



Canada



## Statement on Outcomes of IFES' Election Dispute Resolution Week

Kyiv, Ukraine  
March 31, 2017

A country's complaints adjudication framework must be transparent, balanced and effective. Its design and application should ensure fairness, accountability, and confidence in the electoral results. While Ukraine's complaints adjudication processes have evolved since the country's independence, areas for improvement and refinement remain.

From March 13-17, 2017, the International Foundation for Electoral Systems (IFES), through the support of the United States Agency for International Development (USAID), Global Affairs Canada, and the UK government, organized a series of meetings and events in Kyiv to discuss Ukraine's election dispute resolution process and to identify actions that could be taken to strengthen the overall process. These events gathered representatives of political parties and civil society, alongside leading experts, judges and members of Ukraine's election management bodies. Chad Vickery,<sup>1</sup> Director of IFES' Center for Applied Research and Learning, and a leading authority internationally on election dispute resolution, facilitated the discussions, which culminated in an expert round table on March 16, 2017 titled "International Standards and Ukrainian Practices in Election Dispute Resolution" organized by IFES and the Venice Commission of the Council of Europe.

Key findings of the week and the round table were:

### 1. Ineffective investigation

During the last pre-term parliamentary elections in October 2014, out of a total of 291 criminal cases opened in relation to election-related offenses, only 14 resulted in court hearings, while only five individuals were sentenced to prison terms. In its election observation reports, Civil Network OPORA explained that such ineffectiveness is caused not only by the lack of effective, proportionate, and dissuasive penalties, but also by the lack of investigation skills in the police force that are to produce the

---

<sup>1</sup> Chad Vickery – Director of IFES' Center for Applied Research and Learning, author of *Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections*, co-author of *The Hierarchy of Laws: Understanding and Implementing the Legal Frameworks that Govern Elections* and many other publications.



**USAID**  
FROM THE AMERICAN PEOPLE

**Canada**



British Embassy  
Kyiv



evidence needed for adjudicative bodies to properly and effectively adjudicate electoral complaints.

## 2. Ineffective adjudication

As has been noted in election observation reports produced by domestic observers and by the Office of Democratic Institutions and Human Rights of the Organization for Security and Cooperation (OSCE/ODIHR), the treatment of complaints by the CEC and by the lower-level election commissions compromised the right to judicial appeal provided for by OSCE commitments. Observers noted that most complaints are rejected and returned to complainants without consideration due to technical reasons (lack of legally required data such as address of the complainant/respondent and other information).

A number of interlocutors stressed that a two-day deadline for election commissions to consider complaints does not support the right to procedural justice and to effective remedy, as within such a limited timeframe it is nearly impossible to collect evidence or carry out an effective investigation.

Some interviewees emphasized that the decisions delivered by lower-level commissions (DEC decisions for parliamentary elections) do not comply with current legal requirements (i.e., do not contain legally required data, such as reference to facts, evidence, explanation of the violation of the law, and/or reference to the legal provisions used to resolve the case).

In cases when election commissions identify signs of crimes or administrative offenses, they do not have the mandate to investigate violations and are legally required to forward the case to the responsible law enforcement agencies for further action. This, combined with a lack of capacity within the law enforcement agencies to properly conduct investigations of election crimes and malpractice, weakens the adjudication process.

Ukraine's election commissions are comprised of political party proxies and candidates; this, in some cases, leads to bias within the adjudication process.

While the CEC delivers cascade training on Election Day procedure, including consideration of complaints on E-day (requirements to complaints, jurisdiction over specific complaints, the grounds for rejecting complaints or leaving them without



**USAID**  
FROM THE AMERICAN PEOPLE

**Canada**



British Embassy  
Kyiv



consideration, timelines for filing complaints and their consideration) for lower-level election commissioners prior to each major election event in the country, the effectiveness of such efforts weakened by the frequent and last-minute replacements of trained commissioners with new commissioners. This at times leads to the placement of commissioners who have never received training and do not have the skills needed for effective adjudication.

### 3. **Lack of transparency**

Many lower-level commissions do not forward all their decisions on complaints received to the CEC for publication on the CEC's website. This makes it difficult to analyze how specific types of complaints (e.g., complaints against lower-level commissions or against parties) are dealt with by the respective commissions, and whether the overall dispute adjudication was conducted in compliance with the legal framework.

Ukraine's election commissions and courts do not have effective and transparent complaint management systems. This makes it difficult for complainants, commissions, defendants and others to track which court is hearing specific cases, where cases are within the different stages of the process, and if decisions have been finalized and published as required by the election law.

The following includes key IFES recommendations based on the meetings and discussions with key stakeholders:

- 1) The system of penalization for election-related offences as regulated by the Criminal Code of Ukraine and Code of Administrative Offences should be reviewed to ensure that no violation of the law goes without penalization and that penalties are proportionate, effective, and dissuasive;
- 2) Police should regularly receive training on investigation techniques in with a focus on election-related cases, well in advance of the elections;
- 3) The legal requirements for filing election-related complaints to election commissions should be reviewed to ensure that the procedures for filing complaints are not as complicated as the procedures for lodging lawsuits with courts;
- 4) Consideration should be given to amending the laws governing national and local elections to ensure that if the complainant gives the commission probable cause to believe that the complaint has merit, regardless of mistakes or omissions in the filing,



**USAID**  
FROM THE AMERICAN PEOPLE

**Canada**



British Embassy  
Kyiv



that the commission investigates and adjudicates the claim to provide the complainant with an effective remedy;

- 5) Consideration should be given to expanding the current two-day deadline for reviewing complaints to five days to ensure there is adequate time for an effective remedy, as recommended by Venice Commission and OSCE/ODIHR.
- 6) To enhance overall transparency of election dispute resolution, effective complaint/court case management systems should be created. The experience of the countries, which have an effective and a well-functioning system of complaint management, should be carefully considered as a lessons learned exercise;
- 7) To ensure that courts can effectively share their knowledge and learn from the experiences of other countries in the region, the Higher Administrative Court of Ukraine should consider joining the European Regional Network of Courts Dealing with Election Disputes.