



## SECTORAL BRIEF “ELECTORAL REFORM”

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### **1. Evaluation of reform policies of the Parliament and Government during the period of September 2019 – January 2020 and its compliance with the Toronto Principles (based on the analysis of the Government Program, the plans of the ministries and the adopted/rejected regulatory acts)**

The Electoral Code of Ukraine, the first draft of which was developed in the 2000s<sup>1</sup>, was approved by the newly elected Parliament on 19 December 2019. Thus, in November 2017, the code was approved in the first reading. Subsequently, on 11 July 2019, the revised draft of the Code was approved in the second reading and as a whole. However, on 13 September 2019, President of Ukraine Volodymyr Zelensky returned the Code to the Parliament for reconsideration, together with his 17 proposals, in particular on the effective protection of the voting rights of internally displaced persons, persons with disabilities, ensuring gender quotas, greater openness of the proportional system with open lists without 10 politicians assigned to the leaders of the national list, etc. After finalization and adoption of the Electoral Code of Ukraine in the repeated second reading, it entered into force with 330 votes on 1 January 2020.

Adoption of the Code is one of the steps towards the implementation of electoral reform. Key innovations include: abolition of the majority electoral system and introduction of a proportional electoral system with partially open lists in par-

liamentary elections and elections to local councils of large cities and local self-government bodies on regional level that are consistent with the Toronto Principles, which also include the introduction of a proportional system with open regional lists, an effective system of proportional punishment for electoral crimes, and transparency of political finances<sup>2</sup>.

In addition, the following important achievements in the area of electoral reform are worth noting:

- codification of electoral law – The Electoral Code of Ukraine has partially harmonized the provisions governing different types of elections – presidential, parliamentary and local;
- introduction of norms aimed at respecting citizens’ rights based on the Electoral Code of Ukraine. Thus, the concept of “electoral address” and “registered place of residence” was specified for the first time at the legislative level, which allows internally displaced persons and migrant workers to exercise their voting rights, in particular, to vote at the place of actual residence. The Code also provides the basis for providing voters with disabilities with access to the electoral process. A gender quota of at least two representatives of the same sex in each of the five positions of the list is required to register the entire party list;
- The Central Election Commission (CEC) has been given the opportunity to create its own territorial offices, which will functionally support

<sup>1</sup> <https://ifesukraine.org/verhovna-rada-ukrayiny-uhvalyla-istorychne-rishennya-i-pryjnyala-vyborchyj-kodeks/>

<sup>2</sup> [https://rpr.org.ua/wp-content/uploads/2019/07/A4\\_Toronto\\_ua\\_web4.pdf](https://rpr.org.ua/wp-content/uploads/2019/07/A4_Toronto_ua_web4.pdf)

the work of the State Register of Voters locally and provide professional advice on the organization of elections;

- Legalization and extension of the powers of the CEC Training Centre, which will work in the field of special education;
- General provisions for the use of IT technology in elections, including the introduction of electronic party reporting, electronic voter requests regarding the change of voting location or electoral address, as well as a mandatory procedure for verifying candidates' information by the CEC are laid down;
- Publication of election data in open format became mandatory.

## **2. Current challenges / issues in the relevant policy area**

Despite the positive changes introduced by the Electoral Code of Ukraine, some issues have been left unaddressed and require immediate legislative regulation. The local election campaign will start in the end of August, so all the changes need to be introduced by the end of April 2020 to ensure the principle of legal certainty and sustainability. Although the Code has introduced a proportional system with open regional lists, in fact the influence of voters on the election results is limited by the introduction of mandatory parliamentary seats for the "first nine candidates" from the party list that will get into the Parliament. In addition, the votes will affect only those candidates who will pass the barrier – 25% of the size of the electoral quota. The form of the ballot does not favour voting for a particular candidate, so the effect of the system may be rather closed than open to the voter.

The issue of campaigning on the Internet and social networks, as well as their reporting, remains unsettled.

Another major issue is the over-funding of electoral campaigns. Thus, the 2019 election campaigns (presidential and parliamentary) reaffirmed the lack of transparency and the dependence of candidates and political parties on major donors<sup>3</sup>. One of the regulatory mech-

anisms is to set the limits on electoral funds. Previously, such restrictions were absent in the presidential and local elections, but today the Code has also abolished the limits for electoral funds in the parliamentary elections. Such changes will make candidates and political parties more dependent on sponsors and lobby for the interests of the sponsors of their electoral funds, rather than citizens whose interests should be represented by the parties and candidates. An excessive obstacle to participation in the electoral process is the amount of money pledged, which is twice as high for a party in elections to a regional council of large regions than for presidential candidates.

The credibility of the elections also depends on the correctness of the voter lists and the quality of the State Voter Register, which has never undergone an independent audit or evaluation since its introduction in 2009, and its data remains closed even to election participants.

A proper system of qualification of crimes against electoral rights and electoral violations, as well as the possibility of conducting investigative actions by law enforcement officers at the stage of pre-trial investigation is not implemented yet. All this requires introduction of changes to the legislation. Equally important is the need to improve the system of appealing against the actions or omissions of action of commissions and the transparency of this process.

## **3. Recommendations for priority actions in 2020-2021, in particular, for the agenda of Parliament's second session**

The key objective for 2020-2021 should be to implement the next phase of electoral reform – the whole Volume of the Fourth Electoral Code of Ukraine, which has not been revised in its entirety, but regulates the conduction of local elections. The individual provisions of the code relating to parliamentary elections need to be urgently reviewed, as inaccuracies in the method of calculating the electoral quota and the manner in which the mandates are distributed generally block the phase of establishing the results of elections for both parliamentary and local campaigns.

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<sup>3</sup><https://ifesukraine.org/ifes-predstavyla-klyuchovi-priorytety-v-sferi-realizacziyi-reformy-politychnogo-finansuvannya/>

Fair and free elections must be guaranteed through the proper determination of sanctions for violations of electoral rights and procedures, the application of proportional and effective punishment, which is not possible without introducing changes to the Criminal Code of Ukraine and the Code of Administrative Offenses.

The issue of campaigning on the Internet and social networks, setting restrictions on political advertising in the media, which today accounts for the vast majority of candidates' expenses in elections also requires regulation. It is also important to establish a fair and adequate maximum size of electoral funds for parties / candidates for all types of elections.

A special focus in the area of electoral reform should be set on information and education campaigns for voters, given the complexity of the established proportional system both for voters and election administration.

The issue of money collateral for elections at all levels, which is currently excessive, especially at the local level also requires urgent regulation.

Equally important is the internal reform of the CEC, which should include transparency and openness of decision-making, as well as the ability to ensure the safety of voters' personal data and counteract cyberattacks against information-analytical systems.