



Організація з безпеки та співробітництва в Європі
Координатор проектів ОБСЄ в Україні



Conference

«2015 Local Elections in Ukraine: Lessons Learned and Recommendations»

Final recommendations

February 15, 2016

On December 16-17, 2015, the International Foundation of Electoral Systems (IFES), the OSCE Project Co-ordinator in Ukraine, the Council of Europe jointly with the Central Election Commission hosted a conference “2015 Local Elections in Ukraine: Lessons Learned and Recommendations”.

The event aimed to discuss the results of the local elections, the key problems of the election process and possible ways to address them. The conference brought together the representatives of the election management bodies, election experts, academia, representatives of the Government, Parliament and judiciary, as well as members of the international and domestic election observation missions that observed the 2015 local elections (the list of participants is attached to this document).

The participants of the conference worked in plenary sessions and four working groups which discussed the following topics:

- 1) Electoral system for local elections and its implications;
- 2) Political actors and observers: statuses and roles;
- 3) Election administration: election commissions for local elections, their structure and composition; and
- 4) Voter participation in elections: electoral rights, voter awareness and deliberate choice.

Discussions in each working group were moderated by a national election expert. The present document summarizes findings and recommendations of the conference, being drafted on the basis of the conclusions provided by each national election expert.

Key findings and recommendations

1. The Local Election Law № 595-VIII of July 14, 2015, was adopted too late, just in two months before the start of the election process in the local elections. The Last minute adoption of the Law did not allow political parties and prospective candidates to properly prepare to the upcoming elections and hampered the work of the election commissions. The participants of the conference reiterated the fact that changes to the electoral legal framework should be consistent with the international standards, in particular, those recommending that any significant changes

in the electoral legal framework should be made no later than in one year prior to the elections. The adoption of the Election Code that would harmonize the legal framework governing the parliamentary, presidential and local elections could be an effective solution to that problem. It would allow the electoral contestants to know “the rules of the game” well in advance of the elections and to be properly prepared to the elections. Adoption of the Code could also facilitate better administration of the elections, ensure its fairness and transparency and increase the level of voters’ confidence in the election outcomes.

Recommendation 1: to convince the law makers to adopt an electoral code.

2. The proportional electoral system used for the elections to the oblast, rayon, city and city district councils proved to be too complicated and unclear (as to the consequences of its application) for the parties, candidates, electoral administration and voters.

This electoral system also ignored the constitutional provisions requiring that common interests of local communities must be equally represented in the oblast and rayon councils. While this system mathematically ensured proportional distribution of the seats in the local councils among the parties participating in elections, it also produced highly irrational results. In particular, some sub-districts (districts within multi-mandate district) remained without any representation at the respective local councils (for instance, in the oblast council elections almost 20% of the sub-districts have not received any representation), while some sub-districts were overrepresented by two and even more councilors (e.g., in the oblast council elections 15% of all sub-districts have been overrepresented). In some sub-districts the candidates from the parties with lowest level of support received seats, while the winners of the race did not receive mandates. Moreover, some candidates with no votes were elected.

Recommendation 2: To restrain from using the same or similar systems in any further elections, and urged the authorities to ensure that any electoral systems proposed for the national or local elections are subject to public discussion among the stakeholders. Consideration could be given to the single non-transferable vote electoral system (SNTV) with small districts as an option for elections to the oblast, rayon, village and settlement council elections, as well as for the elections in amalgamated communities. Furthermore, the right to nominate candidates for local council elections should be also given to the organized local groups of citizens.

3. The use of the two-round electoral system for mayoral elections in the cities with at least 90,000 voters proved to be justified.

Recommendation 3: To consider the possibility of using the two-round electoral system at further mayoral elections in cities.

4. A number of problems that emerged during the last local elections were rooted in unintentional errors made by election commissioners, for instance, while approving the texts of the ballot papers and while compiling the final vote counting protocols at the election precincts. Such problems could have been easily avoided or their scale could have been decreased if the IT technologies would have been used more extensively by the Territorial Election Commissions (TECs) and Precinct Election Commissions (PECs).

