

WHITE BOOK

Preparing and Organizing the Post- war Elections

**Kyiv
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The White Book on Preparing and Organizing Post-War Elections aims to comprehensively formulate and express the position of the three partnering organizations on the challenges caused by the war that will affect the organization and conduct of elections and ways to overcome or minimize these challenges. The experts have studied the existing and probable problems that might occur at different stages of the electoral processes of the national post-war elections and have provided proposals to eliminate these issues. The materials are based on the analysis of the electoral legislation, official documents of state authorities, statistical data, as well as information obtained by the experts through interviews with stakeholders involved in the electoral process, public discussions, regional focus groups, and discussions with MPs of Ukraine, representatives of the Central Election Commission, other state authorities, and leading experts.

It is important to emphasize that while the main purpose of the White Book is to address priority steps to prepare for post-war elections, some of the proposed topics and issues are analyzed in the broader context of the medium- and long-term goals of electoral reform. This approach ensures effective and comprehensive planning of the necessary legislative changes. The recommendations set out in the White Book cover both immediate measures for the organization of post-war elections and strategic directions of electoral reform, which should become the basis for joint efforts of all stakeholders in the medium and long term.

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LIST OF ABBREVIATIONS

Venice Commission	European Commission for Democracy through Law
Electoral Code, ECU	Electoral Code of Ukraine
IDPS	Internally displaced person
VRU	Verkhovna Rada of Ukraine
PEC	Precinct election commission
SRV, Register	State register of voters
The law	Law of Ukraine "On the Central Election Commission"
FPS	Foreign polling station
FC	Foreign constituency
USRCD	Unified State Register of Court Decisions
CAPU	Code of Administrative Procedure of Ukraine
CMU, Government, Cabinet of Ministers	Cabinet of Ministers of Ukraine
CC of Ukraine	The Criminal Code of Ukraine
CUAO	Code of Ukraine on Administrative Offenses
MFA	Ministry of Foreign Affairs of Ukraine
NACP	National Agency for the Prevention of Corruption
National Council	National Council of Ukraine on Television and Radio Broadcasting
TFMIC	Tax-free minimum income of citizens
DEC	District Election Commission
OPG	Office of the Prosecutor General
NSDCU	National Security and Defense Council of Ukraine
SSU	Security Service of Ukraine
CEC	Central Election Commission
Center	Center for Training of Election Process Participants

To summarize:

Discussion with the Verkhovna Rada Committee on January 25, 2024
Regional public discussion in Poltava on May 14, 2024
Regional public discussion in Odesa on June 06, 2024
Regional public discussion in Lviv on September 27, 2024
Roundtable "Democracy in time of war: elections through the eyes of civil society" on February 28, 2025

SUMMARY AND KEY RECOMMENDATIONS

The previous elections in Ukraine took place in 2019-2020. Under normal (peaceful) conditions, the terms of office of the President of Ukraine and MPs would have expired and these positions would have been re-elected, or, as in the case of community heads and local council members, their terms of office will come to an end and they would be due for re-election in October 2025.

The provisions of the Constitution of Ukraine, based on the principle of continuity of state power functions, provide a legal basis for the extension of the powers of the Verkhovna Rada of Ukraine and the President of Ukraine if their mandate expired during martial law. In turn, the articles of Section III "Elections. Referendum" of the Constitution of Ukraine may be restricted under martial law in accordance with Article 64 of the Basic Law. The Law of Ukraine "On the Legal Regime of Martial Law" and the Electoral Code of Ukraine prohibit holding of national and local elections and referendums during martial law, which is in line with international standards.

According to the current legislation and international standards, elections can be held only after the end of martial law, taking into account the minimum preparatory period. Experts suggested that this preparatory period should be at least six months before the start of the first post-war election process. Such a period was officially agreed upon at the Ninth Jean Monnet Dialogue between parliamentary groups and factions in November 2023 and reaffirmed during subsequent dialogues in April and November 2024. However, it is worth noting that the six-month timeframe is very conditional, as it stems from the circumstances and scale of the challenges at the moment. If the war lasts longer, it may not be enough.

The first post-war elections will face a number of challenges, covering both long-standing problems and new realities caused by Russia's full-scale war against Ukraine. Traditional shortcomings of the electoral process include non-transparent campaign financing, low level of professionalism and politicization of election commissions, abuse of administrative resources, bribery of voters, and violations of election campaign rules.

The war has triggered a number of new and unprecedented challenges. Millions of Ukrainians have been internally displaced or have fled abroad, while the destruction of electoral infrastructure in many regions makes voting difficult or impossible, especially near the front line. The number of polling stations abroad is insufficient to serve a much larger number of voters, and outdated data from the State Voter Register creates additional challenges for the organization of the electoral process. Security of voting is a serious problem both in the territories that suffered the most from the Russian war, due to constant shelling, large-scale mining and completely destroyed settlements; and throughout Ukraine, due to possible armed provocations by Russia on the day of the elections in Ukraine and arms trafficking. An additional factor is the active development of new technologies, such as artificial intelligence (AI), bot farms, cryptocurrencies, and other digital tools, which create new opportunities for

abuse by the aggressor country and corresponding challenges for election administrators in Ukraine. The scale of the development of new technologies and trends in their use at the local and regional levels largely go beyond the scope of current legislative regulation.

In addition to addressing the challenges created or exacerbated by the war, Ukraine faces the priority task of reforming its electoral legislation in line with European Union (EU) standards. Ukraine's status as an EU candidate country necessitates compliance with a number of obligations, including the protection of the rights of national minorities, the integration of people with disabilities into the electoral process, the regulation of online election campaigning, the fight against disinformation and manipulation in the media, and so on. The stability of democratic institutions - one of the Copenhagen criteria of 1993 - is based on representative democracy, which is based on free and fair elections. Without these democratic practices, Ukraine's European integration will be significantly hampered.

KEY CHALLENGES OF THE POST-WAR ELECTIONS

Legal nature and regulation

The first post-war elections in Ukraine will require additional legislative regulation, both because of the missed constitutional deadlines for their holding and the challenges caused by the war. It is necessary to determine the order of their holding, the procedure for appointing and the duration of voting. Simultaneous elections, if such a political decision is made, will require coordination of the timing of the election process and campaigning, regulation of the procedure for forming election commissions, the sequence of transportation of election documents, and ensuring transparency of the election process.

Defining possibility of holding elections in certain territories

Due to the consequences of the war, elections cannot be properly conducted in areas with destroyed infrastructure, non-functioning authorities, or security threats to electoral actors and citizens in general. The current legislation of Ukraine empowers military-civilian administrations to provide opinions to the CEC on the possibility of organizing, preparing and holding elections in certain territories. It is on the basis of these conclusions that the CEC decides whether or not to hold elections without having the authority and practical ability to verify the validity of the conclusions of the civil-military administrations. This procedure could be reviewed and improved before the first post-war elections.

Electoral system and territorial organization of elections

The proportional system with open lists envisaged by the Electoral Code of Ukraine contains elements that unreasonably limit voters' influence on the order of distribution of mandates among candidates (9 "guaranteed" mandates on the electoral list, the need to overcome 25% of the electoral quota to advance in the regional electoral list) which needs to be revised. The electoral system also does not take into account new challenges, namely migration of voters, changes in the administrative-territorial structure and ensuring the rights of voters abroad.

Voter registration

Due to the large-scale displacement of citizens, lack of complete information about citizens in the occupied territories and those who have moved abroad, the State Voter Register contains incomplete and inaccurate information. Lack of independent regular audit of the State Voter Register and low automation of the process of updating its database through interaction with other authorities, insufficient human and material and financial support of the bodies maintaining the State Voter Register may threaten the stability of the organization and conduct of post-war elections.

Nomination and registration of candidates

The requirement of permanent residence for candidates in national elections does not take into account the circumstances of citizens forced to travel abroad due to the war, which limits their participation in the electoral process and may disproportionately affect women.

Numerous cases of collaboration of citizens by the Russian occupation or military authorities require the introduction of mechanisms to prevent the influence of compromised individuals on political and electoral processes in accordance with the Constitution of Ukraine and international standards.

Traditional problems with the electoral process not related to the war include non-transparency of candidate nomination, excessively high cash deposits, inadequate legal certainty of grounds for denial of registration, and insufficient use of IT for submission of candidate registration documents.

Gender equality

Despite progressive changes in the Electoral Code of Ukraine, which introduced gender quota requirements, and in the legislation on political parties, the latter still have the ability to deregister female candidates after the approval of lists or force them to resign. Legislation does not create adequate incentives to ensure balanced representation of women in the governing bodies of political parties.

Administration of elections

While the current composition of the Central Election Commission ensures political representation of all parliamentary factions and demonstrates an understanding of the challenges associated with post-war elections, once they are completed, electoral reform should include stronger guarantees of the political neutrality of this body. This is particularly relevant, as under the current legislation there is a risk of early termination of the powers of the entire Central Election Commission or its individual members for political reasons. The institutional capacities of the Central Election Commission are limited, in particular, due to the actual absence of its territorial offices, the establishment of which has been provided for by law for several years. At the same time, the process of forming and ensuring the proper level of professionalism of members of election commissions at the district and precinct levels will face new challenges due to the massive movement of citizens both inside and outside the country, as well as limited budgetary resources.

Information support and campaigning

Russian aggression has led to the introduction of a single telethon, which creates the need for early efforts to restore a competitive information environment in Ukraine. At the same time, the country still lacks comprehensive regulation of political advertising both during elections and in the inter-election period, and legal regulation of campaigning in online media and on shared platforms remains insufficient. Political actors retain the ability to conduct covert campaigning in violation of the principle of equal opportunities, and candidate officials may abuse their status in the course of campaigning.

Financing of election campaigns

The controlling powers in the field of electoral finance are not clearly defined and divided between the National Agency for the Prevention of Corruption and the Central Election Commission, and sanctions for violations of the law remain disproportionate, inefficient and ineffective. Campaign expenditures are made long before candidates are registered, making them non-transparent and unaccountable. The administration of election funds remains outdated.

Preparation for voting, voting, vote counting, determination of election results and outcomes

A significant increase in the number of internally displaced persons in Ukraine and voters abroad requires a significant expansion and revision of the network of polling stations. Without stabilization of the security situation, the voting process for military personnel and residents of the most affected regions will remain at risk and will require additional efforts. At the same time, the number of people with disabilities has increased significantly due to Russian aggression, which requires a significant expansion of mechanisms to ensure accessibility of polling stations.

Appealing against violations and liability

The system for appealing electoral disputes and bringing to justice remains ineffective, which was true even before Russia's full-scale invasion of Ukraine. There is a need to strengthen accountability for violations of electoral law, ensure quality training of judges and law enforcement officers, and regulate mechanisms for investigating violations that occur outside the country.

PRIORITY RECOMMENDATIONS

Legal nature and regulation: Through the adoption of a one-time legislative act, the order of priority for holding the missed elections, the procedure for their appointment, and other key deadlines and procedures should be determined.

Defining possibility of holding elections in certain territories: The mechanism and criteria for adopting, reviewing and appealing a decision on the impossibility of holding elections in certain territories should be clearly defined.

Electoral system and territorial organization of elections: The openness of the proportional electoral system should be increased by abandoning the 9 guaranteed mandates on the national party list, reducing the threshold for promotion of a candidate on the regional list from 25% to 5 or 10%. It is also important to revise the administrative-territorial structure based on new realities, and create additional polling stations for internally displaced persons and Ukrainians abroad.

Voter registration: It is advisable to introduce regular independent audits of the State Voter Register, ensure it gets updated regularly and takes into account the large-scale movement of voters, automate data exchange with other state registers and strengthen the staffing and resource support of the State Voter Register.

Nomination and registration of candidates: The period of citizens' stay outside Ukraine during the martial law regime should be taken into account in the period of residence in Ukraine to avoid unjustified restrictions on their participation in the elections. It is important to ensure that voters are comprehensively informed about the facts of candidates' collaboration activities, and that the issue of lustration is regulated by law in compliance with the requirements of the Constitution of Ukraine and international standards. In addition, it is advisable to reduce the amount of the election deposit and increase the legal certainty of candidate registration procedures.

Gender equality: Financial incentives for political parties that ensure equal representation of women and men should be strengthened, and control over compliance with gender quotas should be enhanced. In particular, the criterion for receiving additional state funding, the so-called "gender bonus", should be increased from 30% to 40% of women to be elected as MPs from the party, as well as the parties should be prohibited from canceling the registration of female candidates after the approval of the lists and provide for the replacement of MPs on the national (closed) list with candidates of the same gender.

Election administration: It is important to significantly limit the possibility of recalling election commission members by parties and candidates, and to give the Central Election Commission and District Election Commissions the flexibility to determine the maximum and minimum composition of election commissions. Ensuring the sustainability of election administration and taking into account the previous experience of the Central Election Commission should be an important element of preparations for post-war elections. Instead, as

part of a comprehensive electoral reform, it is important to strengthen legislative guarantees of the independence of the Central Election Commission by, among other things, eliminating the possibility of early termination of the powers of the entire Central Election Commission or its individual members for political reasons.

Information support and campaigning: It is necessary to comprehensively regulate political advertising in traditional and online media based on EU standards, create mechanisms to counter disinformation, ensure transparency of campaign financing and its separation from information coverage of the activities of the authorities and officials. Stop broadcasting the only telethon in advance of the first election process after the war. Instead, the controlling powers of the Central Election Commission, the National Agency for the Prevention of Corruption, and the National Council on Television and Radio Broadcasting should be clearly delineated by law as early as possible.

Election financing: In order to implement an effective system of control over election finance, it is necessary to consolidate the leading role of the National Agency for the Prevention of Corruption in the implementation of such control, ensure that all types of reports are submitted electronically through the POLITDATA Registry and establish proportionate, effective and dissuasive sanctions for violations in the financing of election campaigns.

Preparation for voting, voting, counting votes, establishing the results and tabulation of the election results: At the legislative level, mechanisms should be established to ensure the effective exercise of the right to vote by military personnel, internally displaced persons, voters abroad, voters with disabilities, and to simplify the procedures for counting votes using information technology.

Appeals against violations and liability: There is a need to strengthen liability for electoral violations, ensure quality training of judges and law enforcement officers to handle electoral disputes, and establish international cooperation of law enforcement agencies in investigating violations of Ukraine's electoral legislation abroad. It is also important to unify the appeal procedures, which will help to increase the efficiency and transparency of the electoral process.

Legal nature and regulation

The first post-war elections in Ukraine will require additional legislative regulation, both because of the missed constitutional deadlines for their holding and the challenges caused by the war. It is necessary to determine the order of their holding, the procedure the purpose and duration of voting. Simultaneous elections, if such a political decision is made, will require coordinating the timing of the election process and campaigning, regulating the formation of election commissions, the sequence of transportation of election documents, and ensuring the transparency of the election process.

Defining possibility of holding elections in certain territories

Due to the consequences of the war, elections cannot be properly held in areas with destroyed infrastructure, non-functioning authorities, or security threats to electoral actors and citizens in general. The legislator should establish clear criteria for the impossibility of holding elections in certain territories, provide a mechanism for making such decisions and the possibility of

their regular review.

Electoral system and territorial organization of elections

The version of the proportional system with open lists envisaged by the Electoral Code of Ukraine contains elements that unreasonably limit voters' influence on the order of distribution of mandates among candidates (9 "guaranteed" mandates on the electoral list, the need to overcome 25% of the electoral quota to advance in the regional electoral list) and need to be revised. The electoral system also needs to be improved with consideration of migration of voters, changes in the administrative-territorial structure and ensuring the rights of voters abroad.

Voter registration

The State Voter Register needs to be updated due to inaccurate and incomplete information as a result of large-scale displacement of citizens, lack of information on citizens in the occupied territories and those who have moved abroad. The lack of independent regular audits of the State Voter Register and low automation of the process of updating its database through interaction with other authorities, insufficient staffing and financial support for the State Voter Register bodies threaten the stability of the organization and conduct of post-war elections.

Nomination and registration of candidates

The requirement of permanent residence for candidates in national elections does not take into account the circumstances of citizens forced to leave the country due to the war, which limits their participation in the electoral process and disproportionately affects women.

Numerous cases of citizens' collaboration require the introduction of mechanisms to prevent compromised individuals from influencing political and electoral processes in accordance with the Constitution of Ukraine and international standards. Traditional problems of the electoral process include non-transparent nomination of candidates, excessively high cash deposits, inadequate legal certainty of the grounds for denial of registration, and insufficient use of IT for submission of candidate registration documents.

Gender equality

Despite progressive changes to the Electoral Code and the legislation on political parties, the latter still have the ability to deregister female candidates after the approval of lists or force them to resign. Legislation does not create adequate incentives to ensure balanced representation of women in the governing bodies of political parties.

Administration of elections

While the current composition of the Central Election Commission ensures political representation of all parliamentary factions and demonstrates an understanding of the challenges associated with post-war elections, once they are completed, electoral reform should include stronger guarantees of political neutrality of this body. This is particularly relevant, as under the current legislation there is a risk of early termination of the powers of the entire Central Election Commission or its individual members for political reasons. The institutional capacities of the Central Election Commission are limited, in particular, due to the actual absence of its territorial offices, the establishment of which has been provided for by law for

several years. At the same time, the process of forming and ensuring the proper level of professionalism of members of election commissions at the district and precinct levels will face new challenges due to the massive movement of citizens both inside and outside the country, as well as limited budgetary resources.

Information support and campaigning

Russian aggression has led to the introduction of a single telethon, which creates the need for early efforts to restore a competitive information environment in Ukraine. At the same time, the country still lacks comprehensive regulation of political advertising both during elections and in the inter-election period, and legal regulation of campaigning in online media and on shared platforms remains insufficient. Political actors retain the ability to conduct covert campaigning in violation of the principle of equal opportunities, and candidate officials may abuse their status during campaigning.

Financing of election campaigns

Oversight powers in the area of electoral finance are not clearly defined and divided between the National Agency for the Prevention of Corruption and the Central Election Commission, and sanctions for violations of the law remain disproportionate, inefficient and ineffective. Campaign expenditures are made long before candidates are registered, making them non-transparent and unaccountable. The administration of election funds remains outdated.

Preparation for voting, voting, vote counting, determination of election results and outcomes

A significant increase in the number of internally displaced persons in Ukraine and voters abroad requires a significant expansion and revision of the network of polling stations. Without stabilization of the security situation, the voting process for military personnel and residents of the most affected regions will remain at risk and will require additional efforts. At the same time, the number of people with disabilities has increased significantly due to Russian aggression, which requires a significant expansion of mechanisms to ensure accessibility of polling stations.

Appealing against violations and liability

The system for appealing electoral disputes and bringing to justice remains ineffective, which was true even before Russia's full-scale invasion of Ukraine. There is a need to strengthen accountability for violations of electoral law, ensure quality training of judges and law enforcement officers, and regulate mechanisms for investigating violations that occur outside the country.

Other recommendations can be found in the thematic sections of the White Book.

Section 1

ESTABLISHING THE IMPOSSIBILITY OF HOLDING ELECTIONS AND REFERENDUMS IN CERTAIN TERRITORIES

Introduction

The term of office of the President of Ukraine and the Verkhovna Rada of Ukraine (hereinafter referred to as the VRU) has already expired, but these institutions continue to function in a constitutional manner, as regular presidential and parliamentary elections were not held due to the legal regime of martial law. It is likely that the term of office of local governments will also expire during a full-scale war. These circumstances will undoubtedly necessitate the holding of national and local elections.

These elections should be held in accordance with international standards of general, equal, fair and free elections - only under these conditions can public acceptance and trust in the electoral process be guaranteed and, accordingly, the formation of legitimate state and local governments be ensured. However, it is unlikely that it will be possible to hold elections that meet democratic standards throughout Ukraine even a few months after the end of martial law. This is due to a number of factors.

First, a significant part of Ukraine's territory (the Autonomous Republic of Crimea, the city of Sevastopol, and certain districts of Donetsk and Luhansk regions) has been under Russian occupation since 2014. Constitutional authorities, Ukrainian parties and media have not been functioning in these territories for a long time; some citizens have lost their Ukrainian citizenship and acquired the citizenship of the aggressor state; some residents of these territories are actively involved in collaborationist activities; and voter information in these territories has long since become obsolete. Thus, holding elections in these territories will require serious preparatory work, which is unlikely to be completed even a year after the end of the war. Preparations for the elections in the territories that were de-occupied in 2022-2024 or that were not occupied but are located near the border with the aggressor state or in the frontline areas will be also difficult. Some of them have neither infrastructure nor voters, and in the future may be deregistered altogether. Others face serious security threats, damaged infrastructure, and other challenges. The organization of any post-war elections in these areas will only be possible after the risks have been addressed allowing for the organization and conduct of elections in accordance with democratic standards.

To summarize, the organization of voting in the post-war elections will not be possible throughout Ukraine - in some areas, elections will have to be postpone for the period of time necessary to eliminate the circumstances that make it impossible to hold them. However, such a postponement requires the creation of an appropriate legislative framework that will define the list of grounds for establishing the fact(s) that make it impossible to organize voting and/or hold elections, the procedure for documenting them, the procedure for initiating and adopting

decisions on non-conduct of elections, the procedure for periodic review of such decisions and, possibly, the definition of a separate type of post-war elections for all types of elections in Ukraine.

This Section is devoted to the study of the issues related to the future postponement of elections in certain territories. Since there are a number of differences of opinion among experts and politicians regarding the procedure for determining the impossibility of holding elections, this section also analyzes the advantages and disadvantages of different options for making decisions on the impossibility of holding elections.

Key challenges

This is not the first time that Ukraine deals with the issue of postponing elections due to impossibility of organizing and holding elections as scheduled.

On August 8, 2020, the Central Election Commission (CEC), based on the conclusions of the Donetsk and Luhansk regional military-civilian administrations, determined that elections could not be held in 10 territorial communities in Donetsk and 8 communities in Luhansk regions. This decision was criticized by election experts and civil society organizations, as the CEC did not have the authority and real opportunities to verify the completeness and accuracy of the conclusions of the respective civil-military administrations or to disagree with such conclusions. On May 11, 2021, the Sixth Administrative Court of Appeal disagreed with the CEC's decision to hold elections in 18 communities, declared it unlawful and canceled the relevant CEC resolution.

This paved the way for discussions on the legislative regulation of issues related to the impossibility of holding elections. In 2021, Ukrainian MPs prepared a draft law "On Improving the Procedure for Determining the Impossibility of Holding National and Local Elections, All-Ukrainian and Local Referendums in Certain Territories and Polling Stations," which was sent to the Venice Commission for its opinion. The opinion of the European Commission for Democracy through Law (hereinafter referred to as the Venice Commission) on this draft law was approved on December 10-11, 2021¹.

In its conclusion, the Venice Commission emphasized the following:

- any restrictions on the right to vote should be temporary and proportional, while the state should explore the possibility of using alternative means to exercise of the right to vote by citizens in those territories where voting is not held;

¹Joint Opinion of the Venice Commission and OSCE/ODIHR [CDL-AD\(2021\)045](#)

- Vesting the National Security and Defense Council (hereinafter referred to as the NSDC) with the power to determine the impossibility of holding elections may contradict the mandate of both the NSDC and the President of Ukraine, who heads it and whose decrees enact the NSDC decisions;
- it is necessary to provide for adequate involvement of the CEC in the process of determining the impossibility of holding elections, even if the relevant decision is made by other bodies, as well as the involvement of experts in this process and public consultations;
- the criteria for determining the impossibility of holding elections should be established by law, not by law enforcement agencies (e.g., the NSDC);
- the criteria for determining the impossibility of holding elections should be determined by the parliament in consultation with the CEC, civil society organizations and the NSDC;
- The law should clearly define who should initiate the issue of the impossibility of holding elections and within what timeframe;
- Decisions to restrict voting rights must be carefully reasoned, set out in writing and made public in a timely manner;
- The list of entities authorized to assess the security situation in the respective territories should not be exhaustive;
- An effective system of appealing decisions on these issues should be provided.

