that, during the corrections of the protocols, only those figures that served as the grounds for correction must be subject to correction, rather than the entire protocol. Existing ODIHR recommendations to simplify the PEC results protocol should also be considered.**

Accessibility and inclusion

Accessibility of all elections in Ukraine remains a significant issue. Nearly all credible observer organizations highlighted that polling stations, information on the electoral and political process as well as candidate information and campaign materials were not sufficiently accessible. According to IEOM, 58 percent of polling stations observed during the election were not accessible to voters with disabilities, though disabled person's organizations in Ukraine report that these numbers are much higher. The Presidential Election Law does not provide for the availability of tactile ballot guides for voters with visual disabilities; local authorities are not obliged to allocate premises to PEC's and DEC's adapted to the needs of the voters with disabilities; the CEC website is not adapted to the needs of voters with disabilities. The law also fails to allow commissioners with disabilities the right to bring an assistant to election commission meetings without the commission's consent or invite. Voters with disabilities are de facto forced to vote at home, contrary to international standards, the United Nations Convention on the Rights of Persons with Disabilities (CRPD), and best practice. In addition and as noted by the IEOM, the Constitution does not allow citizens who have been deemed "incapable" by a court to vote or run for office, which is not in line with the CRPD which states that all persons, regardless of type of disability, deserve equal political rights. Access to election campaigning materials, voter information, political party platforms, and candidate posters remains limited for persons with disabilities. Many of these issues are addressed in Draft Law 5559 pending in the Rada. **The Rada needs to prioritize this bill and adopt it well in advance of the next parliamentary election, following consultations with disabled persons organizations (DPOs). The CEC, in consultation with DPOs, should explore possibilities within its existing mandate to improve access to the electoral process for persons with disabilities to bring it closer to meeting international standards.**

Election observation

The Presidential Election Law provides that the election process can be observed by domestic observers (from parties, candidates, and NGOs) and international observers representing foreign states and international organizations. To become accredited to observe the election, an NGO must have election observation-related provisions in its charter. Members of the NGO are registered by the DEC, while international observers are registered by the CEC. Domestic observers are granted broad rights, including filing complaints and lawsuits against decisions, actions or inactions of the election commissions, taking photos and video records, as well as the right to be present at the meetings of the election commissions without prior invitation or consent.

For the presidential election, the CEC accredited 139 NGOs, of which 132 had the right to observe the election nationwide. Only 82 of the 139 accredited NGOs registered observers for the first and second round. This is the highest number of NGOs accredited to observe in the country's history. Many NGOs, according to OPORA, were directly or indirectly affiliated with specific parties and candidates, thus undermining the independent nature of election observation and discrediting the overall idea of observation. Some NGOs



Observers monitor the voting process at a polling station in Kyiv, Ukraine.

accredited by the CEC were connected to paramilitary groups. A large number of observers can have a negative impact on DEC and PEC operations, especially if they appear in huge numbers in the premises of the election commissions or interfere in election day processes. While these fears did not manifest themselves in this election, measures are needed to decrease the number of frivolous and party/candidate affiliated domestic observers registered as NGOs. **To decrease the number of NGOs eligible to observe the election, the Presidential Election Law could impose additional requirements for NGOs, such as registration at least one year before election.**

The CEC announced that 2,700 international observers from 41 states and international organizations were registered to observe the second round (compared to 2,300 observers from 36 states and organizations in the first round). International observers from the Russian Federation were banned from observing the election, in violation of the 1990 OSCE Copenhagen Document. It is questionable to bar citizens of a certain state from observing elections as members of multilateral election observation efforts from an international organization of which Ukraine is member, since these citizens do not represent their country but the sending organization. **The criteria for rejecting international observers should be specified in election laws and should comply with international standards and best practices.**

DECs are in charge of registering domestic observers. Given that DECs are formed in the middle of the election process, domestic observers are de facto deprived the right to observe key election-related procedures such as candidate nomination and registration, early stages of the election campaign and the very formation of the DECs. **The procedure for accreditation and registration of domestic**

observers needs to be reviewed to ensure they are able to observe the early stages of the election process, including initial election-related preparations. Consideration could be given to entitling NGOs with a proven record of observing elections to accredit observers with the CEC on equal terms with official observers from foreign states and international organizations.