Recommendation 4: To consider using the IT system *Vybory* administered by the CEC (alternatively, for the local elections a separate IT system can be created) for preparation of the electronic templates of the ballot papers, IDs for observers, and for compiling electronic copies of the PEC vote counting protocols. Such an approach could allow to compile electronic vote counting protocols in accordance with the Law, as well as to verify integrity and correctness of the

entered data by the means of IT system. This will help to eliminate the risk of mathematical errors and to prevent unauthorized changes to the protocols. Such an approach could also allow to increase the overall quality of the protocols and exclude the need in compiling additional updated protocols. Consideration could also be given to the possibility of using IT technologies for other purposes, such as scanning the ballots by readers to count the votes. The scope of use of IT systems for election-related purposes can be a subject to further expert discussions.

5. Under the Local Election Law, the TEC have the status of permanent collective decision-making bodies. However, in practice their funding stops once the official election results are published, even though the TECs are legally required to work after official publication of the election results. For instance, they are obliged to participate in the preparations to the opening of the first session of the newly elected council, as well as to compile reports on the use of budget funds and to deliver the sensitive election documents to the archives. The TECs are also in charge of preparations to by-elections, but usually are not provided with any budget allocations for this purpose.

Recommendation 5: To consider the allocation of budget funds to the TECs on a permanent basis. They should be given permanent premises for operations. The possibility of paying monthly salary to at least one TEC commissioner should be also carefully considered.

6. The local elections are organized by more than 10,000 TECs and almost 30,000 PECs. Given that the electoral legal framework is frequently reviewed, the election commissioners every time face new challenges. To address these challenges, the election commissioners permanently need consultative support from the Central Election Commission. However, the number of employees of the CEC Secretariat is insufficient to provide a competent and - even more important – timely assistance to the lower-level commissions. Timeliness of such consultative support becomes an issue of a crucial importance during the elections, as the timelines for many election procedures are extremely short.

Recommendation 6: To consider the possibility of creating the CEC offices in the regions. Such offices can be tasked to provide full-scale consultative support to all the TECs established in the regions. The Law on Central Election Commission authorizes the CEC to establish such offices (CEC regional branches), but they have never been established.

7. The participants highlighted the need in more extensive training of the election commissioners on the electoral matters. The political parties and candidates do not pay much attention to selection of well-prepared candidates for membership on the election commissions. At the same time, short timelines for the preparations to the elections do not allow the CEC (even with the support provided by the international organizations) to effectively train all the election commissioners. Also, frequent replacements of the commission members once they had been trained to a certain extent undermine the efforts made to ensure a better level of awareness of the commission members on electoral matters, as only some of the trained election officials retain their positions by the Election Day, something that has a negative impact on overall organization of the elections.

Recommendation 7: To create a special training center under the CEC in order to conduct training of the election commissioners or the persons who decided to be members of the commissions in the future elections in between the election periods. The trained persons should pass the exam at the end of the training to receive certificates of completion of the training course. The certified trained persons should be then registered in a special database. The legislation should require

that parties, their local branches should nominate the election commissioners only from among the persons registered in that database.

8. Several surveys and focus-groups held by the OSCE Project Co-ordinator in Ukraine and IFES revealed that the Ukrainian citizens remained by large unaware of the details in the new electoral legislations, especially of the new electoral system for local elections. Such lack of awareness was believed to result in a low voter turnout on the Election Day and to affect overall voter' and candidates' confidence in the election outcomes. To reduce such a risk, the CEC with IFES' and OSCE Project Co-ordinator's support released a series of videos that were officially recognized a social advertising. However, under the current legislation, private broadcasters are not required to air public service announcements, which are widely believed to be the most effective voter awareness instrument. As a result, significant numbers of the voters were not able to watch the produced videos and, accordingly, to raise the level of their awareness of the new election legislation.

Recommendation 8: To introduce amendments to the legal framework that would impose an obligation on private broadcasters to air public service announcements that were produced or approved by the CEC during the elections (on a free of charge basis).