After the start of Russia's large-scale invasion of Ukraine in February 2022 and the beginning of discussions on the prospects for post-war elections, the CEC and MPs developed two legislative initiatives on the procedure for establishing the impossibility of holding elections and referendums. The CEC's proposals were approved by its Resolution of September 27, 2022², while the MPs' proposals were presented during a public discussion in the fall of 2023.

Below, we discuss the main challenges associated with the impossibility of holding elections and referendums, assess the advantages and disadvantages of the presented concepts of postponing elections, and offer recommendations for legislative improvement of the procedure for establishing the impossibility of holding elections and referendums.

Defining criteria for assessing the impossibility of holding elections/referendums

The relevance of security and other risks that may affect the electoral process varies across Ukraine: some territories are under occupation, some of them border the aggressor state, some are subject to periodic shelling, while certain territories, particularly in the west of the state, are relatively safe.

²Resolution of the CEC of September 27, 2022 [№ 102](#) "On Proposals for Improving the Legislation of Ukraine Aimed at Ensuring the Preparation and Conduct of Elections after the Termination or Lifting of Martial Law in Ukraine"

Accordingly, the possibility of canceling elections in any territory of the state, for example, in the Zakarpattia region, which is perhaps the most secure, could create fertile ground for restricting the electoral rights of citizens or canceling elections under the influence of political factors, for example, due to a decline in the ratings of pro-government parties or an increase in the level of electoral support for opposition parties. That is why it is necessary to define at the legislative level the territories for which the possibility of holding elections is not assessed in principle.

Both the CEC's proposals and the MPs' draft law attempt to define the territories where the possibility of holding elections may be questioned in principle. According to the CEC's proposals, these are:

- territories adjacent to the contact line;
- territories, adjacent to occupied territories (i.e. have joint administrative border);
- territories directly affected by the armed forces of Russia;
- territories adjacent to the state border with Russia or Belarus.

The MPs' draft law formulates the criteria for determining these territories even more clearly: they must meet at least one of the following criteria:

- must be de-occupied, have been subject to hostilities or have been negatively affected by Russian armed groups;
- located in the region where the state border with Russia or Belarus passes through;
- over the past 6 months, there has been shelling in these areas, resulting in the deaths/injuries of civilians;
- a restricted access regime has been introduced in these areas, in particular due to the mine danger.

At the same time, both proposals do not define clearly how the boundaries of the respective territories will be determined. For example, if civilians were killed in the shelling of Lviv, should the assessment apply to the entire region or just the city of Lviv? If a restricted access regime is imposed due to mine danger, does it apply only to areas with high mine risk or to the entire district/region/several regions? Since local elections may be limited to, for example, a small territorial community, the answer to this question is of fundamental importance. Especially since the geography of shelling of Ukrainian territory is constantly changing, with different intensities in different regions (for example, in Kharkiv and Odesa regions, the intensity is higher and not limited to certain territorial communities, while in Chernivtsi and in the Zakarpattia region, the shelling is sporadic and targets specific objects).

In addition to the territories to be assessed for security risks, the issue of criteria for establishing such an assessment is also important. The CEC's proposals define an indicative "set" of the following criteria: intensity of shelling, possibility of unimpeded activities of the authorities, political parties, and media, state of functioning of the State Voter Register (hereinafter referred to as the SVR), possibility of informing voters, ensuring the security of election documents, organizing voting in principle, etc. The MPs' draft law contains almost

identical criteria. **However, both legislative initiatives do not define an exhaustive list of criteria for evaluation, which contradicts the recommendations of the Venice Commission.**

Thus, the Electoral Code/separate special law should regulate the organization and conduct of post-war elections:

- **Criteria for determining the boundaries of the territories to be assessed for the impossibility of holding elections. The relevant criteria should depend on the type of election. For example, in the case of elections to the regional council, security risks should be assessed for the entire territory of the region, while for elections in a separate territorial community, the assessment should be limited to the administrative-territorial boundaries of such a community, and not to the fact that it is part of a region bordering Russia or Belarus;**
- **the list of criteria for assessing security and other risks should be exhaustive and cannot be expanded at the discretion of the decision-maker to determine the impossibility of holding elections/referendums.**

Ensuring the realization of citizens' voting rights in case of impossibility of holding elections/referendums

While recognizing the admissibility of postponing elections, the Venice Commission emphasized that in such a case, the state should consider alternative ways to ensure the voting rights of citizens registered within the territories where elections will not be held.

The CEC's proposals do not provide for any special mechanisms to ensure exercising the voting rights of citizens whose voting addresses are located in the territories for which it was decided that elections/referendums cannot be held. Obviously, they will exercise their voting rights on the basis of the general provisions of the TCU and the Law of Ukraine "On the State Register of Voters", which determine the procedure for changing the place of voting without changing the electoral address. However, according to the current legislation, change of voting place without change of the electoral address

is provided only for national elections and all-Ukrainian referendum. Accordingly, in local elections/local referendums, a voter will not be able to use this mechanism and will in fact be deprived of the right to vote in the relevant elections/local referendum. Although this approach is fully consistent with Article 141 of the Constitution of Ukraine, according to which the presence or absence of active suffrage is linked to a person's affiliation with a particular territorial community (the right to vote in local elections belongs to a resident of the relevant territorial community), this approach does not comply with the recommendations of the Venice Commission, which suggested identifying alternative ways for citizens to exercise their voting rights in the event of the cancellation/postponement of elections.

Instead, the draft law by MPs stipulates that citizens will be able to change their voting location in both national and local elections and referendums. This approach is in line with the recommendations of the Venice Commission, but contradicts Article 141 of the Constitution and will raise other new problems. If elections are held under the proportional representation system, the change of voter's voting place does not have a significant impact on the election results, as at the new voting place the voter will still vote primarily for the party list and secondarily for the candidate included in it (if the possibility of voting for the candidate is provided for voters who have changed their voting place at all). However, if the change of voting place without changing the voting address is allowed in elections under the majority system (namely, it is used to elect heads of communities and deputies of local councils with the number of voters up to 10,000 thousand), mass inclusion of voters in the voter lists in territories where their voting addresses are not included may significantly affect the voting results and stimulate the so-called "electoral tourism".

Amendments to the Electoral Code/special law that will define the procedure for post-war elections, as well as the Law of Ukraine "On the State Voter Register" should be made:

- **the possibility of exercising the voting rights of citizens in elections if elections are not held in the territory to which their electoral addresses are assigned due to determination of the impossibility of holding elections;**
- **Possible ways to exercise their voting rights may be either to change the place of voting without changing the electoral address in the national elections or to open additional polling stations in the adjacent territories to vote for candidates/lists nominated within the territories where elections are not held;**
- **opening of additional polling stations is permissible only in the case of elections based on the majority system of relative majority in multi-mandate constituencies. In all other cases, the opening of such polling stations will create logistical chaos and complicate both voting and vote counting and the establishment of election results;**
- **in the case of local elections based on the proportional representation system (although the use of such a system in the election of deputies to regional and district councils cannot guarantee the representation of common interests**

territorial communities in the respective oblast/district council, and therefore is questionable in terms of compliance with Article 140 of the Constitution of Ukraine), the number of ballots that a voter will receive in connection with a change of voting place without changing the voting address should be determined by which single multi-mandate constituency the polling station to which the voter changed his/her voting place is included. If the voting place was changed within the district, but to another community, the voter should be able to vote in the elections to the district and regional councils, but not in the elections in the "new" community. If the voting place was changed to another oblast, the voter's vote should be excluded altogether. If the change of voting place has taken place within the same community, the voter should be able to vote for the head of the community, as well as for the deputies of the relevant local council (if they are elected by the proportional system), as well as for the relevant higher-level councils - regional and/or district;

- **in elections held under the majority electoral system, the voter should be given the opportunity to change the place of voting only within the respective district (single-member or single-member multi-member district) - otherwise, he/she should not vote, which will be in line with both the concept of district representation in the local council and the need to prevent "electoral tourism";**
- **The CEC should bring its own procedure for changing the voter's voting place without changing his/her voting address³ in line with the amendments to the relevant legislative acts.**

Settlement procedures establishing impossibility to hold elections/referendums

The key drawback of the procedure for establishing the impossibility of holding elections, which was applied before the large-scale invasion, was that the body that established the impossibility of holding elections/referendums was unable to verify the information provided in the conclusions of the bodies that initiated or confirmed the impossibility of holding elections/referendums. Another drawback is the uncertainty of the initiation procedure and the timeframe for making relevant decisions.

The CEC's proposals and the MPs' draft law provide for fundamentally different concepts of the procedure for establishing the impossibility of holding elections and different subjects of such establishment.

⁽³⁾ CEC Resolution of December 02, 2019 [№ 1969](#) "On the Procedure for Temporary Change of Voter's Voting Place without Changing His/her Voting Address"

The main differences between the two concepts are summarized in **Table 1** below.

Table 1: Procedure for initiating and adopting decisions on the impossibility of holding elections/referendums: similarities and differences in the CEC and parliamentary initiatives

Criteria.	Proposals of the CEC	Draft law by MPs of Ukraine
Subject of the initiative	own initiative, initiative of state/self-government bodies, military administrations, the CEC (competing powers)	1) interested state/local authorities self-government bodies apply to the CEC with a petition to initiate the issue; 2) the CEC, on its own initiative or at the initiative of the relevant bodies, applies to the VRU with a motivated petition
Requirements for registration of the initiative	not provided	the CEC's request must be motivated
Requirements for initiation	not defined	not defined
Review process	NSDC sends requests to authorized bodies; bodies provide NSDC with information on requests within 3 days	in accordance with the Rules of Procedure of the Verkhovna Rada; a Temporary Investigation Commission is established to consider the issue
Participation of the CEC in the consideration of the issue	provided for	provided (at the VRU meeting)
Decision-maker	NSDC and the President of Ukraine (approves the decision)	VERKHOVNA RADA
Validity of the decision	until the circumstances are eliminated, but not more than 6 months	until the circumstances are eliminated, but not more than 6 months

The CEC's proposals envisage assigning the right to initiate the impossibility of holding elections/referendums to a number of entities, one of which is the CEC. Since the terms and procedure for such initiation are not defined, there is a high probability that none of these entities will exercise this right, and the CEC will still initiate the consideration of the issue by the NSDC. On the other hand, if the CEC does not have information about the security situation in the respective territories, its submission/request to establish the impossibility of holding elections will be unfounded.

Also, both legislative proposals stipulate that if it is determined that elections/referendums cannot be held, the relevant decision is valid until the circumstances that led to its adoption are eliminated, but not more than 6 months. It would be worthwhile to stipulate that the bodies that issued conclusions on the impossibility of holding elections/referendums in the respective territory are obliged to monitor the existence of relevant circumstances and proactively inform the CEC and the subject of the decision on the impossibility of holding elections/referendums about their elimination or non-elimination within a certain period of time specified by law before the expiration of the 6-month validity period of the decision.

The positive aspect of both legislative initiatives is that they require the CEC to be involved in the consideration of the issue of the impossibility of holding elections by an authorized entity (respectively, the NSDC or the VRU).

The question of who should make the decision to declare an election ineligible is a key one. Each of the proposed models has its own advantages and risks, which are discussed in more detail in **Table 2** below.

Table. 2. *Advantages of the and risks, caused by Securing the right to establish the impossibility of holding elections/referendums for the NSDC, the VRU or the CMU*

Decision-maker	Advantages.	Disadvantages/risks
Establishing the impossibility of holding elections to the NSDC	<ul style="list-style-type: none"> ● The NSDC is not formed on the principle of political representation, and therefore parties do not influence the activities of the body; ● Representatives of the security and defense agencies are included in the NSDC, which allows the NSDC to receive information on the presence/absence of grounds for canceling the elections more quickly; ● The decision is enacted by a presidential decree and is binding; ● The CEC is relieved of responsibility for establishing the impossibility of holding elections, but 	<ul style="list-style-type: none"> ● Decisions to restrict voting rights do not fall within the constitutional powers of the NSDC and the President of Ukraine; ● Due to its specific nature (security/defense), the NSDC's activities are not transparent enough; ● The NSDC does not specialize in election issues, and therefore the decision made may not always be reasoned; ● The NSDC is composed of representatives of the executive branch, so its decisions can still be politicized;

	<p>The CEC is involved in the consideration of the NSDC issue;</p> <ul style="list-style-type: none"> • The effectiveness of consideration of the issue (the probability of passing a decision) is higher than in the parliament. 	<ul style="list-style-type: none"> • The procedure for challenging a presidential decree enacting the NSDC decision is complicated and is limited to challenging its constitutionality; • Since the list of criteria for the impossibility of holding elections is not exhaustive, the NSDC will have a wide degree of discretion in making its decision.
<p>Establishing the impossibility of holding elections to the VRU (with the participation of one of the committees or a temporary special/investigative commission)</p>	<ul style="list-style-type: none"> • The CEC is no longer responsible for making the decision; • The possibilities of challenging the legality of the VRU resolution are wider than those of NSDC decisions/ presidential decrees; • It ensures that political compromise is sought and factors are assessed taking into account the positions of various political actors, not just the executive branch; • The level of awareness of the parliament about the specifics of elections is higher than that of the NSDC. 	<ul style="list-style-type: none"> • There is a risk that the relevant provisions will be recognized as unconstitutional, as the exhaustive list of powers of the VRU is set forth in Article 85 of the Constitution of Ukraine; • There is a risk that the executive branch will ignore parliamentary requests for information on the existence of grounds for canceling elections; • Consideration of the impossibility of holding elections may create a conflict of interest for the parliament, especially if it is determined that it is impossible to organize voting in certain constituencies in the parliamentary elections; • The Verkhovna Rada is not a flexible body - the timeframe for making a decision may be long or the decision may not be made at all; • If the parliament fails to adopt a decision, a legal

		<p>uncertainty (elections are not scheduled, but not canceled);</p> <ul style="list-style-type: none"> ● There is a risk of politicization of decisions, including ignoring the position of the security/defense authorities or making decisions in the interests of the parliamentary majority. ● If a parliamentary decision is appealed and overturned by a court, the parliament may ignore the court's decision.
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In addition to the models of decision-making on the impossibility of holding elections discussed in **Table 2**, representatives of civil society and some experts also proposed another variant of the procedure: its essence is as follows:

- the CEC initiates the issue of establishing the existence of grounds for deciding that elections or referendums cannot be held;
- For this purpose, the CEC sends a request to the NSDC to provide an opinion on the presence/absence of each of the grounds provided for by law for establishing the impossibility of holding elections/referendums within the period specified by law before the start of the post-war election process;
- based on the received request, the NSDCU requests the necessary information from its administrators (security, defense, military administrations, etc.), who are obliged to provide the information within the timeframe determined by the NSDCU (taking into account the timeframes provided for by law);
- based on the results of the information analysis, the NSDCU Secretariat prepares a conclusion that does not contain legal provisions, is informational in nature, and assesses the compliance of each of the specified y the request of the The CEC of the territory/administrative-territorial unit for the presence or absence of each of the grounds for establishing the impossibility of holding elections/referendums specified by law;
- The CEC considers the received conclusion (annexed to which are letters/conclusions of the authorities provided at the request of the NSDC) and makes a reasoned decision on the impossibility of holding elections within the respective constituencies/administrative-territorial units;
- the CEC's decision may be appealed in accordance with the Code of Administrative Procedure.

This model has several advantages compared to 3 existing model, used in 2020 and the models described in **Table 2**:

- unlike the model used to cancel elections in 18 territorial communities in 2020, it allows the CEC to obtain comprehensive and documented information on each ground for establishing the impossibility of holding elections;
- information of security/defense agencies and other state bodies is subject to additional verification by the NSDCU, and is not used by the CEC without any verification;
- For security/defense and executive bodies, the NSDC's request has a greater "weight" compared to requests from bodies that are not part of the executive branch and to which they are not accountable (for example, compared to requests from parliamentary committees or the CEC);
- The CEC, in full compliance with the recommendations of the Venice Commission, retains a leading role in organizing the electoral process;
- The CEC, unlike the NSDC, specializes in elections and can conduct a comprehensive assessment of security and other risks related to the electoral process;
- Unlike the NSDC and the VRU, the CEC is an independent state body;
- Unlike the model in which the decision to cancel elections is made by the parliament, this model provides operational flexibility and compliance with the law in terms of decision-making deadlines;
- For the CEC, the issue of canceling elections does not create a conflict of interest, unlike for the parliament;
- the possibility of effectively appealing the CEC's decision on the impossibility of holding elections (as opposed to presidential decrees or parliamentary resolutions) is ensured;
- the enforcement of a court decision is guaranteed in case the relevant decision of the CEC is canceled (as opposed to the enforcement of similar decisions by the Parliament or the NSDC).

The main risks of this model are as follows:

- bodies that have received a request from the NSDC may not have the requested information or may not provide it in full for objective reasons (e.g., with respect to all the criteria provided for by law);
- each body that receives a request from the NSDC may not have all the information about each security or other risk within the territory defined by the NSDC's request, which will lead to gaps in the NSDC's conclusion in general;
- The CEC is solely responsible for the objectivity/systematic assessment of the information provided in the NSDC conclusion, which may allow for a certain breadth of interpretation or interpretation;
- Ignoring the information (or part of it) provided by the NSDC may lead to political pressure on the CEC from both the head of state and the parliament;

- the CEC's cancellation of elections only because the NSDC's conclusion confirms the existence of one or two grounds for establishing the impossibility of holding them may lead to violations of citizens' voting rights and/or political accusations against the CEC, similar to those voiced in 2020 in the context of the cancellation of elections in 18 territorial communities.

During the public discussion of this document on January 25, 2024, some participants in the discussion also proposed another option for the VRU to make a decision on the impossibility of holding elections and referendums at the initiative of the CMU. The main advantages and disadvantages of vesting this power in the VRU are discussed in **Table 2**. Involvement of the CMU in this process, which will initiate consideration of the relevant issue by the VRU, has the following key drawbacks:

- The Cabinet of Ministers is a collegial body formed by the parliamentary majority and accountable to the parliament. Accordingly, any governmental initiatives regarding elections will be significantly influenced by political factors, including the need to take into account the interests of the parliamentary majority when making decisions on these issues;
- Like the NSDC, the Government does not specialize in electoral issues. Accordingly, even a preliminary analysis of the presence or absence of grounds for postponing elections/referendums is unlikely to be qualified/professional;
- In such a model, the role of the CEC remains unclear. If the government initiates the postponement of elections/referendums without any involvement of the CEC or ignoring its position, this will contradict the recommendations of the Venice Commission. If the government fully takes into account the CEC's position, then the question arises as to whether it is advisable to assign the right to initiate the postponement of elections/referendums to the CMU, since this function could be performed by the CEC directly;
- The CMU has limited influence on the activities of the "power" central executive bodies and military administrations. In any case, this influence will be less than the influence on their activities by the President of Ukraine, who coordinates their work, and the NSDC;
- the procedure for consideration of issues and decision-making by the Cabinet of Ministers is too bureaucratic and is unlikely to ensure fast and high-quality processing of initiatives related to the impossibility of holding elections.

Thus, giving the CMU the right to initiate parliamentary consideration of issues related to the establishment of the fact that elections/referendums cannot be held is unlikely to have fewer disadvantages than involving the NSDC, which is at least capable of controlling the activities of "security" agencies and military administrations.

If the legislator does decide to reserve the right to establish the impossibility of holding elections/referendums to the NSDC or the VRU, the Electoral Code/special law on post-war elections should provide for the following:

- the issue of initiating the impossibility of holding elections should be raised by national security/defense authorities, military, civil-military administrations, etc. (the list should not be exhaustive) before the CEC in the form of conclusions on security and other criteria that may be the basis for establishing the impossibility of holding elections;
- the conclusions of the relevant authorities must be duly motivated and submitted to the CEC within a certain period of time;
- if there are relevant conclusions and based on the results of their preliminary review, the CEC is obliged to address the subject of the decision on the impossibility of holding elections/referendum with a reasoned submission to establish the relevant fact, indicating the list of polling stations/administrative-territorial units that are under the influence of factors that may make it impossible to hold elections;
- The CEC should have the right to appeal against the inaction of the relevant authorities in case of failure to submit conclusions within the established time limit;
- consideration of the issue of establishing the impossibility of holding elections should be carried out within a clearly defined period of time, provide for the involvement of the CEC in the process to express its position, and be carried out in the format of public consultations (taking into account potential restrictions on access to information) with the involvement of experts and other stakeholders to express their positions;
- the authorized authorities (military administrations, etc.) should be obliged to submit the necessary information and explanations to the decision-maker regarding the impossibility of holding elections within the timeframe specified by law;
- the decision on the impossibility of holding elections should provide for either determining the list of polling stations where it is impossible to organize voting or establishing the impossibility of holding elections in general;
- if voting cannot be organized at a certain number of polling stations, the fact of impossibility of holding elections should be established either by a set of circumstances for all electoral districts for the relevant elections that make it impossible to elect the authorized composition of the local council, or due to the impossibility of changing the voting place by voters, which excludes the participation of most of them in the voting;
- in case of a decision on the impossibility of holding elections/referendums, the relevant authorities should ensure monitoring of the circumstances that led to its adoption and notify the CEC and the decision-maker of their elimination/non-elimination before the expiration of the 6-month period after the decision expires.

***Definitions procedures appealing of decisions regarding
determining the impossibility of holding
elections/referendums***

The CEC's proposals and the MPs' draft law provide for the possibility of challenging the legality of decisions to establish the impossibility of holding elections through administrative proceedings. According to the CEC's proposals, voters whose electoral addresses are located in the territories where the elections were canceled, or subjects of the election or referendum process (except for election commissions) have the right to appeal. In the first instance, the relevant disputes will be resolved by the Supreme Court, and in the appellate instance - by the Grand Chamber of the Supreme Court. The deadline for filing a lawsuit will be 5 days after the Presidential Decree enters into force, the deadline for its consideration will be 2 days after the lawsuit is received, the deadline for appeal will be 2 days after the decision of the first instance court is announced, and the deadline for appeal will be 2 days after the deadline for appeal expires. The identical provisions are enshrined in the MP's draft law.

Although both proposals reserve the right to appeal to electoral subjects, disputes related to appeals against decisions to declare elections impossible are not classified as electoral disputes. In addition, it does not take into account that at the time of the decision to establish the impossibility of holding elections, the electoral process subjects may not exist - they will exist only if the electoral process has been started but not terminated. If the election process has not started, it would be advisable to reserve the right to appeal also for registered party organizations that would have the right to nominate candidates in the relevant elections if they are held.

Amendments to the Code of Administrative Procedure of Ukraine (hereinafter referred to as the CAPU) should:

- **to provide for the classification of disputes related to appeals against decisions on the impossibility of holding elections/referendums as electoral disputes within the meaning of the CAPU;**
- **Provide for the possibility of filing an administrative lawsuit - if the election process of the relevant election has not been started - by local organizations of parties entitled to nominate candidates in elections, the impossibility of which has been established;**
- **to exclude the use of interim measures if it is established that elections/referendums cannot be held.**

Recommendations.