While there were some isolated cases of observers being obstructed from observing certain aspects of the election process (by questioning or not allowing their presence at certain commission meetings), observers generally had the opportunity to observe the election.

Recommendations

To address the key challenges identified in this report:

1) Given that the adoption of the draft election code well before the fall 2019 elections does not seem realistic and further will contradict the internationally recognized principle of stability of election laws, the Rada needs to focus on fixing the flaws in the existing laws governing elections in Ukraine. Specifically, the Rada should introduce changes to the Presidential Election Law and other laws in order to:

- Specify the mandates, rights and obligations of the CEC branches in the regions.
- Set a maximum number of members of DEC and PECs to make sure they can effectively manage the election process;
- Consider discontinuing the requirement that election commissions should be completely reappointed shortly before a possible second round vote.
- Restrict the role of “technical candidates” in proposing nominees to lower level election commissions.
- Introduce sanctions for fraudulently proposing nominees to election commissions without their consent/based on falsified nomination documents.
- Exclude the possibility of appointing untrained commissioners to DEC and PECs, and make it mandatory that they have prior certification by the CEC Training Center.
- Consider additional measures to ensure lower-level election commissions transmit their decisions to the CEC in a timely manner for publication on the CEC website.
- Local self-government bodies should be sufficiently resourced to allow for timely (continuous) transmission of relevant data on citizens’ places of residence in Ukraine to the SRV. The system of sanctions for delayed/incomplete transmission of such data to the SRV could be considered to ensure that the SRV data is accurate and up-to-date.
- In the long-term, reform the overall system of residence registration in Ukraine from a permission-based system to a declarative approach to be in line with international standards.
- Given that changing the place of voting cannot result in multiple voting of the same voter at different polling stations or multiple inclusion of the voter on different voter lists, the Law on State Register of Voters should not require voters to file documents supporting their request for changing place of voting without changing their electoral address (residence registration).
- Harmonize the timelines for: printing ballot papers before the second round; the establishment of PECs before the second round vote; and for changing the place of voting/updating the voter list. This will ensure that all PEC members can change their place

of voting before the deadline, and that each polling station has an equal number of ballot papers (or, at least, with little departure from) to the number of voters finally registered to vote at each polling station.

- The election laws should be amended to entitle PEC members who perform homebound voting to bring a reasonable surplus of ballot papers to cater for homebound voters who accidentally spoil their ballot and need a replacement.
- Ensure that court decisions in cases related to voter list inaccuracies are delivered to the PECs before election day.
- Provide clear guidance as to the criteria and the approach for calculating the term of residence in Ukraine for parliamentary and presidential candidates.
- Decrease the size of the electoral deposit to be paid to run for election or provide for the possibility of filing lists of signatures in support of a candidacy in lieu of this deposit (e.g., a certain number of voter signatures, or signatures of members of parliament or local councils).
- Allow for reimbursement of the electoral deposit not only to those who won their election, ran in the second round or were rejected by the CEC, but also to those who receive a certain percentage of the votes cast.
- Provide clear guidance on what is considered informational coverage of the election, election campaigning, and official activities of public office holders who run as candidates.
- Introduce effective measures to deter prospective presidential candidates from starting their campaigning early or in violation of campaign silence provisions.
- Strengthen the independence and expand the mandate of the National Broadcasting Council to become an effective media oversight body.
- Establish an independent media council in charge of providing recommendations and guidance to the media as to how election-related events must be covered.
- Establish effective, proportionate and dissuasive sanctions for violations of legal requirements to campaigning in line with draft law No 8270.
- Provide a clear definition of “hidden political advertising.”
- Require that the state-funded debates before the second round are held at least three to four days before the election in order to allow voters to make an informed choice.
- Impose restrictions on the value of permissible donations transferred not only by private donors but also by candidates themselves or by parties that nominated the candidates.