Other findings and recommendations

9. One of the issues of concern among the experts was election district boundary delimitation and the problem of gerrymandering aimed at delimitation of district boundaries in a way to concentrate electorate of one candidate/party in one district or to split electorate of political contestants among different districts in order they fail to get enough voters' support in any district. The Local Election Law does not provide for the clear requirements to the delimitation of election district boundaries for the local elections. While the Law makes it clear that the election districts must be established with approximately equal number of voters in each constituency, it however failed to provide for the maximum deviation in the number of voters between different districts. The Local Election Law also does not require that the election sub-districts under the proportional system must be contiguous. This resulted in many sub-districts created with non-contiguous boundaries and in significant disproportions in the numbers of voters in different constituencies, which in some cases varied up to 700% of the average number of voters in the districts. According to OPORA Civic Network, in almost half of the sub-districts established for the oblast council elections departures in the numbers of voters were as high as 15% of the average number of voters, *i.e.* were equal to the maximum recommended by the Venice Commission's Code of Good Practice in Electoral Matters.

Recommendation 9: The legislation should require the election districts be established with contiguous boundaries, with due consideration of the administrative boundaries and with maximum deviation in the number of voters in a district not exceeding 15% of the average number of voters in all the districts established for specific elections. To reduce the gerrymandering risks, it was recommended to establish the boundaries of the districts well in advance of the elections, for instance, in 180 days before the Election Day. The experts also stressed the need in more extensive use of GIS systems for more fair and transparent election districting.

10. Under the Local Election Law, the technical errors and typos in the vote counting and tabulation protocols serve the grounds for sending the protocols for updates (*i.e.* for compiling new updated

protocols) to the respective election commissions. In practice, while updating the protocols, the election commissions corrected not only technical errors and typos, but also data related to election outcomes, such as numbers of votes for the parties/candidates. Such unjustified changes in some cases undermined genuine voters' will.

Recommendation 10: To introduce changes to the election laws providing that all the technical errors and typos are changed by a territorial election commission that identified them at its meeting, and that the mistakes identified are properly documented in the minutes of the TEC meeting at which they were identified. Such a change would eliminate the need in sending the protocols to the lower-level commissions for updates.

11. The election results in many cases were affected by vote recounts.

Recommendation 11: To clearly specify the grounds for vote recounting, as well as to include into the electoral legislation more details as to how the votes be recounted.

12. Due to ambiguous interpretation of the provisions in the Local Election Law pertaining to registration of the election observers, TECs in some cases refused to register observers for unjustified reasons. In many cases the official observers were not able to observe all the preparations to the elections, as their observation was limited to only observing the meetings of the election commissions.

Recommendation 12: To specify the procedures for observer registration to exclude arbitrary decisions on registration/refusal of registration, as well as to clarify the status of observers, in particular, by making it clear that the observers can observe not only the commission meetings, but also registration/receipt of the documents by designated commission members and other election-related activities carried out in the premises of the election commissions etc.

13. The introduction of the gender quota without any specific enforcement mechanisms seemed to be good intent rather than real step to ensure balanced gender representation in the elected office. Currently, the equal opportunities of men and women in politics are enshrined in three laws, namely, the Law on Equal Rights and Opportunities of Women and Men, the Law on Political Parties in Ukraine, and Local Election Law. None of these laws provide for enforceable gender quota for the national and local elections. In particular, a party's failure to include a gender quota provision in its charter as well as to enforce the respective provision in the charter if it was included into it, does not constitute the grounds for rejection in registration of the candidate list for elections. Under the Local Election Law, non-compliance with the quota requirement does not result in refusal of registration of the party list for elections either.

Recommendation 13: Regardless of the electoral systems used for the parliamentary or local elections, the election legislation should seek to ensure a better level representation of women in elected office at both the national and local levels. The legislation should also provide for enforcement of the requirements on gender equality.

14. The Local Election Law fails to provide for clear list of grounds for refusal of registration of the local council and mayoral candidates. In practice, it resulted in ambiguous interpretation and arbitrary enforcement of the respective legal provisions.

Recommendation 14: The Law should provide for a clear and exhaustive list of grounds for refusal of a candidate/list registration. Such a list should not contain broad or unclear terms that can be interpreted in a different way to reduce the risks of illegal/unjustified refusals of registration.