Content of the recommendation	Responsible actors	Deadlines for implementation
Legislative regulation of the procedure for establishing the impossibility of holding elections/referendums and the procedure for appealing against relevant decisions	VERKHOVNA RADA	Until the end of martial law
Training by the military, military-civilian administrations and other bodies to issue conclusions on the existence of grounds for making decisions on the impossibility of holding elections/referendums	Relevant authorities designated by law	No later than 5 months after the end of martial law
Submission by the CEC of a reasoned submission to establish the impossibility of holding elections/referendums based on the findings	CEC	No later than 6 months after the end of martial law/liquidation of martial law
Consideration of the CEC's submission and decision on the impossibility of holding elections/referendum	An entity authorized by law	Within the time limit specified by law

Section 2

ELECTORAL SYSTEM AND TERRITORIAL ORGANIZATION ELECTIONS

Proportional electoral system with open lists

Introduction

According to the Electoral Code, the elections of people's deputies of Ukraine and most local elections (elections of deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, regional, district, city district and city councils (in territorial communities with 10,000 or more voters) are held under the proportional electoral system with voting for open lists nominated by parties (in parliamentary elections) or relevant local party organizations. Although the proportional system with open lists is used in parliamentary elections in many European countries (Albania, Austria, Belgium, Bosnia and Herzegovina (partially), Cyprus, Czech Republic, Denmark, Estonia, Finland, Greece, Latvia, Poland, Slovakia, Slovenia, Sweden, Finland, and the Czech Republic), and both civil society representatives and leaders of the main parties have insisted on its introduction, and the leaders of the main parties represented in the Parliament, the Ukrainian version of the proportional electoral system with open lists has a number of peculiarities, some of which are not typical for proportional systems of European countries or do not comply with the Constitution of Ukraine or cause a significant level of closure of the proportional system despite its declared openness:

- securing guaranteed seats for the first candidates on the national list for the election of people's deputies (9 candidates) and candidates on the respective unified lists for the election of local councilors (1 candidate);
- establishing a high quota for the promotion of candidates on regional/territorial lists in the respective elections (25% of the electoral quota);
- the inability of independent candidates to run for office in both parliamentary and local elections;
- holding elections to regional and district councils under a proportional representation system with such features of representation that contradict the constitutional nature of district and regional councils as representatives of the common interests of territorial communities;
- applying a proportional system with open lists in elections to those local councils that do not form local policy but rather address local issues (communities with 10,000 or more voters);
- division of the general/national multi-mandate constituency into territorial constituencies without reference to the number of voters in such constituencies

districts (among all European countries where elections are held under the proportional representation system, this approach to district representation is used only in the Czech Republic and, until recently, in Slovakia).

After the introduction of martial law in Ukraine, some politicians supported the idea of returning to a proportional electoral system with voting for closed party lists, as they considered it simpler in terms of administration and clarity for voters (as it had been used in all parliamentary elections since 1998). However, according to the results of the Ninth "Representatives of all factions and parliamentary groups in the Verkhovna Rada of Ukraine signed joint Conclusions in which they agreed on the need to preserve the electoral systems for national and local elections that will ensure the competitiveness of candidates within the same party list, in other words, the need to preserve proportional electoral systems with open lists. However, these Conclusions are not legally binding and rather record the political commitments of their signatories, and therefore do not guarantee the immutability of the signatories' positions in the future.

The inexpediency of returning even to a one-time use of the proportional electoral system with closed lists in elections is due to several challenges that give rise to the decision to return to this system:

- After the post-war elections were held under the proportional system with closed lists, there is a high probability that all subsequent parliamentary and/or local elections will be held under this system;
- Although the proportional system with closed lists has a number of advantages (in particular, in terms of simplicity of administration, voting procedures, vote counting, reducing the impact of unfair practices on election results, etc.), it also has a number of undeniable disadvantages identified in the previous stages of its application: this system does not promote internal party democracy, renewal of political elites, ensuring communication between elected deputies and voters, etc.

That is why this section assumes that a return to the proportional system with closed lists is inappropriate in the Ukrainian political reality, and therefore it is necessary to talk primarily about modifying proportional electoral systems in parliamentary and local elections to increase their openness, ensure their constitutionality (compliance with the principles of electoral law) and bring them in line with international standards. These challenges are the focus of this section.

Key challenges

Level of application of the proportional representation system with open lists

The analysis of the experience of using proportional electoral systems in parliamentary and local elections in European countries suggests that in the case of parliamentary elections under the proportional system with open lists, the identical electoral system is used in local elections - up to the level of administrative-territorial structure at which elections under this system are "technically" possible - that is, if it is possible to ensure the holding of elections under the proportional system in relatively large (5-6 mandates) constituencies. The smaller the size of the electoral district, the more the results of the proportional system become similar to the results of the majoritarian system of relative or absolute majority. Accordingly, in small communities, elections are usually held on the basis of the majority system.

As noted above (see Introduction), Ukraine's proportional representation system with open lists is applied at the level of urban communities with 10,000 or more voters. At least three questions arise in this context:

- How does a city community with 10,000 voters differ from a village or settlement community (in terms of the scope of powers and the nature of the functions of local self-government bodies)?
- Does the local council formed under the proportional system perform political functions, i.e., does it develop special local policies that local party organizations may be interested in formulating and implementing?
- Are there any special differences between the functions of local councils with 8,000, 10,000 and 20,000 voters, since in the latter two cases elections to such councils are held under the proportional system, and in the former case - under the majoritarian system of relative majority with voting in multi-member districts (the so-called "single non-transferable vote system")?

These questions are rhetorical, which casts doubt on the feasibility of introducing a proportional system at the level of urban communities and in communities with at least 10,000 voters. This inexpediency is also evidenced by the experience of the 2020 local elections. Small communities usually have small districts (where it is difficult for candidates to obtain 25% of the electoral quota to advance in the territorial party list), the respective local councils have a small number of members, and the combination of these factors, together with the participation of a significant number of party organizations in the elections, leads to the fact that the composition of local councils in small communities is formed in many cases by a common list, that is, in fact, by a proportional system with closed lists.

The level of application of the proportional electoral system with closed lists should be "raised" to communities with at least 50,000-75,000 voters. Ideally, this

the system should be applied to the election of community councils that formulate and implement local policy, and communities themselves should have more powers than small communities. The division of powers between different categories of communities, depending on the number of voters registered within their boundaries or other criteria, should be preceded by appropriate amendments to the Law on Local Self-Government in Ukraine.

Application of the proportional electoral system in elections to district and regional councils

According to the Constitution of Ukraine, rayon and oblast councils represent the common interests of their respective territorial communities. Representation of common interests requires ensuring approximately equal representation of communities in rayon and oblast councils. However, the proportional electoral system as envisaged by the CCU is not able to ensure such equal representation in principle: the latter depends on a number of factors, such as the number of parties that passed the electoral threshold, the number of voters who took part in the voting, etc. The experience of the last regular local elections in 2020 showed that in some territorial districts, no deputies were elected to district and regional councils on territorial lists. Accordingly, a regional or district council that does not represent the regional center or several districts is unlikely to represent the common interests of the territorial communities of the region or the respective district. But even modification of the proportional electoral system for the election of deputies to oblast and rayon councils is unlikely to ensure representation of the common interests of communities: even if each territorial electoral district is assigned a number of mandates proportional to the number of voters in that district, some districts will be too small (1-2 mandates) to be elected under the proportional system. If the legislator decides to increase the number of mandates to be distributed in such districts to a level that allows for the use of a proportional representation system without significantly distorting the proportionality of representation, he will simultaneously have to increase the number of oblast and, especially, rayon councils. Instead, the creation of district councils with a number of deputies of several hundred is unlikely to be justified.

Thus, the ECU should be amended to provide for a change in the electoral systems for the election of deputies to district and oblast councils. In accordance with the constitutional nature of rayon and oblast councils, each community within a rayon and each rayon/city of oblast significance within an oblast should form a separate constituency/community of constituencies, which should be represented in the respective council by approximately the same number of deputies as any other community/rayon/city of oblast significance. Provided that the quantitative restrictions on the composition of district and regional councils provided for by the TCU are preserved, this is possible only if elections are held in the respective districts under the majority voting system or in multi-member or single-member electoral districts.

The application of the proportional system in the election of deputies to district and regional councils requires amendments to the Constitution that would revise the nature of district and regional councils, in particular, in terms of their representation of the common interests of territorial communities.

"Guaranteed" mandates

The current ECU provides for the first 9 candidates on the national list in parliamentary elections and the first candidate on a single list in local elections held under the proportional representation system with open lists to have a priority right to receive parliamentary seats, provided that the party/local organization of the party that nominated the respective list overcomes the electoral threshold. This provision of the ECU deserves a critical assessment for several reasons:

- overcoming the electoral threshold by a large number of parties, especially in elections to councils with a small number of members, significantly reduces the number of mandates to be filled by open regional/territorial electoral lists, and thus increases the closedness of the proportional electoral system;
- filling part of the of the of the local council with candidates who received "guaranteed seats," increases the electoral quota and, accordingly, reduces the chances of candidates being promoted on regional/territorial lists;
- analysis of the experience of European countries where elections are held under the proportional system with open lists allows us to assert that "guaranteeing seats to candidates for whom voters did not even vote" is not allowed by the electoral legislation of any European state (except in the case of distribution of compensatory mandates by closed lists after the primary distribution of mandates at the level of multi-mandate/territorial districts);
- Guaranteeing seats to certain candidates regardless of the results of the vote/election violates the principle of equal passive suffrage, as such candidates are not obliged to campaign, form their own election funds, etc. Moreover, since such candidates are not assigned to any electoral region/territorial constituency, they are not able to form election funds and campaign for themselves in principle;
- guaranteeing seats to candidates leads to a violation of the principle of equal status of MPs - candidates eligible for guaranteed seats are not tied to any constituency, while all other candidates elected to the Parliament are tied to specific constituencies and, in particular, are obliged to maintain relations with voters in these constituencies;
- The guarantee of seats contradicts the very nature of elections, as it does not reflect the results of the will of voters who do not vote for candidates entitled to guaranteed representation;

- the impossibility of voting for candidates who are entitled to receive guaranteed seats in the parliament/local councils is a violation of the principle of free expression of will, as the content of the will is limited to candidates running in electoral regions/territorial electoral districts.

Amendments to the ECU should exclude provisions that enshrine the priority right to receive mandates for candidates on the national/unified list before the end of the distribution of mandates in territorial electoral districts and electoral regions. In this regard, the requirements for the form of ballots, the procedure for including candidates in regional/territorial lists (each candidate on the unified/national list should be assigned to the respective territorial constituency/electoral region), and the procedure for establishing the voting results and election results should also be revised.

Overcoming 25% of the electoral quota as a condition for "promotion" of a candidate in a regional/territorial electoral list

In elections under the proportional representation system with open party lists, only those candidates who receive at least 25% of the electoral quota in support of their candidacy have a priority right to receive a deputy mandate on a regional/territorial electoral list. The experience of the 2020 local elections has shown that only a small number of candidates can receive this number of votes in support. Thus, in general, only about 10% of the candidates included in the respective territorial election lists were able to receive 25% of the electoral quota among all parties that passed the electoral threshold in the local elections. At the same time, the largest number of candidates who received 25% or more of the electoral quota in their support was recorded in the elections to district and city councils (17.6%), and the smallest - in the elections to city councils (9.9%). Out of this number of candidates, only 42% received mandates, as the respective party organizations did not receive the number of mandates in the districts necessary to elect all candidates in support of which votes were cast in the equivalent of 25% of the quota. The conditions for promotion of candidates on regional/territorial lists in the elections are among the most "rigid" among all European countries. In a number of states, a candidate needs to receive 5-10% of the vote to move up the regional list, while in many states, priority in obtaining a mandate is generally given to candidates who receive more votes than their colleagues on the same list. The latter approach, however, stimulates excessive intra-party competition, which can have a significant negative impact on the party's campaigning activities and its chances of winning. Therefore, setting a certain threshold as a condition for promotion on the list is more justified, especially in the context of low political culture, institutional weakness of parties, or high risks of bribery of voters or other unfair forms of influence of candidates on the formation and expression of the will of voters.

Amendments to the ECU should provide for lowering the threshold that a candidate on a regional/territorial electoral list must overcome to 5% of the electoral quota.

Representation of territorial electoral districts/electoral regions in the local council/ Verkhovna Rada of Ukraine

An analysis of the electoral legislation of European countries shows that the level of representation of a multi-mandate constituency in the respective elected body depends on the number of registered voters in it. The only exceptions to this rule are the Czech Republic and some states that provide for the distribution of a certain number of seats in the parliament among candidates in the nationwide constituency to compensate for the imbalance in party representation caused by the peculiarities of the distribution of mandates in regional constituencies. In Ukraine, however, the number of candidates to be elected from each electoral region or constituency to the parliament/local council remains unknown until the voting results are finalized, as the number of mandates a constituency/territorial electoral district will receive is determined by dividing the number of votes cast in that region/constituency for the party that passed the electoral threshold by the electoral quota established after the voting. This approach to determining representation in a district raises a number of problems:

- difficulty for parties to plan their election campaigns in constituencies/electoral regions;
- the difficulty of predicting election results in a constituency/electoral region by voters and parties;
- the possibility of influence of random (weather, natural disasters, etc.) or manipulative factors (massive reports of mining of polling stations to reduce the turnout, nomination of candidates from a large number of parties in the district to disperse votes) on the level of representation of the district in the elected body;
- unequal functional burden on each elected MP from a constituency/electoral region due to unequal mandate prices by constituency/electoral region (one MP may need 1000 votes to be elected, while another may need 4000 votes);
- the possibility of ignoring the interests of "underrepresented" regions/districts in the elected body at the expense of "overrepresented" districts/regions and the resulting risks of separatism or confrontations between deputies;
- Increased disillusionment of voters in "underrepresented" constituencies and a decrease in their turnout in the next election;
- a decrease in the interest of parties in nominating candidates in constituencies/regions with consistently low turnout or excessive competition.

That is why amendments to the Electoral Code should directly define the level of representation of territorial districts/electoral regions in the respective local councils and parliament depending on the number of voters registered in such districts. However, given the continued risk of occupation of certain territories by the aggressor state even after the termination of martial law, this approach needs to be implemented:

- **revising the quorum/legitimacy requirements for elected bodies to ensure that decisions are made by a majority/qualified majority of the total number of deputies who have assumed their powers/whose powers have not been terminated, rather than by the number of members of the Verkhovna Rada or local councils specified by the Constitution or law;**
- **revising the number of votes required for elected bodies to make decisions (majority of the number of deputies who have assumed their powers and/or whose powers have not been terminated);**
- **determining the conditions and grounds under which elections cannot be held within the entire electoral district;**
- **determining the order of voting;**
- **assigning a certain number of mandates to a foreign electoral district with the potential election of deputies in such a district and creating opportunities for candidates to campaign in a foreign electoral district (hereinafter - FED).**

Given the complexity of implementing many of these tasks (some of them - for example, revision of the concept of a qualified majority of MPs' votes for making certain decisions, reduction of the number of MPs' votes required for making decisions, etc. - require amendments to the Constitution, including its "protected" sections), the introduction of "linking" the representation of an electoral region/district in the respective council to the number of registered voters in it is a matter of the medium term, if such an introduction is to be made at all

Independent candidates running for office

Under the proportional electoral systems introduced in the elections of people's deputies of Ukraine and local councils, the candidacy of self-nominated candidates is virtually excluded. This approach deserves to be criticized for several reasons:

- It directly contradicts the OSCE Copenhagen Document⁴;
- it is not consistent with the European practice: most European countries provide for the possibility of self-nomination of candidates at least in local elections, while it is explicitly excluded in parliamentary elections

⁴Document of the Copenhagen Meeting of the OSCE Human Dimension Conference, July 29, 1990
<https://www.osce.org/files/f/documents/9/c/14304.pdf>

only in a few countries, including Belgium, the Czech Republic, Italy, Latvia, Portugal, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom;

- the inability to self-nominate in elections causes parties to nominate candidates who are not their members and do not share the party ideology/program;
- a potential candidate who has failed to "agree" with any party on the terms of his or her nomination for the election is encouraged to create his or her own party to run for the election; the latter leads to the emergence of "technical" candidates, "town hall" and "name" parties whose main ideology is populism;
- the ban on self-nomination in elections does not achieve the goal set in connection with its introduction: it does not stimulate factional discipline, does not prevent political fragmentation of elected bodies, and does not ensure the institutionalization of parties.

That is why the legislator should consider amending the VKU to provide for the possibility of self-nomination of lists of independent candidates at least in local elections. The realization of this possibility requires amendments to the Electoral Code that will provide for:

- **nomination of independent candidates in territorial electoral districts;**
- **in case of nomination of independent candidates in the form of a single list or several lists, determining the order of inclusion of candidates in such lists (alphabetical order, drawing of lots, by agreement between the candidates themselves, etc;)**
- **making it impossible to vote for such a list as a whole - the CCU should oblige voters to vote only for a single candidate on such a list;**
- **determining the number of votes not less than the electoral quota as a condition for the election of a candidate from the list;**
- **determination of the number of mandates to be distributed among the parties after the self-nominated candidates are deemed elected;**
- **excluding the possibility for parties/party organizations to nominate persons who are not their members (only if the possibility of self-nomination is simultaneously enshrined).**

Recommendations

Content of the recommendation	Responsible actors	Deadlines for implementation
<p>Amendments to the Law "On Local Self-Government in Ukraine" to differentiate between the scope of functions and powers of territorial communities depending on their financial and economic capacity, number of members, etc.</p>	<p>VRU</p>	<p>After the cancellation/termination of the martial law</p>
<p>Reforming the proportional electoral system to make it more open:</p> <ul style="list-style-type: none"> ● Securing the possibility of self-nomination of candidates ● Reviewing the limits of the proportional system in local elections ● Abolishing guaranteed seats for candidates on the national/unified list ● Reducing the threshold for changing the order of candidates in regional/territorial lists to 5% ● Defining the electoral systems for conducting elections of deputies to district and regional councils 	<p>VRU</p>	<p>Until the cancellation/expiration of the martial law</p>
<p>Ensuring proportional representation of constituencies/regions in the respective councils according to the number of registered voters in them</p>	<p>VRU</p>	<p>After the cancellation/termination of the martial law and the relevant amendments to the Constitution of Ukraine</p>

Territorial organization of elections

Introduction

The legal requirements that define the procedure for establishing and revising the boundaries, size, and hierarchy of electoral districts and polling stations largely determine the extent to which the principles of universal and equal suffrage are upheld, the speed of determining election results, the number and optimal composition of election commissions, and their functional workload.

The general principles for the creation of electoral districts and polling stations are defined in the ECU and specified in the CEC's regulations. The relevant provisions were partially tested during the 2020 regular local elections. At the same time, further implementation of the relevant provisions faces a number of challenges due to the large-scale Russian invasion of Ukraine on February 24, 2022. In particular, since the beginning of the war, there has been a significant displacement of voters from less secure to more secure areas; a significant number of voters have left the territory of Ukraine altogether. Accordingly, the number of voters at some polling stations has increased significantly, while at others it has decreased to a minimum. The electoral infrastructure in many administrative-territorial units has been destroyed, necessitating changes in district centers and the allocation of temporary premises for the work of precinct election commissions. Certain administrative-territorial units exist only legally - they have neither voters nor infrastructure, which eliminates the need to hold local elections on the territory of such units, necessitates their deregistration, and calls for consideration of their potential liquidation when determining the boundaries of territorial electoral districts for national and local elections. The network of permanent foreign polling stations established outside Ukraine is unable to ensure participation in elections of millions of refugees who were forced to leave the territory of Ukraine with the outbreak of hostilities.

The war has created new challenges for the territorial organization of elections, but pre-existing ones remain – legislative and organizational issues that existed even before Russia's large-scale invasion. The issue of the optimal number of polling stations per territorial electoral district remains unresolved. The number of voters assigned to large polling stations is significant, which negatively affects the organization of voting, vote counting and determination of election results, and also leads to the formation of respective precinct commissions with a composition that is untypically large for most European countries. The principles of formation of electoral districts in local elections held under the majoritarian system, with voting in multi-member districts (in particular, the possibility of their formation with a 15 percent deviation from the estimated average number of voters per mandate) do not fully comply with the Code of Good Practices in Electoral Matters. Possibilities to appeal decisions on the formation of electoral districts are further complicated by the fact that disputes related to the formation of districts in national elections are not considered electoral disputes. The legislation does not provide for conducting any consultations regarding the creation of districts, nor does it properly define a detailed procedure for reviewing district boundaries.

This paper outlines the legislative and practical challenges related to the territorial organization of elections and proposes possible ways to address them.

Key challenges

Optimizing the system of electoral regions in parliamentary elections

According to the ECU, the system of territorial organization of parliamentary elections is different from any other elections and referendums and includes, in addition to the nationwide electoral district, territorial districts and polling stations, electoral regions that serve as the territorial basis for nominating candidates and establishing the results of voting.

Contrary to common practice in Europe, the Electoral Code does not set the number of mandates to be allocated to each electoral region. The level of representation of an electoral region in parliament depends on a number of factors: the total number of voters who voted for parties in the region on election day; the number of votes cast in the region for parties that did not overcome the electoral threshold; the number of voters who voted for "passing" parties within the nationwide district, etc. Thus, the number of mandates that will represent the electoral region in parliament remains a mystery until the election day, both for parties and for voters. This artificially stimulates parties to nominate as many candidates as possible in regions where their electoral support is high, since in case of "overrepresentation" of the region in the VRU, the respective party will receive a larger number of mandates. Similarly, the nomination of an excessive number of candidates by parties in electoral regions will lead to longer time for vote counting and establishing the results of voting, more complicated election administration due to the increased number of candidates in the region, as well as logistical difficulties for parties related to campaigning, especially in regions with uneven distribution of voters or physical and geographical features.

In addition, the current ECU provides for the existence of electoral regions in the territories that have been fully or largely occupied by Russia. Thus, Donetsk and Luhansk oblasts are separate electoral regions, while electoral region No 16 includes Kherson oblast (a significant part of which has been occupied), the Autonomous Republic of Crimea and the city of Sevastopol, which have been under occupation since 2014. If Ukraine restores full control over these territories and elections are held there, such features of the electoral region system will not have a significant impact on the electoral process. However, if these territories remain under occupation (most notably Luhansk oblast, which has been almost completely occupied), the use of such a system of electoral regions in post-war elections is unlikely to be possible.

Amendments should be made to the ECU to provide for the formation of several regions within the existing electoral regions (in particular, in densely populated oblasts), as well as the inclusion of electoral regions and/or their parts that are not under Ukraine's control into the system of regions located in the territory controlled by Ukraine. The respective amendments to the ECU should be introduced after the end of martial law, when the boundaries of the territories controlled by Ukraine are clearly defined. This will allow voters who will remain in the occupied territories to exercise their electoral rights through the procedure of changing their voting place without changing their voting address, reduce the number of party candidates in each electoral region, and also optimize and speed up the vote counting and the establishment of voting results in the new regions.

Revision of community and rayon boundaries before the formation of districts

The main requirements for the formation of territorial electoral districts are defined in Article 27 of the ECU. According to this article, they are formed taking into account the boundaries of administrative-territorial units and from territories bordering each other. As a result of the active hostilities, a number of administrative-territorial units - in particular, in the frontline areas - have effectively ceased to exist. That is, an administrative-territorial unit may exist "on paper," but in reality, it may have no voters or any infrastructure at all. The expansion of the theater of hostilities may lead to a situation where the list of legally existing, but actually non-existent, administrative-territorial units will no longer be limited to territorial communities, but will include entire rayons (districts).