- Consider the possibility of either introducing campaign spending limits or imposing restrictions on costly types of campaigning, such as TV and/or radio advertising during an election.
- Introduce a requirement that obliges candidates to file a post-election financial report after the first round to cover the expenses made in the last days of the campaign. It should also require that all information contained in the financial reports/election fund bank accounts that are subject to publication by the CEC and the NAPC can be provided to any stakeholder upon request prior to the official publication, and that such information should not be covered by the bank secrecy clause.
- Clearly delineate the oversight mandates of the CEC and NAPC to avoid duplication of efforts and ensure effective campaign finance oversight.
- Take steps to strengthen the independence, accountability and resources of the NAPC whose role as political finance regulator remains insufficient.
- Introduce effective, proportionate and dissuasive sanctions for political/campaign finance violations.
- Eliminate the possibility of parallel consideration of the same complaint by the courts and administrative/executive bodies.
- Ensure that the timelines for filing election-related complaints and resolving election disputes allow courts sufficient time to resolve complex cases and do not derail preparations for the second round vote.
- Allow for the possibility of election commissions to consider complaints with technical errors if a complaint presents sufficient data to allow for the violation to be identified and verified/investigated.
- Mandate the use of translucent ballot boxes or require the CEC/lower level commissions to issue instructions to voters as how to fold their ballots to ensure the secrecy of vote. The introduction of these measures should be accompanied by a comprehensive information campaign prior to election day.
- Require the PECs to identify PEC commissioner(s) who will be in charge of maintaining order and managing the queue at the polling station.
- Provide that precinct results can be invalidated if violations affected the election outcome (the criteria for invalidation should be listed in the law).
- Explain how stuffed ballots should be accounted for and marked.
- Establish that, during corrections of protocols, only those figures that served as the grounds for a correction are subject to revision, rather than the entire protocol.

- Impose additional requirements for NGOs to observe, such as NGO registration at least one year before the election.
- Specify the criteria for rejecting international observers.
- Allow for the possibility for domestic observers to observe all stages of the election process and all election-related events.

The Rada should accelerate consideration and ensure adoption, well in advance of the 2019 parliamentary elections, of bills No 8270 (strengthening sanctions for election violations), 6240 (aimed to fully enfranchise IDPs as well as other mobile populations in elections), and 5559 (on accessibility of electoral process).

2) The CEC should:

- Further continue its efforts aimed to ensure an appropriate level of cybersecurity protection of its electronic systems.
- Modernize its website to ensure accessibility to for all voters, including those with disabilities, and make it easy to access CEC decisions and voter information, as well as other data.
- Adopt a comprehensive strategic communication strategy.
- Consider establishing an expert council to discuss its key draft resolutions as well as introduce public consultations and abstain from holding closed-door preparatory meetings.
- Ensure that in future elections DEC's have sufficient financial, technical and other resources in order to implement their mandates and ensure transparency of their operations, including during the tabulation of votes on election day.
- Ensure that DEC's have the equipment and resources that would enable them to promptly transmit their decisions and other legally required data to the CEC through the "Vybery" electronic system.
- Take further steps to increase voter awareness of the procedure for changing the place of voting and encourage the RMBs to introduce a queue management system to simplify the process.
- In coordination with the NAPC, improve the quality of analysis of the financial reports with an increased focus on major violations, such as shadow financing and unreported expenses, that could undermine the fairness of the election.
- In consultation with DPOs, explore possibilities within its existing mandate to improve access to the electoral process for persons with disabilities to bring it closer to meeting international standards.

3) National Police should:

- Take further action to make sure that those who committed criminal and administrative offences related to election campaigning are effectively prosecuted and do not enjoy impunity.
- Continue efforts aimed to strengthen the professionalism of police in the sphere of elections.

CSOs should continue their efforts to move the needed reforms forward in advance of 2019 parliamentary elections, as well as to monitor how the reforms are implemented in practice. International stakeholders should prioritize electoral reforms and continue to provide support and technical assistance to the Government of Ukraine to ensure effective and timely implementation of the reforms.



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