15. Flaws in the legal definitions of “election campaigning” and “political advertising” resulted in abuses of the right to election campaigning by parties and candidates. In particular, many contestants campaigned in prohibited time or used illegal funds (*i.e.*, funds other than those at the election fund accounts in banks) to cover their campaign expenses.
Recommendation 15: Sanctions should be more severe for campaigning during the prohibited periods, for distribution of the election campaign materials without all legally required data (such as overall circulation, information on printer etc.) Mandatory independent auditing of campaign finance reports should be introduced. Sanctions for placing/airing political advertising not identified as such (hidden political advertising) should be effective, proportionate and dissuasive.
16. Lack of any effective supervision over campaign finance resulted in illegal funding of campaigns from other than electoral funds.
Recommendation 16: Independent public supervision of campaign finance should be foreseen. That could allow, among other things, to timely identify violations of campaign finance provisions and bring those who committed them to account.
17. In most cases, the Local Election Law imposes sanctions for violations of the election campaign provisions only on parties and candidates. This results in active engagement of the persons who are not electoral subjects into election campaigning.
Recommendation 17 : Sanctions for violations of the provisions governing election campaigning should cover not only parties and candidates but all the persons directly or indirectly engaged into election campaigning, including advertising agencies, intermediaries, commissioners, vendors and other parties engaged into distribution of election campaign materials.
18. The Local Election Law fails to clearly determine the definition of a term of election document. In particular, it is unclear from the Law whether a submission of the candidates for election commissioners, application for registration of official observer, written consent to be a candidate for elections, written consent to exercise the duties of the chair, deputy chair, secretary of the election commissions, consent to be an election observer, as well as decisions of the election commission can be considered as “election document”. This loophole in the legal framework is important given that Article 158 of the Criminal Code of Ukraine provides for the criminal liability for forgery of the election documents.
Recommendation 18 : The term “election document” should be expressly determined in respective electoral legislation.
19. The Local Election Law does not require all the documents submitted for candidate registration to the respective election commissions be filed in electronic format. In practice, election commissions face difficulties while performing their duties pertaining to publication of certain documents. In particular, technical and time constraints in many cases result in failure to make public asset, income, expenses and financial obligations declarations filed by the candidates.
Recommendation 19 : The electoral legislation should provide for mandatory submission of all the documents required to register candidates in both paper and electronic formats.
20. Under the Local Election Law, the voting premises must be equipped by sufficient number of polling booths. Such booths must be provided by local authorities and self-government bodies. However, due to legal flaws such booths are produced anew for each elections, resulting in ineffective use of budget funds.

Recommendation 20 : Consideration should be given to using simple and cheap carton hurdles fixed/ set up in a way that ensures secrecy of the vote and convenience of voting.

21. According to the data of the UN High Commissioner for Refugees as of September 2015, the number of IDPs in Ukraine had reached 1.43 million persons. Many IDPs were not able to exercise their right to vote on the Election Day as the Local Election Law does not provide for changing the place of voting without changing the voters' address.

Recommendation 21 : Consideration should be given to clarifying the notion of "membership of the territorial community" as well as to listing the criteria based on which a citizen can be considered a "member of the local community". In particular, a person might be considered a member of local community if he/she pays taxes to respective local budget/ is employed in the territory of community/ has been residing in the territory of community over a certain period of time. Also, there is a need in taking measures to ensure the voting rights of the migrant workers and other citizens residing in the respective territory during long period of time. These measures, however, should be weighed against the risk of potential fraud and so-called "electoral tourism".

22. During the recent local elections, voters with disabilities had limited opportunities in exercising their right to vote in elections. In particular, most of the polling stations are not properly equipped to serve the needs of the peoples on wheelchairs, while the election documents, education and voter awareness materials remain inaccessible for visually impaired voters.

Recommendation 22 : The authorities should be urged with respect to taking measures to increase the level of participation of voters with disabilities in electoral process. In particular, the location of the polling stations inaccessible to the voters with disabilities is suggested to be changed to the places where such voters can exercise their right to vote without serious constraints. The websites of the state bodies on which key election-related information is posted should be adapted to the needs of the visually impaired voters as provided for by the Decree No 730 issued by the Cabinet of Ministers of Ukraine on September 26, 2013.