Thus, the formation of territorial electoral districts for the national post-war elections should be preceded by a review of the boundaries of administrative units, including rayons. The law should define the mechanisms for distributing the territories of communities that have ceased functioning among adjacent communities, entities, and the procedure for making decisions on these issues. The authorized entity (the CMU or the relevant regional state administrations) should determine the boundaries of new communities/ deregister the respective communities immediately after the end of martial law. The VRU, after clarifying the boundaries of communities, should then clarify the boundaries of rayons, which will create conditions for forming territorial electoral districts for the national post-war elections.

Determining the optimal number of territorial electoral districts in national elections

According to the ECU, all issues related to the formation of territorial electoral districts fall within the exclusive competence of the CEC. Unlike the draft version of the ECU, the current Code does not define the number of polling stations per one territorial electoral district. This may result in the formation of electoral districts with varying numbers of polling stations - similar to the elections held under the parallel electoral system, when the number of polling stations in certain districts reached hundreds (in agricultural regions of western Ukraine), while in others it was limited to several dozen (for example, in large cities). Such an approach leads to an uneven distribution of the functional workload between DEC, the need to form DEC with different compositions (depending on the number of polling stations within the district), and varying speeds in establishing the voting results and making decisions by DEC.

While the authority of the CEC to regulate issues related to the formation of territorial electoral districts is not in doubt, the ECU should define the minimum and maximum number of permanent polling stations (e.g., 80-120 per district) that should be assigned to one territorial electoral district. This would allow for a more even distribution of the functional workload among DEC.

Ensuring voting by military personnel in their places of deployment

Even after the martial law regime is lifted on the territory of Ukraine, there is a high likelihood that the security situation near the border with the aggressor state and Belarus will remain tense. This will require the continued presence of a significant contingent of the Armed Forces in the relevant territories for an extended period. At present, it is difficult to determine the potential size of such a contingent or the duration of its deployment in the respective territories. It may involve hundreds of thousands of military personnel and years of their presence in the border regions (depending on the geographical characteristics of these territories).

This raises a number of questions:

1. Is it advisable to create a separate electoral region for such service members?
2. At which polling stations should they vote — regular permanent polling stations or specially established polling stations to ensure their voting?
3. How can the participation of military personnel in voting be ensured if it is determined that holding elections in their places of deployment is impossible / no polling stations are operating there?
4. Can voting by military personnel be organized within one election day, considering security and other risks, service-related constraints, and the existing network of polling stations?

The creation of a separate region for voting by military personnel, as proposed by some participants in the public discussion of this document on January 25, 2024, is inappropriate for several reasons:

- It is impossible to ensure the compactness of such an electoral region - it could stretch for hundreds of kilometers along the border or demarcation line, and transportation of electoral documents to the regional center from its "periphery" and vice versa can be time-consuming and dangerous;
- Such a region would include parts of oblasts, which contradicts the approach set out by the ECU, according to which the boundaries of an electoral region must not cross the boundaries of oblasts;
- The establishment of such a region does not mean that security and other risks that would make it impossible to hold elections in accordance with international standards will be eliminated on its territory, in other words, elections may not be held at all in a significant part of such a region;
- It would be difficult, if not impossible, to conduct campaigning within such a region, and creating it specifically to organize voting for military personnel could result in political parties nominating only military personnel as candidates;
- Public and state oversight of elections in such a region would be complicated due to the peculiarities of the functioning of infrastructure facilities related to service or the need to ensure security and protect state or military secrecy.

Therefore, the places of permanent deployment of military personnel should be included in the system of electoral regions defined by the ECU, and should not form a separate electoral region.

As for the feasibility of establishing special temporary polling stations for voting by military personnel (similar to polling stations established for voting by military personnel of peacekeeping contingents outside the country), this model offers a number of advantages, but

also numerous disadvantages. Advantages include:

- Accessibility - temporary special polling stations are established directly in places of deployment and do not require the movement of military personnel to significant distances from the places of deployment;
- The possibility of staffing PECs from among the military personnel themselves, including in cases where there are no candidates for PEC membership from the election process stakeholders;
- Relative simplicity in organizing voting for service members unable to vote during standard hours due to the performance of official duties;
- Flexibility - the ability to establish polling stations where this is justified in terms of logistics, security, and the number of military personnel present.

However, these advantages are outweighed by substantial disadvantages:

- A special polling station may become an easy target for the aggressor state — both before and on election day;
- The possibility of effective observation of voting organization, voting itself, the establishment of results at such polling stations, and the transfer of electoral documents to the relevant DEC is practically excluded; access for outside observers will be limited;
- Voting at such stations would be vulnerable to intimidation, threats, vote-buying, misuse of administrative resources, and other unlawful influences on the free formation and expression of voters' will;
- Such stations pose higher risks, compared to regular polling stations, of mass use of the "voting at place of stay" procedure, voting by proxy, and similar violations;
- The level of electoral process awareness among PEC members drawn from military personnel at such special polling stations is unlikely to be high, which could cause difficulties in voting and vote counting, and may result in the need for revised protocols or even the invalidation of the polling station's results.

In view of this, if the ECU or a special law provides for the possibility of establishing special polling stations for organizing voting by military personnel, such polling stations should be established by the CEC, not DECs, based on reasoned submissions from commanders of relevant Armed Forces units, only in exceptional cases (i.e., when it is reasonably impossible to organize voting at regular polling stations), only for the duration of the specific election, and only if conditions for observation of the voting process and vote counting can be ensured, and if no security or other risks impede the operation of the PEC and the organization of voting/counting.

In the absence of justified grounds for establishing special polling stations, voting by military personnel should be organized at the regular polling stations closest to their places of deployment. If the contingent of military personnel is large and/or their deployment sites are located far from the nearest regular polling stations, the ECU or a special law should provide for the possibility of multi-day voting for military personnel or for all other categories of voters. This would create proper conditions for ensuring the principles of universal and equal suffrage.

Bringing the requirements for electoral districts in line with international standards

According to the Code of Good Practice in Electoral Matters⁵, the difference in the number of voters between electoral districts in elections under the majoritarian system should not exceed 10%, and exceeding this limit is allowed only to ensure the rights of national minorities. In local elections conducted under the majoritarian system of relative majority with voting in multi-member districts, the ECU allows for a 15% deviation in the number of voters per mandate across districts, which is not in line with the Code of Good Practice in Electoral Matters.

In addition, the Code of Good Practice in Electoral Matters provides that places of compact residence of national minorities must be taken into account when forming electoral districts. In accordance with the amendments to the Law of Ukraine "On National Minorities (Communities) in Ukraine" of 21 September 2023, the state has undertaken the obligation to create the necessary conditions for the effective participation of persons belonging to national minorities in the management of public affairs. This obligation includes, among other things, the formation of majority electoral districts based on places of compact residence, as well as other proactive measures (e.g., the possibility of establishing minority parties, etc.). If legislation does not provide for the existence of national minority parties or quotas for national minorities in electoral lists under the proportional representation system, the formation of territorial electoral districts in local elections under the proportional electoral system must take into account the places of their compact residence.

Therefore, the ECU should be amended to include the following provisions::

- **Reduction of the maximum allowable deviation in the number of voters between multi-member constituencies in local elections to 10%;**
- **Mandatory consideration of the places of compact residence of national minorities in the formation of territorial districts in local elections under both the proportional electoral system and the majoritarian system with voting in multi-member districts;**
- **Legal consequences for failure to comply with the requirements for the formation of electoral districts by territorial election commissions and the CEC;**
- **Legal consequences for non-compliance with district formation requirements by territorial election commissions..**

⁵Code of Good Practice in Electoral Matters. Guidelines and explanatory report. European Commission for Democracy through Law. 52nd session. October 18-19, 2002. [CDL-AD\(2002\)023rev.](#)

"Reshaping" of ordinary polling stations in Ukraine

The number of voters per polling station in different regions has changed significantly due to migration and demographic processes (deaths, missing persons, etc.). It is quite likely that in some polling stations this number has decreased to fewer than 20 voters (e.g., if the territorial community and its infrastructure were completely destroyed), while in safer communities it has increased to over 2,500 persons. Such polling stations will not meet the requirements of Article 28 of the ECU, which will necessitate a revision of their boundaries or a change in the status of the polling station (temporary closure, liquidation, etc.).

This review should be conducted prior to the start of the post-war electoral process. It is important that the revision of polling station boundaries is preceded by:

- **Restoration of the functioning of the SRV;**
- **A functional inspection of polling stations by the respective local self-government bodies or military administrations, with the participation of the CEC, to assess the feasibility of creating new polling stations, merging existing ones, or implementing other changes to their status.**

Establishment of Temporary Foreign Polling Stations

Even before the outbreak of the war with Russia, the number of voters assigned to FPS established at Ukraine's diplomatic missions in a number of countries (e.g., Israel, Moldova) amounted to tens of thousands. It is evident that if all such voters had actively participated in the elections, they would hardly have been able to exercise their right to vote on election day. Following the outbreak of the war and the mass forced displacement of millions of Ukrainian voters abroad, the possibility of exercising their right to vote at their actual place of stay in foreign countries has become even more limited. The inability to vote in elections from outside Ukraine violates the principles of universal and equal suffrage. In view of this, the legislator should consider amending the ECU to allow for the establishment of temporary FPS outside the premises of diplomatic missions, as well as to regulate the procedures for their establishing and operation.

Accordingly, even before the end of martial law, the ECU should be amended to include provisions for:

- **The establishment of temporary FPS outside the premises of Ukraine's diplomatic missions for voting in large cities of countries (in line with areas of compact residence of citizens) with a significant number of voters;**
- **The procedure for initiating and obtaining approval from the competent authorities of the host country for the establishment of temporary polling stations;**
- **The procedure for coordination between the MFA and the CEC in initiating the creation of temporary foreign polling stations;**
- **The procedure and grounds for assigning voters to such polling stations, including specifics of their registration in the foreign constituency, which may combine both passive registration (when the voter has already been assigned to a FPS) and active registration;**

- **The composition, procedure, and specific rules for the formation of PECs at such polling stations, including aspects of ensuring their operation and security.**

The implementation of these innovations should begin immediately after the end (or cancellation) of martial law. This includes the MFA identifying the approximate number of voters in each country where Ukraine’s diplomatic missions operate, mapping their places of compact residence, and conducting negotiations on the conditions and feasibility of opening temporary foreign polling stations. These actions should be undertaken in a timeframe that enables the CEC to establish foreign polling stations and ensure the formation of the respective PECs well in advance of election day, but after the start of the post-war electoral process.

Ensuring the possibility of appealing decisions on the formation of electoral districts in national elections

In cases where decisions on the formation of electoral districts are made by territorial election commissions after the start of the election process (as in local elections), such decisions are subject to appeal under the procedures for resolving electoral disputes as defined by the CAPU. At the same time, decisions on the formation of territorial electoral districts in national elections are adopted by the CEC before the start of the election process and are therefore appealed under the general procedures established by the CAPU.

The CAPU should be amended to include in the list of electoral disputes those related to the formation of electoral districts and polling stations in both national and local elections, including cases where the decision of an election commission to form districts or polling stations is adopted prior to the start of the election process. This would ensure the prompt resolution of such electoral disputes under the expedited procedures specifically provided for electoral disputes. If a dispute arises before the start of the election process, the right to file an administrative claim with the court should be granted to a political party or its local organization, as well as to a voter whose rights and legitimate interests in participating in the electoral process were violated by the decision to form electoral districts or polling stations.

Recommendations

Content of the recommendation	Responsible actors	Deadlines for implementation
Legislative regulation of problems related to the territorial organization of elections (excluding the revision of the system of electoral regions)	VRU	Until the end of martial law
Revision of the boundaries of electoral regions	VRU	Immediately after the lifting of martial law
Organizational actions to establish temporary foreign polling stations	MFA, CEC	Shortly before the termination of martial law or immediately after its lifting
Restoring the functioning of the State Register of Voters and updating it	CEC	Within the period defined by law after the lifting of martial law (upon completion of the renewal process)
Assessment of the state of infrastructure, deregistration of territorial communities, amalgamation of communities, revision of rayon boundaries	Entities defined by the Law "On Voluntary Amalgamation of Territorial Communities" or other entities authorized by law, VRU	Within the period defined by law after the lifting of martial law (upon completion of the renewal process)
Establishment of a new system of polling stations (taking into account updates to the State Register of Voters) and territorial electoral districts	CEC	Before the start of the post-war election process
Reducing the number of voters per polling station	VRU (amendments to the ECU), CEC (decision on formation)	In the long term
Establishment of special temporary polling stations (in exceptional cases) to organize voting by military personnel	CEC	Within the period defined by law after the start of the election process
Establishment of special temporary polling stations (in exceptional cases) to organize voting by military personnel	CEC	Within the period specified by law after the start of the election process

Chapter 3

VOTER REGISTRATION

Introduction

Any democratic election is based on respect for the principles of universal and equal suffrage. The implementation of these principles in terms of active suffrage, i.e. the right to vote, is ensured by an effective voter registration system. In Ukraine, the legal framework for a permanent and continuously updated voter registration system was established in 2007 with the adoption of the Law “On the State Register of Voter”.

The Register contains up-to-date and regularly maintained data on all citizens of Ukraine who are eligible to vote in the respective elections. The compilation and updating of voter lists is carried out through personalized voter record-keeping within the SVR. Therefore, the proper and secure functioning of the Register is inextricably linked to the protection and implementation of the principles of universal, equal and direct suffrage.

After February 24, 2022, updates to the SRV database and access to it were suspended by the SRV Management Service due to the risk of unauthorized use of Register data by third parties, primarily by the aggressor state. No information on new voters was entered into the Register database until December 22, 2023, and updates of existing voter data (including for those residing in the temporarily occupied territories) were not carried out. On December 22, 2023, the CEC resumed periodic updating of the SRV database, although without the participation of SRV maintenance bodies in the temporarily occupied territories⁶. At the same time, under current conditions, periodic updates of SRV data still cannot ensure the completeness and accuracy of the Register. In particular, fleeing the war, a significant number of Ukrainian citizens were forced to relocate either to other regions with better security conditions or to leave the country altogether. If information about such voters that must be entered or updated in the SRV database has not been updated, it is quite evident that the data in the Register is outdated.

This applies, in particular, to nearly 8 million Ukrainian citizens who left the territory of Ukraine after the start of the full-scale invasion, as most of them have not been registered with the consulate.

This section outlines the legislative and practical challenges associated with maintaining the Register and suggests options for addressing them.

⁶CEC Resolution [No. 89](#) of December 22, 2023 "On Some Issues of Partial Restoration of the Functioning of the Automated Information and Communication System "State Register of Voters"

Key challenges

The functioning of the Register faces a number of challenges that must be adequately addressed in the context of preparations for the upcoming post-war elections. These challenges concern the exercise of powers by the Register maintenance bodies with respect to keeping the SRV, ensuring the secure protection of voters' personal data, and updating the Register, in particular, with regard to voters who have relocated abroad due to the security situation in the country, etc. These challenges are discussed in more detail below.

Security and Reliability of the Register

One of the key tasks of the SRV, as an information and communication system, is to ensure reliable protection of voters' personal data. Strengthening cybersecurity becomes even more crucial in the context of full-scale war to prevent potential unauthorized interference with the operation of the Register by third parties, especially by the aggressor state, both now and in the future.

The level of security, accuracy and reliability of the Register's data depends not only on technological safeguards but also on the staff who have access to SRV personal data. This issue is especially relevant for the Register maintenance bodies in the temporarily occupied or de-occupied territories, where there have been numerous documented cases of collaboration by both government officials and individuals.

The first step towards addressing the problem of potential unauthorized interference with the functioning of the Register should be the preparation of an analysis of the effectiveness of the Register's information protection and the confirmation of the compliance of its technical and cryptographic safeguards.

Some organizational measures in this area are already underway: the CEC resumed the operation of the Register in text mode in November 2023⁷. The preparation of this analysis should include the identification by the SRV Management Service, in cooperation with the State Service of Special Communications and Information Protection of Ukraine, of attempts and instances of unauthorized interference with the operation of the Register, an analysis of their causes, and the identification of the system's most vulnerable components and processes..

Such an analysis would enable the development of practical recommendations to prevent future unauthorized interference with the Register, enhance security measures and their implementation methods (e.g., the use of blockchain or other distributed technologies), and determine the necessary funding and sources for their implementation.

⁷CEC Resolution of November 24, 2023, [№ 74](#) "On the Procedure for Access to the Database of the State Voter Register"

Based on the results of the analysis, the CEC and the State Service of Special Communications and Information Protection of Ukraine, together with the Ministry of Digital Transformation of Ukraine, representatives of the Ukrainian IT business, and international partners (for example, the International Electrotechnical Commission (IEC)), if such involvement does not violate the established access regimes to information on the functioning of the SRV, should develop such recommendations before the end of martial law. At the same time, their implementation should take place before the start of the electoral process of the first post-war elections.

To ensure an independent assessment of the completeness, accuracy, and reliability of the SRV database and the level of its protection against unlawful interference, **the Law of Ukraine “On the State Register of Voters” should be amended to provide for a public audit of the Register in accordance with international standards. The amendments should define clear criteria for determining the audit entities, the methodology, procedure, and consequences of the public audit.** A comprehensive public audit of the SRV would not only increase voters’ trust in the accuracy and reliability of the data, but also assess the effectiveness of the existing security safeguards. The public audit of the Register should be conducted prior to the start of the electoral process of the first post-war elections, allowing for timely consideration of the audit’s recommendations. The amendments to the Law “On the State Register of Voters”, which will serve as the legal basis for the audit, should be adopted before the end of martial law.

In order to restrict access to the Register database for persons convicted of collaborationism and other crimes against the foundations of Ukraine’s national security, **the VRU should introduce appropriate amendments to the legislation** before the practical implementation of the recommendations on preventing unauthorized interference with the functioning of the SRV. **Such amendments may include restrictions on such individuals holding positions in SRV maintenance bodies and may also provide for automated transmission of information from the Unified State Register of Court Decisions to the SRV Maintenance Body by the State Judicial Administration of Ukraine regarding the entry into force of court decisions concerning SRV staff or candidates for SRV positions who have been convicted of collaborationism or other crimes against Ukraine’s national security.**

Full functioning of the Registry in the de-occupied territories

As a result of the full-scale war, about 20% of Ukraine's territory is occupied. The Register is not maintained in these territories and it is currently impossible. Given the ongoing active hostilities and the shifting front line, non-technical and technical surveys of potentially dangerous areas, their marking, and demining should be carried out to ensure an adequate level of safety for citizens.

The key to enabling the functioning of the Register is the resumption of the work of state authorities and local self-government bodies in the de-occupied territories, in particular those directly responsible for administering and maintaining the SRV, as well as providing information necessary for the periodic updating of the Register database. If

it is established that restoring the functioning of the SRV maintenance bodies is impossible, the issue of temporarily assigning the functions of these bodies to other entities (e.g., military administrations or other bodies operating in the relevant territory during the transitional period, the duration of which should be clearly defined by law) should be resolved at the legislative level. These legislative amendments should be adopted before the start of the electoral process for the first post-war elections.

After the restoration of full state control over the de-occupied territories, regional state administrations, based on data provided by military administrations and law enforcement agencies (the Security Service of Ukraine (SSU), the National Police of Ukraine, and the State Emergency Service of Ukraine), should assess the condition and safety of the buildings and premises that housed the bodies responsible for the maintenance and administration of the Register.

In case of absence or unsuitability of appropriate premises for the activities of these bodies, regional state administrations, in coordination with the CEC, should identify other, including temporary, premises for the Register's bodies. If such premises are also unavailable, the boundaries of the territorial jurisdiction of these bodies should be reviewed, and, if necessary, measures should be taken to increase the staff of the enlarged Register departments.

In addition to the lack of suitable premises, the bodies responsible for maintaining the SRV may face logistical problems after the resumption of their work. For example, a body may have suitable premises, but all equipment may have been seized or destroyed during the occupation, or it may have been provided with new premises without any material or technical resources.

That is why regional state administrations need to assess the state of logistical support for each new/recovered SRV maintenance body in their respective territories, as well as initiate the preparation and formal approval of cost estimates for the logistical support necessary to ensure the proper functioning of the SRV bodies, including in connection with their potential consolidation. The purchase of the necessary equipment for the functioning of the SRV bodies should be carried out at the expense of the state budget or international technical assistance well in advance of the start of the electoral process for the first post-war elections.

Problems related to the resumption of the work of the SRV bodies in the de-occupied territories are not limited to issues of their material and technical provision. Demographic factors (migration of voters, including employees of SRV departments), as well as the potential prosecution of SRV officials in connection with collaboration activities, may also significantly weaken the staffing capacity of the SRV bodies in the de-occupied territories.

Therefore, the CEC, in cooperation with executive authorities (including local ones), will need to prepare an adequate number of specialists to be appointed to the SRV bodies after their resumption of work, before the start of the electoral process for the first post-war elections.

Maintaining the State Register of Voters

In the context of the war, the full functioning of the Register in terms of periodic data updates became possible only in 2024. The possibility of recording polling stations that exist on a permanent basis without the involvement of the SRV maintenance bodies was also partially restored. However, this situation cannot be sustained on a permanent basis, and the functioning of the Register's bodies must be fully restored before the start of the electoral process for the first post-war elections. Currently, due to the deterioration of the security situation in a number of regions, the staffing and funding of the SRV departments (including labor costs) have been reduced. Staffing problems in the SRV maintenance bodies will negatively affect both the pace of future updates to the Register's database and, potentially, the quality of the updated Register.

To solve this problem, the CEC, in cooperation with the bodies under which or within which the SRV maintenance bodies will operate before the start of the electoral process for the first post-war elections, should assess the potential future functional workload per employee of the SRV maintenance body and, if necessary, increase the staffing of the respective SRV departments to ensure a more even distribution of the workload among them.

Based on the results of such assessment, the bodies within which the SRV maintenance/administration departments are established should determine the number of staff to be added to the SRV bodies. This staffing may be carried out on a permanent or temporary basis. The advantage of the latter approach is that it takes into account a one-time sharp increase in the functional workload on the SRV bodies due to the unblocking of access to the Register, which will require the entry of a significant volume of updates into the SRV database – information that was transferred to the SRV maintenance bodies from February 24, 2022, until the moment they regained access to the Register. At the same time, given the significant migration of voters between regions, some of them will need to increase the permanent staff of SRV departments, while in other regions, the permanent staff of these departments will need to be reduced.

After the end of martial law, but before the start of the electoral process for the first post-war elections, military administrations and/or bodies within which SRV maintenance/administration units have been established, with the involvement of the CEC, should:

- Determine the number of employees to be hired by each SRV body on a permanent and temporary basis;
- Establish clear timeframes and conditions for the engagement of temporary employees of the SRV bodies;
- Develop basic training programs and organize training for the relevant persons on updating the SRV database;
- Ensure the separation of responsibilities and areas of competence among such persons;
- After the initial update of the SRV database, dismiss temporary employees and, taking into account the results of the database update, approve the final staffing of the units responsible for maintaining and administering the Register.

An alternative to changes in the staffing of the SRV bodies may be the partial automation of the process of updating the Register database, i.e., an increase in the number of operations that do not require human intervention.

If such automation is introduced, the functions of the employees of the SRV maintenance/administration bodies will essentially consist in controlling the correctness and completeness of automated operations within the Register system, which will allow for a significant reduction in the staffing of these bodies. However, such automation of the processes of updating the SRV database can only be implemented after the data on the update of the SRV database, received by the SRV bodies, has been entered in “manual” mode, i.e., with the involvement of the relevant employees.

To automate the process of updating the SRV, the CEC needs to:

- Ensure access to the database and verification procedures for voters and authorized representatives of bodies responsible for providing data as part of updating the SRV database;
- Standardize the information/data packages that are entered into and processed by the Register system;
- Ensure the possibility of automated control over the completeness and accuracy of data entry, both by the voter/authority maintaining/administering the SRV and by authorized representatives of the bodies entering data for the purpose of updating the SRV;
- Introduce mechanisms to prevent unauthorized data entry into the SRV database;
- Define the procedure for controlling the accuracy and completeness of the data entered by the SRV maintenance/administration bodies, as well as the procedure for correcting identified errors or violations;
- Provide for annual testing and auditing of the accuracy and security of the Register system’s functioning;
- Organize basic training for representatives of the bodies involved in updating the SRV database.

Obviously, the implementation of these measures will require significant financial, organizational, and time resources. Therefore, the introduction of automation in updating the SRV database should be viewed as a medium- and long-term objective.

Updating the data of the State Register of Voters in Ukraine after the restoration of access by the SRV maintenance bodies

As noted above, during the war, state and local self-government bodies have generally continued to fulfil their obligations to submit information for the periodic updating of the SRV database. According to preliminary estimates by representatives of the Service of the Administrator of the SRV, it will take approximately two months for employees of the SRV maintenance bodies to update the data for each year of the war. Therefore, assuming the war lasts for three to four years, it will take six to eight months for the Register’s maintenance bodies to enter into the Register all the data accumulated during the war. As mentioned above, the functioning of the Register in terms of periodic updates was fully restored in 2024. This may have a positive impact on reducing the above-mentioned timeframe. However, constant

changes in the configuration of the combat zone and the cessation of the functioning of public authorities in the respective territories will still not allow this timeframe to be significantly reduced.

The main challenges in this context may be:

- Lack of public trust in the completeness, accuracy and reliability of the SRV database;
- A significant amount of information collected during the war that will need to be entered into the Register;
- Potential frequent changes in data on the same voter throughout the period of restricted access to the SRV due to changes in the registration of his/her place of residence or other data to be included in the Register (in some cases, the SRV authority will have to change the information on the same voter several times while processing the update data to bring it in line with the most up-to-date information for the entire period since the beginning of the war);
- Uncertainty of the final amount of data that will need to be processed by the SRV authority after its access to the Register database is restored and the start of entering such data into the Register database, as the timing of restoring access directly depends on the timing of the end of the war, which remains unknown;
- Problems with staffing of the SRV authorities (see above);
- Lack of guarantees of proper storage of data in paper and electronic formats by the authority maintaining the SRV and risks of their loss and impossibility/difficulty of potential recovery of lost information;
- Failure/improper exercise of powers by the authorities responsible for transferring voter data to the State Register of Voters in the non-government controlled areas;
- Absence or destruction of primary documents confirming personal or other data on voters to be included in the Register database;
- Problems related to the non-recognition by the state of Ukraine of documents issued by the occupation administration (death certificates, marriage certificates, etc.).

To respond to these challenges properly, it is necessary to:

- The SRV Administrator Service, in coordination with the bodies that will exercise the powers of executive authorities and/or local self-government during the legally defined transitional post-war period (e.g., military administrations, local state administrations, and local self-government bodies), should **promptly assess the condition and methods of storing the information transferred to the SRV maintenance bodies as part of the periodic updating of the Register**, identify risks related to data preservation, and **develop methodological recommendations for the SRV maintenance bodies on mitigating these risks.**
- The SRV Administrator Service should immediately **assess the possibility of digitizing the information received by the SRV maintenance bodies** in a format that can be easily adapted to the needs of updating the SRV database; explore possible ways to process and update such information more efficiently without access to the SRV database; and ensure its **more secure storage and protection (e.g., using cloud services, storage on flash drives or external optical disks protected from unauthorized access/use, etc.)**. The results of this assessment should serve as the basis for preparing guidance for the SRV maintenance bodies.
- The SRV Administrator Service should **assess the possibility of enabling automated updating of the SRV database and synchronization/interoperability of the Register**

with other state registers to ensure automatic data exchange between different registers, minimizing human intervention in these processes (see previous recommendations on automation).

- **The CEC should approve the above-mentioned methodological recommendations and explanations** developed by the SRV Administrator Service and ensure their proper implementation. The CEC should also take steps to provide material, technical, and human resource support to the SRV maintenance bodies in accordance with the proposals set out in this document (see above).
- The SRV maintenance bodies, following the approval of the methodological recommendations and guidance by the CEC, should **ensure their continuous implementation both before and after the end of martial law**.
- The CMU, when preparing the draft Law on the State Budget of Ukraine for the next year, should **take into account the need for adequate funding for measures aimed at ensuring proper recording of voter data to be included in the SRV**, as well as the need to ensure proper staffing and remuneration of the SRV maintenance bodies.
- The VRU, before the end of martial law, should **ensure funding for activities aimed at properly accounting for voter information to be included in the SRV; determine the legal implications of civil status documents issued in temporarily occupied territories and establish the procedure for making decisions on their state registration** (which, among other things, may involve the adoption by the VRU of the draft law Register. No. 9069 of February 28, 2023⁸), and amend the Law “On the State Register of Voters” to define the procedure for using documents issued by the occupation administration to populate and update the SRV database.

Updating the data of the Register on voters abroad

As of 2024, more than 6 million Ukrainian citizens were outside the state⁹. The longer the war lasts, the more people are likely to gradually become rooted in the host countries. As a result, many of them may no longer have sufficient motivation to return to Ukraine after the war ends. Therefore, the issue of ensuring the participation of millions of voters who have moved abroad in the political life of Ukraine, in particular, securing their voting rights in the host countries during Ukrainian post-war elections, is becoming increasingly relevant.

In addition to the need to revise electoral procedures to enable voters in the foreign constituency to properly exercise their right to vote, which may include, among other things, the establishment of temporary foreign polling stations outside diplomatic and consular missions, ensuring the participation of this category of voters in national elections will require updating their data in the SRV database. Since not all voters who were forced to leave the territory of Ukraine after the outbreak of the war in February 2022 registered with a consulate, the official number of voters in the foreign constituency (FC) and the actual number of voters who left Ukraine do not match.

⁸<https://itd.rada.gov.ua/billInfo/Bills/Card/41464>

⁹Data from the United Nations High Commissioner for Refugees, December 16, 2024

The main challenges for updating the SRV database with respect to voters in the FC are:

- The unwillingness of voters to register with consulates or difficulties in doing so for various reasons (registration fees, long queues, limited working hours of diplomatic missions, the need for long and expensive trips, extensive document requirements, etc.);
- Significant discrepancies between the number of voters according to consular records and the SRV data, and thus incomplete information in the Register regarding voters abroad – due both to gaps in consular registration and to the lack of access to the Register by the SRV maintenance body under the MFA. In particular, as of the beginning of the war (February 22, 2022), a total of 431,227 Ukrainian citizens were on consular records, while according to the MFA, as of April 12, 2023, the number was 423,095, which is tens of times lower than the actual number of citizens abroad;
- Constant changes in the dynamics of the number of voters, both abroad in general and in specific host countries, due to ongoing migration, which complicates efforts to determine optimal approaches for their registration, communication, and the overall safeguarding of their voting rights;
- The MFA's lack of complete information about the locations of compact settlement of voters in each specific host country;
- The absence of effective communication tools to reach voters or disseminate information in host countries (beyond traditional methods such as posting information in diplomatic/consular offices, SMS notifications, and using embassy websites and social media);
- General challenges faced by SRV authorities, which are also relevant to the SRV maintenance body under the MFA (lack of access to the Register database, ongoing accumulation of voter data without entering it into the database, staffing shortages, etc.);
- Potentially low awareness among voters regarding the procedures for exercising their voting rights abroad, including both the actual voting procedure and procedures for verifying their data in the Register/lists, updating voter lists, appealing against inaccuracies, etc.;
- The impossibility of addressing the completeness of the Register in terms of data on foreign voters solely through passive registration based on consular records.

Responding to these challenges involves taking the following steps:

- The VRU should, before the end of the martial law: (1) amend the Law "On the State Register of Voters" to **provide for the introduction of active voter registration within foreign constituencies and the combination of such registration with passive registration, which is carried out in accordance with the current version of this Law**, as well as amendments that will **provide for the possibility of submitting applications for changing the place of voting without changing the electoral address using the "Diia" application or directly through the voter's office in the SRV**. Voters who have been registered with the consular authorities will be included in the Register automatically (based on the relevant information from the heads of diplomatic missions), while those who have not been registered will be included in the Register database in foreign constituencies solely on their own initiative; (2) amend the Electoral Code to **define the procedure and methods for exercising the right to vote by voters in the FC**, as these determine the procedure and timing for compiling voter

lists at foreign polling stations and mechanisms for ensuring the principle of universal suffrage abroad.

- The **MFA**, before the end of the martial law regime, should: (1) **optimize the procedure for registering citizens with the consular authorities**, in particular by reducing the registration fee, allowing citizens to submit documents electronically without personal presence, introducing queue management tools in diplomatic institutions, etc.; (2) **complete the collection of information on the places of compact residence of voters abroad**, possible ways to ensure their voting rights taking into account the conditions of the respective host states, and hold preliminary consultations with the authorized bodies of the host states regarding the organization of voting outside diplomatic missions (following amendments to the Electoral Code enabling such voting); (3) **establish more effective means of communication with voters**, including encouraging voters to engage in communication, identifying optimal channels of information delivery, and introducing dedicated digital tools for this purpose (e.g., chatbot); (4) **launch public awareness campaigns about the procedure for exercising voting rights abroad** (funded from the state budget or international assistance), the procedure for registration in the SRV, updating registration data, and changing the place of voting without changing the electoral address.
- The **CEC / SRV Administrator Service**, before the start of the electoral process for the first post-war elections, should: (1) **ensure the optimization of the voter's personal account to expand the range of actions related to voter registration, change of voting place without changing the electoral address, and exercise of voting rights through this account, including submission of relevant applications electronically**; (2) in coordination with the MFA, ensure that voters abroad are informed about the procedures for exercising their voting rights and the key electoral procedures.
- The **Ministry of Digital Transformation of Ukraine**, before the end of martial law and in coordination with the CEC, should **expand the functionality of the "Diia" application to allow submission of documents necessary to amend the SRV or change the place of voting without changing the electoral address through the application**, as well as jointly with the CEC, ensure voters are informed about the new features of the "Diia" application.

Recommendations

Content of the recommendation	Responsible actors	Deadlines for implementation
Assessment of the security of SRV, development of recommendations for preventing unauthorized interference with the functioning of SRV	CEC, State Special Communications Service	Until the end of martial law
Legislative definition of the procedure for conducting public audit of the SRV	VRU	Until the end of martial law

Conducting a public audit of the SRV and submitting recommendations to the CEC/other authorized bodies based on the results	Relevant civil society organizations	Before the start of the election process for the first post-war elections
Evaluation of the state of storage of information received by the SRV authorities as part of the periodic updating of the Register after February 24, 2022 and not entered into the SRV database, assessment of digitizing such information, technological compatibility with SRV, development and implementation of recommendations	SRV Administrator Service with military/state administrations (assessment and draft recommendations) CEC (approval) SRV maintenance bodies and military administrations (implementation)	Until the end of martial law
Determination of the legal consequences of documents issued in the temporarily occupied territories and the procedure for registering such documents/acts	VRU	Until the end of martial law
Ensuring active registration of voters abroad and determining voting procedure for such voters	VRU (legislative changes), MFA, Ministry of Digital Transformation, diplomatic missions and DECs	Until the end of martial law (legislation) Before post-war election process (registration)
Optimization of consular registration procedures, information gathering on compact residence, determination of voting procedure, development and implementation of voter information programs abroad	MFA in coordination with the CEC	Before the start of the post-war election process
Optimization and expansion of the voter's personal account and the Diia application, informing voters of innovations	CEC in cooperation with Ministry of Digital Transformation and State Special Communications Service	Before the start of the post-war election process
Expanding the Diia app functionality to submit documents electronically related to voting rights	Ministry of Digital Transformation of Ukraine in cooperation with the CEC	Until the end of martial law

Preventing persons involved in collaboration from holding positions in SRV maintenance bodies	VRU (legislation), State Judicial Administration, CEC (information exchange)	Until the end of martial law (legislation) Before the post-war elections (implementation)
Restoring state authorities in de-occupied territories or designating interim transitional bodies	CMU, ministries and executive authorities, VRU (legislation)	Before the start of the post-war election process
Restoring state authorities in de-occupied territories or designating interim transitional bodies	CMU, ministries and executive authorities, VRU (legislation)	Before the start of the post-war election process
Inspection of safety and condition of buildings for authorities including SRV departments	Regional state administrations with SSU and National Police	Immediately after de-occupation and removal of security risks
Financial and logistical support for restored SRV authorities	Regional/military administrations (estimates), CMU (budget amendments), VRU (budget changes)	Before and after the post-war election process
Evaluation of SRV staffing, workload, and professional development	CEC with regional/district state or military administrations	Before and after the postwar election process
Automation of the SRV database update process	VRU (legislation/funding), CEC, CMU/central executive authorities (implementation)	After the postwar elections

Chapter 4

NOMINATION AND REGISTRATION OF CANDIDATES

Introduction

The general logic of the procedures for nominating and registering candidates in elections, as set out in the ECU, has remained largely unchanged since the mid-2000s, despite certain amendments. The directions for improving these procedures are not particularly dependent on the intensity of hostilities or the prospects for ending the war with Russia. Rather, they are shaped by the problems identified during previous election campaigns by both national and international election observation missions. The last regular local elections in 2020 were held under the new ECU. Accordingly, all the issues observed in the application of its relevant provisions will remain relevant for all subsequent election campaigns at both the national and local levels, including those held after the war.

This section examines the main challenges related to the nomination and registration of candidates in national elections and proposes mechanisms, procedures, and stages for addressing them.

Key challenges

Excessive concentration of powers to nominate candidates for deputies in the hands of political party leadership

The degree of influence of rank-and-file party members on the nomination of candidates in elections depends not only on the state of development of intra-party democracy, but also on the provisions of the legislation that define the type of electoral system and the procedure for nominating candidates. Although the ECU introduced a proportional electoral system with open party lists for parliamentary elections, this system contains a number of closed elements (see in more detail the section “Proportional Electoral System with Open Lists” of this study), which allow parties to significantly control the order of seat allocation, while the candidate nomination procedures under this system further reinforce these elements.

Thus, the Electoral Code only fragmentarily regulates the procedure for nominating candidates: according to it, the nomination of candidates for People's Deputies of Ukraine is carried out at a party congress, the time and place of which must be communicated by the party to the CEC. The party is also responsible for determining and publishing the procedure for accrediting media representatives at the congress. The regulation of all issues related to the holding of candidate nomination congresses is assigned by the ECU to party statutes.

Accordingly, the party has sufficient leverage to ensure the selection of congress delegates and to have the congress resolve all issues related to the nomination process in a way that enables the party leadership (in fact, its executive body) to control the candidate nomination process at all its stages: to determine quotas for the representation of delegates from local party organizations at the congress, the total number of delegates (in which case

nothing prevents the party from holding a congress with only a few dozen delegates), to select a list of potential candidates, and to ensure that information about the candidates is delivered to the congress participants within a timeframe that does not allow for the proper assessment of their personal and other qualities. Similarly, the ECU does not provide for any participation of local party organizations in the selection of candidates for national elections, while, according to party statutes, the authority to decide on such matters lies with the party's executive bodies (executive committees, political councils, and similar bodies).

Legislative regulation of internal party democracy is generally assessed negatively by the Venice Commission: such regulation may unjustifiably violate the right to freedom of association guaranteed by Article 11 of the European Convention on Human Rights and Fundamental Freedoms. However, in the Ukrainian context, the lack of legislative regulation does not promote the development of internal party democracy, as political parties are not interested in implementing any mechanisms of intra-party democracy that are not explicitly required by law. Meanwhile, in a number of European countries, political party legislation contains provisions that, to some extent, encourage parties to democratize the candidate nomination process. For example, in Finland, the nomination of candidates for parliamentary elections requires the participation of all party members in the vote. In addition to fostering intra-party democracy, this provision also stimulates parties to introduce elements of e-governance, as it is often physically impossible to ensure the participation of all party members in a congress.

Amendments should be made to the ECU and/or the Law of Ukraine "On Political Parties in Ukraine" to strengthen the mechanisms of internal party democracy in the process of nominating candidates for elections:

- **At least a framework definition of the procedures for discussing and selecting candidates for elected positions with the participation of local party organizations** prior to the holding of congresses/conferences where decisions on nominating such candidates are made;
- **Defining internal party bodies authorized to resolve internal party disputes regarding the nomination of candidates for elected office;**
- The procedure for timely **informing congress delegates about potential candidates for elected positions**, their moral and other qualities, and the general procedure for discussing candidates at the congress/conference;
- **Defining the minimum number of congress/conference delegates, which should ensure representation of delegates from party organizations** at levels below the oblast (regional) level (for both parliamentary and local elections);
- **Defining basic criteria for selecting congress/conference delegates** (e.g., in proportion to the number of members in a local party organization / number of members "affiliated" with the respective local party organization, in proportion to the share of deputies elected from the local party organization to a particular local council, etc.);
- **Defining the procedure for confirming the credentials of congress/conference delegates** and counting votes based on the results of voting at the congress/conference.

Transparency of Party Congresses on the Nomination of Election Candidates

According to the results of public observation of the 2020 regular local elections conducted by the Civil Network OPORA, party organizations generally complied with the requirements of the ECU regarding informing the CEC about the time and place of conferences for nominating candidates for the elections. However, the information provided often did not correspond to the actual circumstances of these events. This complicated or even made it impossible for journalists and observers to attend them. In addition, the ECU does not provide an unambiguous answer to the question of whether a party's failure to notify the time and place of a congress or conference in the manner prescribed by the ECU constitutes a violation of the procedure for nominating candidates for the elections, and therefore grounds for refusing to register candidates. The analysis of court decisions on these issues conducted by the Civil Network OPORA showed that courts interpret the respective violations differently: some of them consider them to be violations of the procedure for nominating candidates, while others do not. The same applies to the fulfilment by local party organizations of the obligation to determine the rules for accrediting journalists at party conferences and congresses.

Since the provisions of the ECU regarding the procedure for nominating candidates in local elections are generally almost identical to its provisions on nominating candidates in national elections, the problems identified during the nomination of candidates in the 2020 local elections may also arise during the first post-war national elections.

To eliminate the ambiguous practice of applying the relevant provisions of the ECU, it should explicitly classify as violations of the procedure for nominating candidates the following: failure to notify the CEC and the media about the time and place of party congresses, discrepancies between the actual time and place of these events and the information published by the party, and the creation of obstacles to the presence of media representatives, election commissions, and observers at such events.

On December 27, 2022, a group of Ukrainian MPs submitted to the VRU draft law No. 8310 "On Amendments to the ECU to Improve the Regulation of Information Support for Elections and Election Campaigning"¹⁰. This draft law provides for the introduction of a number of mechanisms aimed at increasing transparency in the nomination of candidates for elections:

- Guaranteeing unimpeded access of journalists and other employees of media entities to all public events related to all types of elections, including party congresses, meetings of election commissions, etc.;
- Establishing the obligation of state authorities, local self-government bodies, and election commissions, as well as their officials, to provide information on the process of preparing and conducting elections to media entities and journalists;
- Defining the information (with the exception of certain personal data) contained in documents submitted for candidate registration as open information.

¹⁰<https://itd.rada.gov.ua/billInfo/Bills/Card/41061>

At the same time, the draft law does not provide for any liability for violations of these requirements, and in particular does not define such violations by parties as grounds for refusing to register the candidates they have nominated.

The VRU should ensure that draft law No. 8310 is adopted before the end of martial law. When preparing the draft law for its second reading, it should be amended to define violations by parties of the requirements to ensure access of journalists and media workers to public party events as violations that constitute grounds for refusing to register candidates for elections.

During the 2020 local elections, there were also frequent cases when several conferences of party organizations at different levels (regional, district, city, etc.) were held in the same locality, which was often remote from the official location of the respective local party organizations. If such a locality was located a significant distance from the registration address of the party organization, media representatives and territorial election commissions often lacked the physical or financial capacity to attend these events, which negatively affected their transparency. This problem may also arise in national elections, particularly if parties hold candidate nomination congresses in hard-to-reach or remote regions, which may hinder the ability of journalists, CEC representatives, and other authorized entities to attend such events.

Therefore, the ECU should be amended to explicitly state that candidates must be nominated in the locality in which the legal address of the nominating entity is located.

Number of candidates that can be nominated in an electoral region

Due to the peculiarities of the proportional electoral system used in the elections of people's deputies of Ukraine, parties are unable to clearly determine the number of candidates who will be elected from an electoral region in the elections of people's deputies of Ukraine, and therefore to estimate the number of candidates that should be included in the respective regional electoral list. Including fewer candidates in such a list than the number actually elected from the party in the electoral region leads to more MPs being elected from the national list and, consequently, to a reduction in the overall transparency of the electoral system. The problem is further complicated by the fact that a party and its local organization may not nominate more candidates than the total number of seats in Parliament and must nominate at least 5 and no more than 18 candidates in each territorial district, even if the party has no support in a given district. As a result, the party's planning of the strategy for distributing candidates between the national and regional lists is significantly complicated:

- In cases where it is necessary to ensure the election of candidates who are unpopular in electoral regions, they should be given priority positions on the national electoral list;
- The distribution of a significant number of mandates in electoral regions reduces the number of mandates to be distributed from the party's national list and, accordingly, reduces the chances of electing candidates unpopular in electoral regions who are included in the national list starting from position 10;
- A candidate's popularity in the electoral region and their prioritization in the respective regional list do not guarantee election: in the event of low voter turnout and/or

significant dispersion of votes among parties, only a minimal number of mandates will be distributed in the electoral region, and the party's preferred candidates in the regional lists, even those listed first, may not be elected;

- If voter turnout in the region is high and vote dispersion among regional party lists is low, the region may become "overrepresented" in Parliament; accordingly, if a party nominates a minimum number of candidates in such a region (e.g., 5) but based on the election results is entitled to a larger number of seats there (e.g., 15), the 10 seats lost due to nominating fewer candidates will be distributed through the national list;
- Possibly the only strategy for forming party lists that would allow a party to obtain its preferred list of elected MPs regardless of voter turnout, vote distribution among parties in electoral regions, and other random factors is to simultaneously include preferred candidates at the top of both regional and national lists. However, such a strategy, first, makes the proportional system less transparent; second, still does not guarantee the election of all preferred candidates; and third, may lead to excessive intra-party competition at the level of electoral regions or discourage potential candidates from running on behalf of the party (if placed at the bottom of the list).

Ensuring greater transparency of the proportional electoral system and proper planning of election campaigns by parties at the level of electoral regions under this system requires:

- **Increase the minimum number of candidates in the regional list as stipulated by the ECU (e.g., to 10–15 persons);**
- **Introduce a different system for distributing mandates among electoral regions, based on the number of registered voters in the electoral region, rather than the number of votes cast for the regional party lists that have passed the national electoral threshold (for more details, see the section "Proportional Electoral System with Open Lists").**

Clarification of registration documents and refusal to register candidates

According to the ECU, if inaccuracies are found in the documents submitted for candidate registration, they may be corrected and resubmitted to the relevant election commission for a decision on registration or refusal to register the candidate. At the same time, if the submitted documents do not comply with the requirements of the ECU or are missing, the election commission may refuse to register the candidate.

The experience of the 2020 regular local elections showed that election commissions interpreted the relevant provisions of the ECU differently: the absence of certain data in the documents or their non-compliance with the requirements of the ECU (for example, non-compliance with the "gender quota") was regarded by some territorial election commissions (TECs) as inaccuracies, while other TECs considered it as the absence of a document or its non-compliance with the ECU.

These TEC decisions had different consequences (either refusal to register or resubmission of documents with corrected deficiencies). The court practice related to the review of relevant TEC decisions was also inconsistent. Moreover, party organizations in the

local elections corrected the identified "inaccuracies" in different ways: in some cases, the corrections resulted in changes to candidate lists, including changes in the order of candidates. At the same time, these changes were made without the relevant decisions of local party organization conferences.

Therefore, the ECU should be amended to provide a clearer distinction between the grounds for correcting registration documents and the grounds for refusing registration due to violations of the nomination procedure or the absence or non-compliance of the submitted registration documents with legal requirements. At the same time, the deadlines for resubmitting corrected registration documents should be aligned with the deadlines for resolving electoral disputes in court. This is necessary to ensure that court decisions in candidate registration disputes can be properly implemented on time and do not affect the ability of the election process entity to exercise its rights related to other stages of the electoral process (for example, the right to representation in election commissions, etc.). Non-compliance of a registration document with the requirements of the ECU should not be considered its absence and must be defined as a separate ground for refusal to register candidates.

Method of submitting documents for candidate registration

The ECU provides for the possibility of submitting candidates' registration documents through electronic services in the manner determined by the CEC. However, in the event of any discrepancy between the content of a document submitted in paper form and a document submitted electronically, the paper document shall prevail.

In the context of the first post-war elections, the submission of registration documents in paper form by parties may be significantly complicated by a number of factors: the lack of appropriate infrastructure for their transportation, security risks, the absence of proper conditions for storing submitted documents due to damaged infrastructure, and the non-compliance of the premises allocated by the DEC with legal requirements, etc.

Taking into account the experience of the gradual introduction of electronic financial reporting for political parties, the ECU should be amended to provide for the submission of registration documents/copies of documents exclusively in electronic form. This would significantly simplify the process of their submission and review, allow for the creation of an electronic register of registered election candidates, and ensure the verification of candidates for compliance with legal requirements. The general mechanisms for the submission and review of such electronic documents, their storage, and processing should be similar to those used for political party financial reporting and voter registration.

Cancellation of candidate registration at the initiative of the party

According to the current ECU, one of the grounds for the election commission to decide on the cancellation of a candidate's registration is an appeal by a party or party organization to the election commission to cancel the candidate's registration based on a decision of its governing body. The possibility for parties to initiate the deregistration of candidates gives rise to several disadvantages:

- Reduces the effectiveness of gender quotas due to the initiation of deregistration of women candidates;
- Lowers the openness of the electoral system, as it allows parties to increase the chances of electing candidates from the closed national list by removing regional candidates from the race;
- Undermines legal certainty for candidates regarding the prospects of running their own election campaigns, financing them, and winning the elections overall.

The arguments in favor of retaining this mechanism for parties include the need to monitor candidates' compliance with campaigning standards, assess whether registered candidates meet integrity standards, and prevent political corruption (particularly in cases where a candidate is bribed by another party to inflict reputational damage on the party that nominated them). However, these arguments are difficult to accept. The responsibility for the "quality" of nominated candidates and their genuine political affiliation should rest with the entities nominating them. Therefore, removing the option of candidate deregistration at the initiative of a party would encourage parties to take a more responsible approach to candidate selection, integrity checks, and related matters. **In this context, it is worth noting that the draft law Reg. No. 11300 "On Amendments to the Electoral Code of Ukraine on Combating Sexism in Electoral Processes and Ensuring Balanced Representation of Women and Men in the Verkhovna Rada of Ukraine and Local Councils," submitted on May 27, 2024¹¹, by MPs Zagoruiko A.L., Shulyak O.O., and others, includes provisions to eliminate this possibility. These provisions deserve support.**

Collaboration activities and restrictions on passive suffrage

The full-scale russian aggression against Ukraine, in addition to general challenges (such as a possible deterioration in the crime situation and the need to involve additional law enforcement and security forces), has also brought to the forefront the issue of holding russian collaborators in the temporarily occupied territories accountable for their actions. One of the widespread tools used by the aggressor state to illegally annex Ukrainian territories is the holding of so-called "pseudo-elections" and "pseudo-referendums" on the "reunification" of the respective territories and their incorporation into russia.

¹¹<https://itd.rada.gov.ua/billInfo/Bills/Card/44290>

In 2022, the Criminal Code of Ukraine (hereinafter – the CC of Ukraine) introduced new criminal offenses (Article 111-1 "Collaboration Activities", Article 111-2 "Aiding the Aggressor State"), under which individuals can be held liable for participation in such “pseudo-elections” and “pseudo-referendums.” However, this issue is broader and primarily concerns the restriction of passive suffrage and the prevention of persons involved in collaboration activities from holding public office.

The issue of restricting passive suffrage can and should be considered in light of international electoral standards. In particular, paragraph 1.1.d of the Explanatory Report to the Code of Good Practice in Electoral Matters of the Venice Commission emphasizes that there may be grounds for the suspension of political rights in a state, but such grounds must meet the following conditions:

- Be provided for by law;
- Comply with the principle of proportionality;
- Be based on either a court ruling recognizing the person as incapacitated due to mental illness or a conviction for a serious criminal offense.

In addition, as the Venice Commission notes, only a court may deprive a person of political rights by issuing a relevant decision. The conditions under which a person may be deprived of the right to be elected may be less strict than those for deprivation of the right to vote, as this concerns holding public office. Therefore, a prohibition on holding such office for persons whose activities could harm the broader interests of society may be considered legitimate.

Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms guarantees the right to free elections by imposing on the States Parties the obligation to hold elections at reasonable intervals by secret ballot, ensuring the free expression of the people’s opinion in the choice of the legislature. The “passive” aspect of the right to vote is elaborated in the case law of the European Court of Human Rights (ECHR), which recognizes that both active and passive electoral rights are not absolute. When assessing the passive aspect of the right under Article 3 of Protocol No. 1 to the Convention, the ECHR focuses on whether national legislation contains arbitrary provisions restricting the right to stand for election and on the impact of such restrictions on the free expression of the will of the people. Within this shortened version of the classical proportionality test, the analysis considers whether the aims pursued by state-imposed restrictions are legitimate and appropriate, with particular attention to the concept of “indirect restrictions.”

In addition to the adoption of the new criminal offenses mentioned above, on May 3, 2022, the VRU adopted legislative amendments¹² that led to the banning of approximately 16 pro-russian political parties whose leaders or members had demonstrated an openly anti-Ukrainian stance and are suspected of engaging in collaboration activities. However, these measures apply exclusively to the activities of the political party as a voluntary association, and not to its individual members.

¹² The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the Prohibition of Political Parties" <https://zakon.rada.gov.ua/laws/show/2243-20#Text>

In 2023, a number of Ukrainian MPs registered several draft legislative initiatives aimed at introducing restrictions on passive suffrage. These are described in more detail in **Table 1** below.

Table 1: Comparative analysis of the draft laws Reg. No. 9081¹³, 9081-1¹⁴ and 9081-2¹⁵

Criteria	Draft law Reg. No. 9081	Draft law Reg. No. 9081-1	Draft law Reg. No. 9081-2
Categories of persons subject to the prohibition of passive suffrage	Citizens who, at the time of the introduction of martial law in Ukraine, were: Members of the Parliament of Ukraine, members of local councils, or village, town, or city mayors elected from a political party whose activities have been prohibited	Citizens who, from the beginning of the temporary occupation of certain territories of Ukraine by the Russian Federation and until the full restoration of Ukraine's state sovereignty over those territories, were (or are), regardless of the duration of the relevant mandate(s): Members of the Parliament of Ukraine, members of local councils, or village, town, or city mayors elected from a political party whose activities have been prohibited and/or were (or are) members of a parliamentary faction formed by such a party	Citizens who, at the time of the introduction of martial law in Ukraine, held any of the following positions: President of Ukraine, member of the Cabinet of Ministers of Ukraine, member of the Parliament of Ukraine, member of a local council, or village, town, or city mayor elected from any political party that has operated on the territory of Ukraine since the declaration of its independence

¹³<https://itd.rada.gov.ua/billInfo/Bills/Card/41482>

¹⁴<https://itd.rada.gov.ua/billInfo/Bills/Card/41499>

¹⁵<https://itd.rada.gov.ua/billInfo/Bills/Card/41604>

Category of elections in which individuals are prohibited from running for office	Elections of people's deputies of Ukraine and local elections	Presidential elections, parliamentary elections and local elections	Elections of people's deputies of Ukraine and local elections
Terms of registration of candidates	Submission of a statement by a person during candidate registration, in which he/she confirms that he/she does not belong to the category of persons who are prohibited from running for office under the draft law	Submission of a statement by a person during candidate registration, in which he/she confirms that he/she does not belong to the category of persons who are prohibited from running for office under the draft law	Submission of a statement by a person during candidate registration, in which he/she confirms that he/she does not belong to the category of persons who are prohibited from running for office under the draft law
Refusal to register	If the CEC establishes (TEC receives such information from the CEC) the fact that the person running for election is prohibited from running for election under the draft law	If the CEC establishes (TEC receives such information from the CEC) the fact that the person running for election is prohibited from running for election under the draft law	If the CEC establishes (TEC receives such information from the CEC) the fact that the person running for election is prohibited from running for election under the draft law
Term of restrictions on passive suffrage	10 years from the date of termination of the martial law regime introduced by the Decree of the President of Ukraine from 24 February 2022 №64/2022 'On the introduction of martial law in Ukraine'	10 years from the date of termination of the martial law regime introduced by the Decree of the President of Ukraine from 24 February 2022 №64/2022 'On the introduction of martial law in Ukraine'	10 years from the date of termination of the martial law regime introduced by the Decree of the President of Ukraine from 24 February 2022 №64/2022 'On the introduction of martial law in Ukraine'

Each of the above draft laws contains significant shortcomings. However, on September 28, 2023, the relevant VRU Committee on the Organization of State Power, Local Self-Government, Regional Development and Urban Planning recommended that the Parliament adopt the main draft law as a basis in the first reading, rejecting the two alternative ones.

A significant drawback of all three draft laws, as noted by the experts of the Centre of Policy and Legal Reform in their opinion¹⁶, is the direct contradiction of their provisions with parts two and three of Article 76 and part two of Article 103 of the Constitution of Ukraine, which contain an exhaustive list of requirements for candidates for the People's Deputies of Ukraine and the President of Ukraine. As for candidates in local elections, the Constitution of Ukraine does not contain clear qualification requirements; however, in this case, it should be taken into account that the principles of electoral law are common to all types of elections, and the conditions for the exercise of the right of a citizen to be elected to representative bodies of state power and local self-government, guaranteed by part one of Article 38 of the Constitution of Ukraine, are also based on the same principles.

The joint opinion of the Venice Commission and the OSCE/ODIHR on draft law Reg. No. 9081 states that the purposes of such restrictions on passive suffrage – namely, the protection of national security, democratic development, the constitutional order, and the territorial integrity of Ukraine – are legitimate and consistent with the Convention, given the unique historical context. However, the draft law's automatic, collective, and indiscriminate approach to imposing such restrictions is disproportionate, as such measures should apply only to individuals who actively participated in or directly or indirectly condoned the actions that led to the party's ban. These actions must be supported by documented evidence and assessed on an individual basis¹⁷.

We fully agree with the above position of the Venice Commission and the OSCE/ODIHR. Therefore, the issue of restrictions on passive suffrage requires broad and inclusive discussion involving all relevant stakeholders (the CEC, MPs, political parties, etc.). In particular, it is necessary to discuss and develop a common position on the following issues:

- **The possibility of providing for deprivation of the right to hold certain positions or engage in certain activities as one of the sanctions under Articles 111-1 and 111-2 of the CC of Ukraine;**
- **Proportionality of the above sanction to the offenses committed;**
- **Development of another mechanism for individualized approach to the application of restrictions on passive suffrage.**

¹⁶<https://pravo.org.ua/blogs/vysnovok-tsentru-polityko-pravovyh-reform-shhodo-zakonoprojektu-9081-pro-vnesennya-zmin-do-deyakyh-zakoniv-ukrayiny-shhodo-obmezhennya-uchasti-osib-pov-yazanyh-z-politichnym-par-tiyamy-diyalnist-yakyh/>

¹⁷[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)025-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)025-e)

The issue of restrictions on passive suffrage should be defined in the ECU/a separate special law before the start of the electoral processes of the first post-war elections.

Recommendations

Content of the recommendation	Responsible actors	Deadlines/realizations
<p>Amendments to the ECU and other laws (Law of Ukraine 'On Political Parties in Ukraine', etc.) regarding:</p> <ul style="list-style-type: none"> ● Increasing the transparency of candidate nomination in elections; ● Ensuring internal party democracy in the process of nominating candidates; ● Providing parties with the opportunity to more predictably distribute candidates between regional and national electoral lists; ● Increasing the minimum number of candidates that can be nominated by a party in an electoral region; ● Eliminating problems identified by international and national election observation missions during the 2020 regular local elections; ● Transition to submission of documents for candidate registration exclusively in electronic form and creation of the Unified Register of Registered Candidates for national and local elections; ● Eliminating the possibility for parties to initiate the cancellation of candidate registration before the elections. 	VRU	Before the termination of martial law
Finalization and adoption of the draft laws No. 8310 and No. 11300	VRU	Before the termination of martial law
Providing opportunities to submit registration documents for national and local elections exclusively in electronic form	CEC together with the Ministry of Digital Transformation (electronic system and electronic services)	Before the termination of martial law

Creating unified electronic register of candidates for elections	VRU (amendments to the ECU) CEC together with the Ministry of Digital Transformation (electronic system and electronic services)	Before the termination of martial law
Clarifying the procedure for nominating and registering candidates for elections, ensuring internal party democracy and transparency of nomination	CEC	Before the start of the election process of the first post-war elections

Chapter 5

ENSURING BALANCED REPRESENTATION OF WOMEN AND MEN IN THE PARLIAMENT

Introduction

For a long time, women's representation in the Verkhovna Rada did not exceed 5–12%. For example, in the Ukrainian Parliament of the IX convocation, women's representation was 5.5%, in the XI convocation – 7.8%, and in the VII convocation – 12%. Such representation did not comply with the recommendations of the UN Millennium Development Goals, the Parliamentary Assembly of the Council of Europe, the OSCE, or international practice. As of January 2024, only 5 out of 27 member states have a woman as head of state. Globally, women hold only 26.7% of seats in parliaments, 35.5% of seats in local self-government bodies, and just 28.2% of senior leadership positions¹⁸.

The nomination of women in "passable" single-mandate constituencies in parliamentary elections, as well as their more active inclusion in electoral lists under the proportional component of the electoral system, led to an increase in women's representation in the Verkhovna Rada to 20.9% of the total number of elected MPs.

With the adoption of the Electoral Code, so-called "gender quotas" were introduced in the elections of Members of Parliament and in local elections held under the proportional electoral system. According to these quotas, each party – and in local elections, the respective local party organization – must include at least two candidates of each gender in every group of five candidates on the respective list (territorial/regional, national/unified).

The experience of the 2020 regular local elections demonstrated that the application of gender quotas in local elections under the proportional system with open lists generally increased the level of women's representation in local self-government bodies. As a result of these elections, the share of women in city district councils rose to nearly 44%, in district councils – to 34%, and in regional councils – to nearly 28%. In view of this, it can be expected that holding post-war elections of Members of Parliament under a proportional system with open lists and gender quotas, as proposed in the draft Electoral Code of Ukraine, may to some extent increase women's representation among elected Members of Parliament – to at least 30%, or even 40%.

¹⁸ https://www.eeas.europa.eu/delegations/ukraine/заява-європейської-комісії-та-високого-представника-з-наго d-international-women's-day_uk?s=232

An important factor that stimulates parties to nominate more women for elections is the provision of the Law of Ukraine "On Political Parties in Ukraine", according to which party statutes must provide for the inclusion of at least 30% of women in party lists for parliamentary and local elections. In addition, this Law provides for the allocation of additional annual state funding to those parties in which the number of representatives of one sex among the elected Members of the Verkhovna Rada of Ukraine who have assumed their mandates does not exceed two-thirds of the total number of elected MPs from that party. Like quotas, state funding can also be considered a factor that will encourage parties to ensure the election of more women in the future.

At the same time, the experience of applying the "gender quota" in the 2020 local elections demonstrated that the relevant provisions of the ECU are not sufficiently effective and require further strengthening. In particular, during the consideration of electoral disputes related to the nomination and registration of candidates in local elections, some courts adopted the position that failure to comply with the "gender quota" during the nomination of candidate lists does not constitute grounds for refusing candidate registration, but is merely grounds for correcting "inaccuracies" in the lists. Some territorial election commissions (TECs) registered candidate lists despite the failure of respective local party organizations to comply with the "gender quota". The effectiveness of gender quotas may also be significantly reduced by the fact that the exclusion of women from party lists after candidate registration, whether before or after election day, is not considered grounds for the deregistration of the entire list, even if it no longer meets the required standards of gender representation. In this regard, there is a need to introduce additional legislative mechanisms to encourage political parties to comply with the established requirements for balanced gender representation in elections held under the proportional representation system with open lists.

This section is devoted to the analysis of the main challenges related to ensuring balanced representation of women and men in elected bodies, as well as to identifying ways to improve the relevant legal provisions.

Key challenges

Effectiveness of gender quotas at the stage of nomination and registration of candidates in elections under the proportional system with open lists

The ECU does not provide a clear answer to the question of what legal consequences arise from non-compliance with "gender quotas" in elections. In general, the "spirit" of the ECU suggests that such non-compliance should be regarded as a violation of the established procedure for nominating candidates, and thus as grounds for refusing to register all candidates nominated by the respective party. However, the practice of applying these provisions by election commissions and courts during the 2020 local elections was inconsistent: some TECs refused to register all candidates due to non-compliance with gender quotas, while others treated such non-compliance as grounds for clarifying the documents submitted for candidate registration. Similarly, court decisions varied in cases challenging the relevant TEC decisions.

Since the grounds for refusing candidate registration and the requirements for gender quotas are formulated almost identically in the ECU for both local and parliamentary elections, problems similar to those encountered during the 2020 regular local elections in connection with the application of gender representation norms in electoral lists can be expected during the preparation and conduct of the first post-war parliamentary elections.

The ECU should be amended to explicitly provide that a violation of the "gender quota" is grounds for denying registration of the entire list of candidates in which the quota was violated. A violation of the "gender quota" in the nomination of the national electoral list should result in the denial of registration of all candidates from the respective party.

Ensuring compliance with the "gender quota" after the registration of candidates

The provisions of the ECU in fact imply that the requirement to ensure gender balance in electoral lists is applied only once – its compliance is verified solely in connection with the adoption or refusal to adopt a decision on the registration or refusal of registration of candidates. Violation of this balance after candidate registration (e.g., as a result of a party's decision to cancel a candidate's nomination, a candidate's withdrawal from the election, etc.) does not entail the cancellation of the registration of all candidates included in the electoral list.

Although enshrining in the ECU provisions that would provide for the deregistration of the entire list of candidates that has ceased to comply with the requirements for balanced gender representation established by the ECU would constitute a sanction disproportionate to the violation and would in fact amount to collective responsibility of candidates for the decisions/actions of the party that nominated them or the decisions/actions of a candidate who decided to withdraw from the election, this does not mean that the ECU cannot introduce mechanisms to encourage parties and candidates to comply with "gender quotas" after the registration of candidate lists in elections.

Since the main initiatives to change the lists of registered candidates come primarily from political parties, while changes initiated by the candidate themselves or due to circumstances that deprive a person of the right to be elected (incapacity, loss of citizenship, etc.) are rather an exception than the rule, ensuring the effectiveness of "gender quotas" should include narrowing the ability of parties to exclude candidates from the lists after their registration. This could be done by amending the ECU to deprive parties of the right to apply to the CEC for the cancellation of the registration of a candidate or candidates on the list. Opponents of such changes usually argue that a party should retain levers of influence over candidates after their registration, since some candidates may campaign against the party that nominated them, prove to be dishonest, or otherwise damage the party's image. On the other hand, eliminating the possibility for parties to withdraw candidates may encourage them to conduct a more thorough selection of candidates who share the party's ideology and possess proper moral qualities.

In this regard, the ECU should be amended to exclude the possibility of cancelling candidate registration at the initiative of political parties between the time of candidate registration and election day.

Replacement of elected MPs in the event of early termination of their powers

According to the current ECU, in the event of early termination of powers of a MP elected under the proportional electoral system, the CEC recognizes as elected the next candidate on the respective list (depending on the list from which the MP whose powers were terminated early was elected). This approach to filling vacant seats in representative bodies may negatively affect the balanced representation of women and men, as in the event of termination of a female/male MP's powers, a person of the opposite sex may be recognized as elected instead.

Mass early termination of the powers of deputies from certain parties may lead to a significant distortion of the gender balance in the respective elected bodies. This problem is not unique to Ukraine. In some countries (for example, the partially recognized Kosovo), the legislator addressed it in a radical way: under the electoral legislation of this state, in the event of early termination of a deputy's powers, he or she must be replaced by a person of the same sex, even if that person is lower on the electoral list and does not have a priority right to receive a mandate. The Kosovar approach to solving this problem was criticized by the Venice Commission. Its implementation in Ukraine also raises certain doubts, given the position of the Constitutional Court of Ukraine, which, when deciding on the replacement of MPs whose powers were terminated early, emphasized that the will of the people/voters (i.e., the order of inclusion in the list) takes precedence over the gender or other characteristics of the candidate.

At the same time, this does not mean that certain elements of the Kosovo experience cannot be enshrined in Ukraine's electoral legislation. Of course, if a candidate on a regional electoral list receives more than 25% of the electoral quota and moves up to the top of the list, the will of the voters in this case takes precedence, and such a candidate should replace the MP elected from the same list as a matter of priority. However, in the case of closed lists, a different approach may apply: if an MP elected from such a list resigns or their mandate is terminated, their vacant seat may well be filled by a candidate of the same gender, even if he or she is not next in line on the list in terms of priority for obtaining a mandate. In other words, gender in this case may take precedence over the candidate's position on the list. This would not violate the will of the voters, as the order of candidates on the lists and the procedure for obtaining mandates (including gender considerations) is known to voters well in advance of the election, effectively from the moment of registration of candidates included on the respective electoral list, and does not depend on the will of the voter or the party that nominated the candidate.

This approach is reflected in the **Draft Law No. 11300 “On Amendments to the Electoral Code of Ukraine to Combat Sexism in Electoral Processes and Ensure Balanced Representation of Women and Men in the Verkhovna Rada of Ukraine and Local Councils” of May 27, 2024¹⁹.**

The TCU should be amended to provide that in the event of early termination of powers of an MP elected from the national list, the next candidate on that list of the same gender shall be recognized as elected.

Revision of financial incentives for political parties

According to the Law of Ukraine "On Political Parties in Ukraine", 10% of the annual amount of state funding for political parties is distributed equally among the parties entitled to receive state funding for their statutory activities, if, based on the results of the most recent regular or early elections to the VRU, the number of representatives of one gender among the MPs elected from the respective parties who have assumed their mandates does not exceed two-thirds of the total number of MPs elected from that political party.

In the absence of effective "gender quotas," this provision indeed encouraged some parties to nominate women candidates in "passable" constituencies and to include a higher proportion of women in their electoral lists. However, the enshrinement of a 40% "gender quota" in the ECU may result in most parties that overcome the electoral threshold in the first post-war parliamentary elections in Ukraine meeting the relevant requirements of the Law of Ukraine "On Political Parties in Ukraine." Accordingly, the provisions of this Law regarding the allocation of additional state funding to parties that have ensured the election of a certain number of women to parliament will largely lose their incentive effect, as the respective funds will be distributed among almost all parties that pass the electoral threshold.

Accordingly, the Law of Ukraine "On Political Parties in Ukraine" should be amended to provide for the distribution of 10% of the annual amount of state funding equally among parties that have ensured the election to the VRU of representatives of the same sex in a number exceeding not one third, but 40% of the total number of MPs elected from the respective political party.

¹⁹Ibid.

Introduction of internal party mechanisms to promote balanced gender representation in elected bodies

Legislation can encourage parties to ensure a more balanced representation of women and men in elected bodies not only through rules on candidate nomination, but also by promoting internal party democracy. Although the Venice Commission and the European Court of Human Rights are critical of states' attempts to introduce internal party democracy through legislation — since such an approach is far from always consistent with the right to freedom of association, guaranteed by key international documents, and which may be restricted only under certain conditions. In the Ukrainian context, this may be justified in terms of the legitimacy of its objective and the proportionality of the means to achieve it, as in the absence of legal requirements, parties are not interested in introducing any elements of internal party democracy.

The experience of foreign parties (primarily those of left-wing political orientation) shows that more active inclusion of women in their governing and supervisory bodies can play an important role in encouraging parties to nominate more women in elections. After all, the greater the share of women among congress delegates, and in executive and oversight bodies, the more likely it is that the party will nominate more women in national and local elections..

The Law of Ukraine "On Political Parties in Ukraine" should be amended to provide for: 1) the inclusion of at least 30% of women in the governing and control and audit bodies of political parties; 2) the possibility of refusing to register party charters or amendments to party charters in case of non-compliance with these requirements.

Activities of the parties to increase the involvement of women in internal party work

If the above legislative changes are enshrined in law, parties should take more active steps to engage women both at the stage of recruitment and in their internal activities. This includes organizing outreach and educational activities targeted at potential and existing members, raising the level of women's professionalism on party policy and public policy in general, issues of participation in elections and campaigning, the role of women in elected bodies, establishing links with “women’s” groups in European parties, etc. Such measures can be implemented both through state funding of statutory party activities and through international technical assistance projects.

Recommendations

Content of the recommendation	Responsible actors	Deadlines for implementation
Amendments to the Law of Ukraine "On Political Parties in Ukraine" (or adoption of a new Law of Ukraine "On Political Parties in Ukraine") to revise the grounds for obtaining the right to additional state funding for ensuring higher representation of women, to establish "gender quotas" in the formation of party bodies; amendments to the ECU to strengthen the effectiveness of gender quotas	VRU	Until the end of martial law
Organizing trainings, awareness raising and other similar events for women	Political parties	After the martial law is lifted/terminated, but before the election process for the first post-war elections begins
Selection of potential candidates for inclusion in the electoral lists for the elections of people's deputies of Ukraine	Political parties	After the martial law is lifted/terminated, but before the election process for the first post-war elections begins

Chapter 6

ELECTION ADMINISTRATION

Introduction

The effectiveness of the functioning of the system of election commissions largely determines the state's ability to ensure that elections are conducted in accordance with international standards and national legislation. In turn, the effectiveness of the commissions' activities depends on a number of factors: the procedure for their formation and composition, the degree of independence and accountability, the scope of powers granted for the organization of elections, and the organizational, financial, and other support for their activities.

The system of election commissions in Ukraine has remained virtually unchanged since the country declared its independence. This system is characterized by a number of "chronic" shortcomings that have been, and continue to be, highlighted by both international and domestic election observation missions, as well as institutions that analyze electoral legislation and draft amendments to it (such as the Venice Commission, OSCE/ODIHR, and others).

Among the main shortcomings are: the politicization of activities due to the peculiarities of the appointment and dismissal of commission members; an insufficient level of professionalism (including due to frequent changes in commission composition); a limited role in the effective resolution of electoral disputes; inadequate material and financial support (which, among other things, is one of the reasons for the purchase of seats in election commissions by parties and candidates); and outdated "paper-based" methods of work.

A large number of election commission members (in presidential elections, the maximum number of members is not limited at all, while in parliamentary elections, district and precinct commissions may consist of up to 18 people) is atypical for most European countries and, in some cases, may complicate their functioning (at the very least, the establishment of an election commission with a large number of members will require providing it with sufficient space to organize its work).

Although the ECU provides for the establishment of territorial offices of the CEC, these have not been created due to the lack of adequate funding. This does not contribute even to the partial decentralization of the CEC's powers and the transfer of certain functions from DEC/TECs to permanent offices.

Russia's large-scale aggression against Ukraine has created a number of new challenges for election commissions in the preparation and conduct of the first post-war elections. In many regions of Ukraine, infrastructure has been significantly or completely destroyed – accordingly, during the post-war elections, the issue of providing commissions with adequate premises for their work will arise. The significant deficit of the state budget is unlikely to ensure sufficient funding for the needs of election commissions, not to mention raising the level of remuneration

for their members. In the case of simultaneous holding of several elections, precinct election commissions will bear a significant functional load. The question of whether prospective candidates will be interested in joining election commissions, given the considerable workload and the absence of any financial incentives from the state, is, in itself, rhetorical. Moreover, taking into account the significant migration of voters both within Ukraine and abroad, the difficulties in forming election commissions, as well as the increase in political corruption due to the complete financial dependence of commission members on those who nominated them, seem quite real.

The problems of elections' administration in Ukraine are examined in this chapter both in the context of the post-war elections and in the broader context of addressing traditional challenges in the administration of the electoral process. The implementation of measures to optimize such administration specifically for the first post-war elections is a matter of top priority. At the same time, there is a need for systematic work on medium- and long-term tasks in this area. In the context of preparations for the first post-war elections, the key task will be to take into account the relevant developments of the CEC and to ensure the stability of the elections' administration.

This section outlines the key challenges related to the formation, organization of activities, and financing of election commissions, as well as provides specific recommendations for addressing them.

Key challenges

The national and local elections held by Ukraine before the full-scale aggression of the Russia revealed significant shortcomings in the legislative regulation of election administration. As noted above, the problems identified by national and international observers may become even more acute in the context of post-war elections and destabilize the process of organizing elections.

Legislative strengthening of guarantees of the CEC's independence as part of a comprehensive reform

The current composition of the CEC ensures political representation of all parliamentary factions, has sufficient experience and expertise to organize elections in a high-quality manner, and is aware of the risks associated with holding post-war elections.

However, this does not preclude the adoption of certain measures aimed at strengthening the CEC's independence in the long term, that is, after the first post-war elections. These measures should primarily include the establishment of safeguards against political influence on the activities of the highest electoral administration body, since the current legislation still allows for the risk of early termination of the powers of the entire CEC or its individual members on political grounds. This possibility directly contradicts the Venice Commission's Code of Good Practice in Electoral Matters, which states that the body responsible for appointing the CEC should not have the power to terminate its mandate early

at its own discretion.

The Law of Ukraine "On the Central Election Commission" (hereinafter - the Law) enshrines the principle of the CEC's independence in Article 2 and provides for guarantees to ensure this independence. These include the prohibition of interference in the CEC's activities, the specifics of the procedure for appointing CEC members to their positions, and the procedure for financing and logistical support of the CEC (Article 3 of the Law).

At the same time, the procedure for appointing and dismissing CEC members does not fully guarantee the independence of this body.

First, according to paragraph 21 of part one of Article 85 of the Constitution of Ukraine, CEC members are appointed to and dismissed from office by the Parliament upon the submission of the President of Ukraine. This procedure of appointments and dismissals can prevent further politicization of the CEC only if the parliamentary majority is not affiliated with the Head of State. If, however, they represent the same political force or are affiliated with it in one way or another, such a mechanism in fact allows full control over the appointment and dismissal of CEC members. Although the Law obliges the President of Ukraine to take into account the proposals of parliamentary factions and groups when submitting nominations for CEC membership, it does not define the extent to which these proposals must be taken into account. Moreover, such an obligation on the part of the President may limit the constitutional prerogative of the Head of State, since the Constitution of Ukraine does not establish any such obligation

Given that the principle of the independence of the electoral administration is a cornerstone of effective election administration, the constitutional provisions and the requirements of the Law regarding the appointment of CEC members should be reviewed in the medium and long term (i.e., after the first post-war elections). Possible amendments to the Constitution and/or the Law may provide for the introduction of some of these mechanisms:

- **Formation of the CEC by an independent body (or with the mandatory involvement of such an independent body in the appointment process) through an open competitive selection of candidates to the CEC;**
- **Clearer definition in the Constitution of Ukraine of the principles for coordinating candidates for the CEC between the President of Ukraine and parliamentary factions and groups (for example, the mandatory consideration by the head of state of candidates in proportion to the number of relevant factions and groups in the parliament, along with limiting the representation of candidates from the parliamentary majority in the composition of the CEC, etc.);**
- **Inclusion in the CEC of former judges or candidates proposed by the judiciary (Congress of Judges) and/or candidates from international or national civil society organizations specializing in electoral issues or election observation.**

This list of mechanisms is indicative and may include other steps deemed necessary by the legislator, since international standards (such as the Venice Commission's Code of Good Practice in Electoral Matters, General Comment No. 25 of the UN Human Rights Committee, etc.) do not propose specific mechanisms for the formation of central election commissions; moreover, under certain conditions, even election administration by executive bodies is permitted. In any case, the procedure for forming the CEC should be defined in such a way as to ensure its operational independence from political influence.

Secondly, the CEC's independence is significantly weakened by the provisions of Article 31-1 of the Law. According to it, the powers of the entire CEC may be terminated early by the VRU upon the proposal of the head of state. In this case, the decision to terminate the powers of the entire CEC must be adopted by at least two-thirds of its constitutional composition. In fact, this article introduces the principle of political responsibility of the CEC, since the Commission does not need to violate the law for all of its members to be dismissed: it is sufficient for the President of Ukraine to justify the need to remove all members of the CEC. Moreover, it is significantly easier to dismiss the entire CEC than to terminate the powers of individual members: according to Article 31 of the Law, a member of the CEC may only be dismissed on their own initiative, in case of non-compliance with the statutory requirements (reaching the age of 65, loss of citizenship, being declared incapacitated, etc.), or in case of specific violations (breach of oath, committing a corruption-related administrative offense, etc.).

Thus, if political actors (the President of Ukraine, the majority of parliamentary factions and groups) are dissatisfied with the activities of the CEC or some of its members for certain reasons, they always have the opportunity to reformat its composition. The requirement to adopt a decision on the early termination of powers of all CEC members by two-thirds of the Parliament's composition is also not a safeguard against politically motivated "reformatting" of the CEC, as the necessary number of votes to support such a decision can always be ensured by nominating more candidates from factions and groups that will support the dismissal of all its members.

In the medium term (i.e., after the first post-war elections), the VRU should consider the possibility of amending Article 31-1 of the Law to narrow the list of grounds for the termination of powers of the entire CEC as a body solely to cases of systematic or gross violations of legal requirements by the CEC. The same article should also define an exhaustive list of such gross violations.

Thirdly, some grounds for early termination of the powers of a CEC member (although Article 30 of the Law defines an exhaustive list of such grounds) are vaguely worded, which essentially allows for the initiation of dismissal of a CEC member on political grounds. It is noteworthy that the grounds for dismissal of a CEC member do not include violation of the Law, systematic failure to perform their duties, or gross violation of electoral legislation: the only applicable ground is a violation of the oath by a CEC member (paragraph 8, part one, Article 30 of the Law). At the same time, the text of the oath, set out in part one of Article 8 of the Law, is too vague and allows for varied interpretation ("to be honest", "to adhere to a non-partisan position", "to comply with the Constitution and laws of Ukraine", "to promote the realization of citizens' electoral rights", etc.) as to whether it has been violated or upheld.

In addition, the President is effectively vested with exclusive powers to determine whether a CEC member has violated the oath, since if the President believes that a particular member of the CEC has violated the oath, he may, in accordance with Articles 85 and 106 of the Constitution, initiate the dismissal of that member. Although the Law stipulates that a motion for early termination of a CEC member's powers is to be submitted to the President by the CEC Chairperson, the President may ignore this legal requirement, referring either to the provisions of the Constitution of Ukraine as norms of direct effect or to the inaction of the CEC Chairperson in submitting the relevant motion, if such inaction occurred.

In the medium term (after the first post-war elections), it is worth considering amending Article 30 of the Law to define:

- or such a **procedure for establishing the fact of violation of the oath by a CEC member** that would ensure impartiality and objectivity in establishing such a fact (for example, it would be established by a court);
- or **establishing as a ground for early termination of powers of a CEC member** not a violation of the oath, but **the commission of a specific list of violations of the law** (such violations should also be established in an impartial manner) that constitute grounds for early termination of powers of a CEC member (for example, systematic failure to participate in CEC meetings without valid reasons, failure to comply with lawful decisions of the CEC, gross or systematic violation of election law, etc.).

Establishment of regional offices of the CEC

In 2020, the Law was amended to grant the CEC the authority to establish its own regional and territorial offices. These offices were intended to be delegated a number of oversight functions, including monitoring compliance with electoral legislation by election commissions and electoral stakeholders; organizing training on electoral issues for election commission members; conducting voter information campaigns; organizing experiments and pilot projects in the electoral field; monitoring the financing of election campaigning and the efficiency and legality of budget expenditures allocated for the preparation and conduct of elections; forming databases of election commission members and candidates in local elections; and overseeing the transfer of electoral and other documentation to archival institutions.

A number of these functions of the prospective territorial offices (in particular, in terms of monitoring the financing of election campaigning and analyzing the financial reports of election fund managers) are also enshrined in the Electoral Code of Ukraine (ECU).

At the same time, the issue of budget deficit will remain relevant for a long time after the end of the war with the aggressor state. Therefore, referring to the state's persistent lack of funds necessary to implement the legal provisions regarding the establishment of territorial offices can hardly be considered well-founded.

The lack of adequate funding does not preclude the possibility of launching pilot projects or experiments in this area, analyzing their results, and gradually expanding the scope of such experiments to other regions. For instance, at the initial stage, a single “pilot” office may be established in the most problematic territory in terms of election administration (which may encompass more than one oblast). The positive and negative experiences of such an office could then be taken into account when establishing similar offices in other territories. This approach is particularly noteworthy as it was successfully tested in the 2000s by the Accounting Chamber, which also established its territorial branches in the format of pilot projects covering several regions of the country.

Given the above, in the medium term, the CEC should:

- **To publicly present and conduct an inclusive discussion of the general concept, the sequence of establishment, and future expansion (including its stages) of the system of territorial representations**, as well as the draft regulation on them as provided for in Article 35 of the Law (which, among other things, will also define clearer principles of vertical and horizontal interaction among the representations themselves and between the representations and the respective election commissions);
- With the participation of the Ministry of Finance of Ukraine and relevant parliamentary committees, **assess the overall estimated cost of establishing one or two “pilot” offices at the regional and/or sub-regional level** (taking into account relevant staffing needs and associated labor costs) prior to the first post-war elections;
- Analyze the experience of operating the first pilot representative office(s) and gradually expand the scope of the respective experiment to other regions;
- **Consider establishing representative offices in such organizational and legal forms that would allow for the attraction of foreign/international funding** for the creation and initial support of “pilot offices”, with the potential to expand such funding to other offices to be established in the future.

Quantitative composition of DEC and PECs

According to the ECU, during presidential elections, the minimum number of PEC members is 9, and of DEC members – 12. Since each candidate for the presidency of Ukraine may nominate one candidate to both DEC and PECs, the Electoral Code does not establish an upper limit for the number of members of these commissions in presidential elections. In parliamentary elections, DEC are formed with 12 to 18 members, while PECs consist of 10 to 18 members, depending on the number of voters assigned to the respective polling station (Articles 140–141 of the ECU).

Given the significant internal migration of voters, the large number of refugees (which, regardless of the counting methodology, amounts to millions of voters, the vast majority of whom are women), as well as the substantial number of citizens who died as a result of the war, the formation of election commissions, even with the minimum required number of members, may prove to be a considerable challenge.

The interest of voters in serving as election commission members may decline even further, given the difficult economic situation in the country (which will directly affect the actual level of remuneration for commission members) and the potential simultaneous conduct of several, or even all, post-war elections (i.e., national and local).

The ECU or a special law that will determine the procedure for the first post-war elections may provide for a certain level of flexibility in the formation of DEC and PEC in cases where the minimum required number of nominations for the respective commission is not received. In such cases, the CEC or DEC may be authorized to form a commission with a composition below the minimum threshold. An alternative approach could be to increase the number of candidates that parties/candidates are allowed to nominate – up to 2 persons in presidential elections and 3 persons in parliamentary elections. In the latter case, this would allow reaching the minimum composition.

As noted above, in presidential elections, there is no upper limit on the number of commission members. Accordingly, if 40 candidates run for the presidency and each of them nominates one candidate to the election commissions, the DEC and PEC will consist of 40 members. This provision has already caused problems during several previous presidential election campaigns: observers noted the excessively large size of some commissions and, in certain cases, the lack of proper conditions for their operation due to the simultaneous presence of a large number of commission members in the premises (not to mention other individuals who have the right to be present at commission meetings or during voting without the commission's permission or invitation).

Therefore, the ECU may be amended to introduce an upper limit on the number of DEC and PEC members in presidential elections, similar to the provisions applied in the elections of people's deputies of Ukraine. Moreover, considering the simpler procedures for vote counting and tabulation of results in presidential elections compared to elections under the proportional electoral system with open lists, the maximum number of DEC and PEC members in presidential elections may even be lower than that applied in parliamentary elections. In cases where the number of nominated candidates to a given election commission exceeds the allowed composition, the final composition may be determined by drawing lots.

Entities entitled to nominate candidates to the composition of DEC and PEC

The next important issue related to the formation of election commissions is who exactly has the right to nominate candidates to DEC and PEC. In presidential elections, these entities are the candidates for the post of President of Ukraine, each of whom is entitled to nominate one candidate to each commission. This approach generally does not raise objections, except for concerns related to the submission of an excessive number of candidates and the formation of commissions with a large number of members (see above).

In the elections of people's deputies of Ukraine, the right to nominate candidates to election commissions is granted to parties whose parliamentary factions are registered with the Secretariat of the Verkhovna Rada of Ukraine (they may submit 2 candidates to each commission), as well as to parties whose candidates are registered in the nationwide constituency (1 candidate each). These provisions of the ECU give parties that have formed their own parliamentary factions significant advantages over other parties participating in the electoral process, as they may effectively nominate up to 3 candidates to each DEC and PEC (2 from a party whose faction is registered in the VRU and 1 as a party participating in the electoral process), whose nominations cannot be rejected, whereas the representation of "non-parliamentary" parties in commissions is determined by drawing lots. In general, the legislator's intention to give preference to parliamentary parties in the formation of election commissions does not raise significant objections. **However, if a party has already nominated candidates in its capacity as a party with a parliamentary faction in the VRU, it should not be entitled to additionally nominate candidates in the capacity of a party participating in the electoral process.** An exception to this rule may apply only in cases where there are no nominations from "non-parliamentary" parties and it is impossible to form an election commission with the minimum number of members — in such cases, "parliamentary" parties should be allowed to submit one additional candidate to the respective commission.

Drawing of lots for candidates to election commissions and transition to electronic submission of nominations to commissions

According to the ECU, if the CEC or DEC receives a number of candidates for lower-level election commissions that exceeds the maximum composition of the respective commission, the representation of parties – electoral process subjects – in such commissions is determined by drawing lots. The procedure for conducting such a draw in the elections of people's deputies of Ukraine is determined by CEC Resolution No. 50²⁰ dated February 15, 2022. According to it, the drawing of lots for the candidates submitted to the commissions is carried out not for each election commission, but based on parties. Accordingly, a party that receives priority in filling vacant positions in commissions has the opportunity to fill all vacant positions in such commissions with its own candidates. This is also confirmed by election practice. For example, according to the Final Report on the Observation of the 2019 Early Parliamentary Elections prepared by the Civil Network OPORA, during the formation of DEC members drawn by lot were submitted by two parties – “Vidrodzhennya” and “5.10” (114 DEC members each), neither of which crossed the electoral threshold in the parliamentary elections. Instead, the parties that did cross the threshold in the 2019 elections (“Servant of the People,” “Holos,” and “Opposition Platform — For Life”) entered the election process without any nominees to DEC members and, therefore, were not formally represented in the relevant commissions. A significant drawback is also the use of the outdated system of drum and paper lots, which significantly increases the time required to conduct the draw.

²⁰CEC Resolution No. 50 of February 15, 2022 "On the Procedure for Drawing of Candidates to the Precinct Election Commissions for the Election of People's Deputies of Ukraine" <https://zakon.rada.gov.ua/laws/show/v0050359-22#Text>

The VKU should be amended to provide for the drawing of lots for candidates to election commissions for each commission separately, rather than for all commissions within a district as a whole, as this will better ensure the principle of equality of parties participating in the election process in the formation of election commissions. In order to save time for the drawing of lots, it should be conducted using an electronic system that must be certified/audited before it is put into commercial operation, in particular for protection against unauthorized interference and manipulation of the results of the drawing of lots. Such a system should be put into commercial operation before the start of the electoral process for the first post-war elections, but no later than the start of the deadline for submitting candidates for DEC's in the first post-war elections.

One of the prerequisites for the introduction of the electronic drawing of lots for candidates to election commissions may be the introduction of amendments to the CEC that would allow for the submission of candidates to commissions **exclusively in electronic form with certification of the relevant documents by a qualified electronic digital signature of a person authorized to submit such documents. This system may be similar to the one that (if implemented) will be used for submission of registration documents by parties and/or candidates in elections (for more details, see the section "Procedure for Nomination and Registration of Candidates"). Ensuring the possibility of submitting candidates to commissions in electronic form seems particularly relevant in the context of post-war elections, as delivery of documents to DEC's/CEC's in paper form may be significantly complicated given the state of roads and other infrastructure in some regions.**

Replacements in the composition of election commissions

As noted in the final OSCE/ODIHR report on the 2019 early parliamentary elections in Ukraine, 63% of DEC members were replaced at later stages of the election process. At the same time, the initiators of rotations were usually electoral subjects. The virtually unlimited possibility to replace election commission members neutralized efforts to pre-train election commission members and allowed election stakeholders to put pressure on commission members. There were widespread attempts to de facto disrupt the proper course of election day by replacing PEC members before election day.

In almost all previous national elections, international and national election observation missions have drawn attention to the instability of the personal composition of election commissions, caused, among other things, by the replacement of commission members by the subjects of their candidacies. During the early parliamentary elections of 2019, the composition of DEC's, according to the CEC, was renewed by 46%. At the PEC level, the percentage of such updates is even higher.

Constant changes in the composition of district and precinct election commissions largely offset the efforts of the CEC and international treaties to provide comprehensive and timely training for commission members, as a commission member who has undergone appropriate training can always be replaced by a new commission member who has not participated in any election at all.

That is why some experts and civil society representatives emphasize the need to enshrine in the legislation provisions that would limit the right of the subjects of nomination to the commissions to initiate the replacement of their proposed commission members. The main arguments for and against this idea (the arguments against it are mainly voiced by representatives of parties and individual politicians) are presented in **Table 1**.

Table 1: *Prohibition/restriction of replacements in the composition of election commissions at the initiative of entities nominating candidates to the commissions*

Arguments in favor	Arguments against
<ul style="list-style-type: none"> ● Enabling commission members to act independently with respect to parties/candidates, including nominating entities; ● The restriction is in line with the recommendations of the OSCE/ODIHR and the Venice Commission; ● The institutional memory of the relevant commission is ensured; ● The possibility of early and comprehensive training of election commission members is ensured; ● Parties/candidates will be encouraged to select candidates for commissions more carefully; ● This ensures the formation of a kind of service market - an impartial/political commission member is likely to be nominated to the commission in the next election; ● More active internal development of political parties is ensured (members of commissions can be recruited from among party members). 	<ul style="list-style-type: none"> ● There is a high risk of competitors 'buying off' commission members; ● Parties/candidates not represented in the commissions cannot properly monitor the activities of election commissions formed without their participation; ● Possibility of destabilizing the functioning of the commission as a whole by 'dissatisfied' electoral actors, as well as the spread of distrust in the electoral administration/election results in general; ● The state does not have sufficient resources to pay for the work of commission members, while if parties/candidates lose control over 'their' members, the subjects of nomination to the commissions lose incentives to pay commission members properly for their work, and the latter lose incentives to become members in general, which may lead to difficulties in forming commissions even with a minimum number of members; ● Interested parties/candidates may train commission members appointed upon their submissions independently.

Perhaps the most important argument in favor of prohibiting the replacement of commission members is the need to increase the effectiveness of training provided to them by the CEC.

Therefore, even if amendments to the ECU do not limit the possibility of replacing commission members at the initiative of parties/candidates in elections, they should at least impose an obligation on nominating entities to replace candidates only with persons who have completed training under the CEC-approved program.

To ensure the stability of the composition of election commissions in post-war elections, the Verkhovna Rada of Ukraine should legislate a restriction on the timeframe for replacing election commission members prior to election day and/or limit multiple replacements initiated by the same electoral subject. One possible way to address this issue may be to prohibit the submission of motions to replace DEC/PEC members later than two days before election day, while such motions must be considered within the same timeframe prior to the start of voting.

Ensuring the professionalism of election commission members

In 2020, the Law was supplemented by a new Article 35-1, which provided for the institutionalization of the Training Center for Election Process Participants (hereinafter referred to as the Center) as a legal entity under public law. This Center was established long before the adoption of the relevant amendments to the CEC Law and a significant part of its activities was funded by international technical assistance. At the same time, the Center's role in training is not enhanced by the fact that it is not mandatory for election commission members to undergo training on election issues. That is why it cannot target those who have not been officially appointed as election commissioners. Accordingly, the latter are trained in the period between the time they become commissioners and election day, rather than in the inter-election period. The effectiveness of the training is negatively affected by the virtually unlimited possibilities of parties and election candidates to initiate the replacement of election commission members appointed upon their submissions, while the available resources of the Center do not always allow for prompt training of newly appointed (replacement) election commission members.

Mandatory training for commission members/candidates for positions in election commissions has been envisaged in draft amendments to the election law since the mid-2000s, but none of them has been adopted. This is not least due to the fact that representatives of a number of parties represented in the parliament at the time saw mandatory training as a risk that their proposed candidates would be deliberately rejected on the pretext of not having completed the training, as the CEC would not certify the relevant persons under the influence of external political factors. On the other hand, the need to increase the professionalism of election commission members and to train them is constantly emphasized by OSCE/ODIHR missions after almost every election. A compromise solution to the problem may be either to enshrine in the election legislation financial incentives for those commission members who have undergone training (for example, guaranteed remuneration or even increased remuneration, if the economic situation in the country allows) or to make it mandatory for at least some representatives of the commission management, and in practice, their secretaries, to undergo training.

In this case, the opportunity to undergo training may be provided both during the election process and in the inter-election period, so that persons who have undergone training before their candidacy is submitted may be offered for the relevant positions in election commissions (in the case at hand, for the positions of secretaries).

In the longer term, the ECU and the Law should be amended to provide for:

- **mandatory training on election issues for all candidates for election commissions according to a program approved by the CEC or the Center;**
- **funding of such training at the expense of the customers of the relevant services;**
- **mandatory certification of persons who have completed the training based on the results of appropriate testing;**
- **creation of an electronic register of persons who have undergone training on election issues;**
- **revocation of accreditation/certification in case a commission member commits a violation that serves as grounds for early termination of their powers, if such a violation is confirmed by a court or a higher-level election commission.**

Administration of elections in a foreign constituency

The administration of elections within the FC is carried out by the CEC, which performs the functions of a DEC in the FC, and by PECs of the FPSs. A number of functions related to the organization of voting abroad are also carried out by the MFA. The relevant structural unit of the MFA, the Department for SRV Management and Administration at the MFA — in particular: maintains the SRV and compiles preliminary and updated voter lists for their further transfer to PECs of the FPSs; accepts proposals for the accreditation of international election observers; publishes information on the SRV; initiates the formation of FPSs; submits candidates to the composition of PECs of the FPSs in case of understaffing of commissions; receives ballots, seals, stamps, and other election documentation forms from the CEC and transfers them to PECs of the FPSs; finances PECs of the FPSs.

Prior to Russia's full-scale invasion of Ukraine, this system of election administration generally ensured the participation of voters in the FC. However, following the onset of the full-scale invasion and the displacement of millions of Ukrainian citizens abroad, it will face a number of challenges: the need to create conditions for a significant number of voters to participate in the elections; the need to negotiate with the competent authorities of host countries regarding the possibility of establishing temporary polling stations outside the premises of diplomatic missions; the need to establish a significant number of PECs of the FPSs and, accordingly, to identify candidates for appointment to these commissions; the need to conduct large-scale voter information campaigns in the FC on the procedures for exercising electoral rights; logistical challenges related to the transfer of electoral documentation to a large number of PECs of the FPSs.

The MFA and the CEC need to respond to these challenges in a timely and effective manner even before the martial law is terminated or lifted:

- **Obtain data on the exact number of voters and their places of compact residence in the FC;**

- **Assess the possibility of establishing additional FPSs outside of diplomatic missions in the respective states** and hold preliminary talks with the authorized bodies of these states on the opening and operation of such stations;
- **Determine the approximate amount of expenses for the operation of PECs**, the needs for material and technical support of the respective commissions, and the number of candidates to be submitted to the CEC in the event of the first post-war elections;
- **Clearly divide election administration powers between the CEC and the MFA;**
- **Formulate a concept for informing voters about the procedures for exercising voting rights in the FC**, including implementation mechanisms and funding sources;
- **Form a preliminary pool of potential PEC members** from among voters residing in the respective state;
- **Identify mechanisms for resolving logistical problems** that will arise during the preparation and conduct of the first post-war elections in the FC;
- **Prepare proposals for legislative regulation of issues related to election organization in the FC** (the CEC developed relevant recommendations back in 2023, but they were not registered by any subject of legislative initiative in the VRU and did not address a significant number of the challenges listed above – in fact, full responsibility for organizing elections in the FC was to be assigned to the MFA).

Administration of the first post-war elections in the de-occupied/war-affected territories

It is quite obvious that the administration of the first post-war elections in the territories directly affected by hostilities (including the de-occupied territories) and the rest of Ukraine will have significant differences. It is no secret that communities that were under occupation or located in the combat zone/in the immediate vicinity of the contact line often lack the infrastructure necessary for organizing elections (premises, roads), face significant security risks (in particular, due to mined areas or the presence of a large number of unexploded ordnance), and lack a sufficient number of people to ensure the formation of commissions in the number determined (or to be determined) by law. Of course, the simplest way to solve these problems would be to postpone the elections/voting in the first post-war elections for the respective territories. However, given the uncertainty of the end of the war with the aggressor state, the risk of an increase in the area of such territories, and the potential increase in the number of voters who will remain within their borders after the end of martial law, this method is not universal, and its large-scale application may call into question both the legitimacy of the first post-war elections and the conduct of these elections in accordance with international standards. That is why the decision to postpone the first post-war elections in the respective territories should be approached with caution. If elections are to be held in the respective territories, amendments to the ECU/special law on the first post-war elections should determine:

- The procedure and deadlines for restoring the functioning of law enforcement agencies and courts in the respective territories before the start of the electoral process for the first post-war elections;
- Assigning to the CEC and/or authorized executive authorities (military administrations, executive authorities in the field of national security, defense and law enforcement, and emergency management) the obligation to inspect the state of infrastructure (including road infrastructure) and assess potential risks to the organization of voting and the establishment of voting results within both PECs and DECAs across Ukraine;
- Enshrining the possibility for the CEC to determine the boundaries of electoral districts and polling stations on different principles than in the rest of Ukraine (e.g., forming districts with a greater or smaller number of PECs, taking into account the state of infrastructure and available funding/material and technical support);
- Granting the CEC the right to establish special regulatory requirements for PEC premises, considering the state of infrastructure in the de-occupied/affected territories;
- Establishing the procedure for providing election commissions with premises necessary to organize their work in the absence of suitable premises/structures that meet applicable norms and standards. Amendments to the ECU or a special law should provide for the possibility of locating PECs, and in some cases DECAs, in temporary facilities (e.g., tents);
- Allowing election commissions in such territories to be formed with fewer members than those in areas unaffected by hostilities;
- Ensuring the financing of travel, relocation, and accommodation of members of such commissions if they need to be recruited from other territories and the required number of nominees from parties/candidates is lacking;
- Assigning authorized state bodies to screen candidates for PECs and DECAs in such territories for potential collaboration or assistance to the aggressor state (which may also require a special law to establish different timelines for forming such commissions);
- Granting the CEC the right, in cooperation with the Ministry of Internal Affairs, the Ministry of Defense, and the SSU, to establish security protocols/algorithms for commission operations, including on election day, during vote counting, the transportation of election documents, and the establishment of voting results, to ensure that elections are held in accordance with international standards, taking into account relevant security risks.

Powers of election commissions and organization of their activities

A significant increase in the functional workload of election commissions in preparation for the first post-war elections (which may also be held simultaneously), as well as a substantial budget deficit, necessitate a revision of the scope of PEC powers and the introduction of more modern working methods into the commissions' activities. These measures could help accelerate and simplify the exercise of certain powers by election commissions.

Similar to previous electoral legislation, the current ECU significantly limits the role of PECs in the adjustment of voter lists. In practice, this role is reduced to that of a kind of “PEC postman,” who is not authorized to review voters’ applications regarding inaccuracies in the voter lists but must merely accept and forward them to the relevant SRV authorities. In the context of the large-scale introduction of electronic applications at the state level, this approach appears unjustified. Both the process of reviewing the voter lists and making corrections could be carried out in an automated manner via the voter's electronic cabinet or the Diia application. From a technical standpoint, voters could also use their electronic cabinet or Diia to view information about themselves and the polling station to which their voting address is assigned, and to submit applications to change their voting location without changing their voting address. Accordingly, the need for in-person interaction between voters and PECs/SRV authorities, the transmission and receipt of preliminary and updated voter lists by PECs, and the processing of voters’ applications for corrections, as well as the sending of personalized invitations to voters regarding their inclusion in the lists, would either disappear or be significantly reduced. Since PECs are currently formed 15 days prior to election day solely to receive the voter lists from the SRV, the implementation of these innovations would also allow PECs to be formed closer to election day, thus reducing the overall cost of financing election commissions..

The ECU should be amended to provide for:

- **Relieving PECs of all powers** related to receiving, transferring, and updating voter lists, as well as accepting voter applications regarding inaccuracies in the lists;
- **Shortening the timeframe for the formation of PECs to 5-7 days before election day;**
- **Carrying out all procedures related to familiarization with and updating of voter lists in electronic form** through the voter's personal account or the Diia application;
- **Removing the obligation of PECs to send personalized invitations to voters;**
- **Assigning the CEC the responsibility to conduct a voter information campaign** via television and the Internet on how to familiarize themselves with and update the voter lists;
- **Ensuring access of civil society organizations** observing the elections, media representatives, authorized persons, proxies, and observers from parties/candidates **to the preliminary and updated voter lists at the premises of the relevant SRV authority.**

Like the previous electoral legislation, the current ECU retains the authority of election commissions to consider certain categories of complaints regarding violations of electoral legislation. While extrajudicial appeals are an effective mechanism for the prompt restoration of violated rights in most European countries, in the Ukrainian context this mechanism proves to be highly ineffective. This is primarily due to the insufficient level of professionalism among election commission members, the lack of legal knowledge among many of them, and the overall politicization of commission activities. **Amendments should be made to the ECU to remove the authority of DEC's to accept and consider complaints about violations of electoral legislation – such violations should instead be appealed directly to the court through administrative proceedings.**

The requirements of the ECU regarding the organization of election commissions' activities are generally outdated and should be revised to promote the broader use of electronic document management and the replacement of paper-based documents submitted to, reviewed, or accepted by election commissions with electronic ones. This would allow to:

- Eliminate the need to place materials related to the activities of the relevant commission on its official stand;
- Ensure that the protocols on vote counting and voting results in the constituency are filled in correctly through appropriate arithmetic and logical control;
- Ensure access of third parties to all information related to the activities of any election commission (resolutions, minutes of meetings, etc.), as well as prompt analysis and summarization of relevant information;
- Automate the internal document flow in the commissions by, among other things, using electronic document templates.

In this regard, the ECU should be amended to provide for the full transition of all election commissions to electronic document management. The CEC may be entrusted with the responsibility of creating a centralized electronic document management system within election commissions, including corresponding electronic offices for district, territorial, and precinct election commissions.

There is a need to optimize the activities of election commissions, which are quite burdensome, especially on election day, during the vote counting, transportation and acceptance of documents, and the establishment of voting results.

First, consideration should be given to the possibility of the widespread introduction of electronic document management, as envisaged in Article 18 of the ECU, including electronic processing of protocols, data transmission, automatic verification of correctness, transfer of documents in the FC, and publication of election documentation on the CEC website disaggregated by constituencies and polling stations. This, in turn, may help increase the transparency of election commission work and minimize errors in the preparation of electoral documentation. At the same time, security risks associated with the use of electronic digital signatures should be taken into account.

Second, it is advisable to assess the possibility of simplifying or optimizing complex electoral procedures without compromising the transparency of the electoral process, especially on election day, during the vote count, transportation and acceptance of documents, and the establishment of voting results. This includes: allowing PECs to produce ballots independently using security stamps; abandoning the use of control coupons; establishing clear schedules for the acceptance and transfer of documents to DEC. In addition, the procedures for continuous meetings of election commissions are essentially a fiction, as they can last for an indefinite period of time and, in practice, commission members must physically leave to meet their natural needs (sleep, eat, use the restroom, etc.). Therefore, these procedures should be abandoned in favor of a more humane and legally defined format.

Thirdly, given the potential staffing shortage in election commissions, one possible way to address this issue could be to engage “temporary workers” (e.g., for vote counting). However, the systemic solution lies in establishing a fair and competitive level of remuneration for election commission members.

Financing and logistics of election commissions

During all previous election campaigns (i.e., even before Russia's full-scale invasion of Ukraine), election commissions and their members faced a number of challenges related to the logistical support of their activities. In many cases, the premises of election commissions did not meet the established standards for space; some of these premises were not adapted to the needs of persons with disabilities, and in some (due to construction peculiarities), the presence of observers, voters, and other persons entitled to attend during the organization of voting and vote counting was complicated or did not allow for effective observation of the voting/counting process. Some PECs still lack stable Internet connectivity. At FPSs, issues related to the material and financial support of PECs must, at least partially, be addressed by the relevant diplomatic missions. In the post-war period, all these problems will become even more acute, as in many regions the infrastructure previously used by commissions during elections, or that could have been used, has been completely or substantially destroyed.

No less urgent is the issue of remuneration for election commission members. Only a small proportion of commission members, as determined by the ECU or by the commission's own decision, receive remuneration for their work, while all other members serve on a voluntary basis from the moment they assume their duties (excluding election day). This not only discourages commission members from properly fulfilling their responsibilities and improving their qualifications in the electoral field, but also creates corruption risks and increases the opacity of election financing. It is no secret that the vast majority of commission members are financially supported by the nominating entities, and such funds are not reflected in any official reporting.

In general, the challenges in the area of material and technical support for the activities of election commissions and their members are as follows (see details above):

- Potential lack of premises suitable for the functioning of election commissions (both PECs and DEC/TECs);

- The need to find premises to accommodate PECs at institutions of higher education in the event that temporary FPSs are established outside Ukraine's diplomatic missions; the need to determine the procedure for paying or reimbursing related rent expenses, and for concluding and approving lease agreements;
- Lack of clear delineation between expenditures for the administration of the electoral process and support for the activities of Ukraine's diplomatic missions abroad, which complicates the logistical support for PECs operating under such missions and may have an even more negative impact in cases where a significant number of PECs operate outside Ukraine's diplomatic premises;
- Destruction or damage of equipment needed for the functioning of election commissions (tables, chairs, computer equipment, etc.) and difficulties with replenishing losses due to large-scale hostilities, including the potential need for centralized procurement;
- Inadequate adaptation of existing PEC/DEC premises (even in areas not affected by hostilities) to the needs of voters with disabilities or voters who require proper access to the voting premises for health reasons (e.g., PECs located on upper floors of buildings, lack of ramps, elevators, etc.);
- Absence of effective legal mechanisms to ensure that blind voters can exercise their right to vote, including the requirement to equip polling stations with reasonable accommodations;
- Non-compliance of PEC premises with legal requirements due to configuration issues (e.g., partitions, niches), which creates favorable conditions for vote rigging, illegal voting, or at least hinders observation of the voting process by authorized persons;
- Shadow remuneration of PEC members by nominating entities and the lack of proper compensation for most commission members, which discourages professionalism and creates corruption risks;
- Insufficient budgetary funding for the implementation of TEC/DEC mandates, including verification of financial reporting by electoral subjects (parties, local party organizations, and candidates), capacity building of lower-level commission members, and execution of commission expenditure estimates.

Responding to these challenges involves taking the following steps:

- **Monitoring** by local/military administrations and local self-government bodies of the **condition of premises and structures used or used by election commissions for their work during previous election campaigns** based on the monitoring methodology determined by the CEC, and informing the CEC of the results of the monitoring before the end of martial law (in the territories where no hostilities were conducted) or within a certain period after its completion (in the territories affected by hostilities);
- Immediately after the end of martial law, **the CEC should determine the needs of lower-level commissions for premises** that would meet the established standards, as well as identify temporary premises (in cooperation with other central and local executive authorities) to accommodate PECs and, if necessary, DEC and TECs;

- The VRU (before the end of the martial law) to amend the ECU **to allow PECs to be located in temporary premises based on the results of monitoring conducted by local authorities** on the basis of relevant decisions of the CEC, as well as to determine the list of premises that cannot be used by election commissions;
- Establishing by the CEC jointly with the National Police of Ukraine and/or other authorized bodies **requirements for such temporary premises** taking into account the need to preserve election documents, prevent unauthorized access to them by unauthorized persons, the need to ensure effective voting, effective monitoring of the voting process, as well as ensuring accessibility of such premises for voters with disabilities (before the start of the election process for the first post-war elections);
- Local state administrations/military administrations and local self-government bodies **to monitor the state of preservation of equipment and material and technical means necessary for the proper functioning of election commissions**, inform the CEC of the results of such monitoring, and include the costs of purchasing the relevant equipment in the budgets of the respective budget holders before the start of the election process;
- Ensure that the authorized executive bodies **restore communication (including the Internet) to support the activities of election commissions (before the start of the election process)**;
- The CEC and the MFA, in coordination with the Ministry of Finance of Ukraine, **to more clearly distinguish between the costs associated with the functioning of the PECs**, especially the PECs of the temporary FPSs, if they are formed (after the end of martial law, but before the start of the electoral process for post-war elections);
- Approval by the MFA and the CEC of **the form of a standard lease agreement for the premises for the election commission**, the definition of subjects and the procedure for its conclusion/approval, as well as standard terms of the agreement;
- **The VRU amending the ECU** (before the end of martial law) to define **the mechanisms and procedure for providing PECs with reasonable devices**, including for organizing voting by visually impaired voters, as well as the possibility of voting without using voting booths (stands, etc.);
- **Amendments to the Budget Code, the ECU and related legislation to allow the use of international technical assistance funds to organize the preparation and conduct of the first post-war elections** (including the operation of election commissions) (after the end of martial law, but before the start of the election process for the first post-war elections);
- **The VRU introducing amendments to the ECU** that will provide for a **gradual increase in the number of persons entitled to be paid for their work in election commissions with a simultaneous potential reduction in the number of election commissions** and the maximum number of voters who may belong to a polling station (in the medium term).

Recommendations.

Content of the recommendation	Responsible actors	Deadlines for implementation
Amendments to the ECU to optimize the procedure for the formation, termination of powers, financial and material support of election commissions, deprive election commissions of the authority to clarify voter lists, ensure familiarization with them, and consider complaints on electoral violations	VRU	Until the end of martial law
Implementation of electronic drawing of lots for candidates to election commissions, electronic document management, provision of the possibility of familiarization with voter lists and updating voter lists, as well as the possibility of changing the place of voting without changing the voting address through the Diia application and/or the voter's electronic office	CEC Ministry of Finance	Development of relevant systems and their certification/audit - before the termination of martial law; commissioning - before the start of the election process for the first post-war elections
Creating conditions for the proper participation of voters who are outside the state (estimating the number of voters, identifying places of compact residence, negotiating with the authorities of the state of residence, assessing the staffing, logistical and other needs of PECs in temporary FPSs)	CEC MFA	Before the termination/cancellation of martial law
Increasing the professionalism of election commission members	CEC	After the formation of the relevant election commissions

<p>Introduction of permanent training of members (individual representatives of the management of election commissions) of election commissions on election issues</p>	<p>CEC</p>	<p>As a pilot project - after the termination/cancellation of martial law (subject to legislative changes), extended to all commission members on a permanent basis after the post-war elections</p>
<p>Amendments to the Constitution regarding the procedure for appointment and dismissal of CEC members, narrowing the possibilities for early termination of powers of CEC members/all CEC members for political reasons</p>	<p>VRU</p>	<p>After the first post-war elections were held as part of the ongoing electoral reform</p>
<p>Gradual establishment of territorial offices of the CEC</p>	<p>VRU CEC</p>	<p>A pilot project to establish one or two territorial offices of the CEC – after the termination/cancellation of martial law (subject to the availability of the necessary funds in the State Budget of Ukraine); expansion of the pilot project to other regions – gradually after the first post-war elections.</p>
<p>Assessment of the condition of equipment, infrastructure, accessibility of election commission premises, security risks (including in areas directly affected by hostilities), restoration or search for alternative premises for PECs, necessary inventory, review of regulations on election commission premises and voting facilities</p>	<p>CEC CMU authorized executive authorities/local governments</p>	<p>Immediately after the termination/cancellation of martial law</p>

<p>Developing algorithms for the actions of election commissions and their members in the presence of security risks/emergency risks that may negatively affect the preparation and conduct of elections</p>	<p>The CEC together with the State Emergency Service, The National Police of Ukraine, the SSU and other security and defence agencies</p>	<p>Before the start of the election process for the first postwar elections</p>
<p>Ensuring the implementation of certain electoral procedures in the Diia application (e.g., changing the electoral address, temporarily changing the place of voting, etc.) while maintaining the functionality of the voter's electronic cabinet</p>	<p>The VRU (amendments to the ECU, a special law on the first post-war elections), the CEC, Ministry of Digital Transformation</p>	<p>Before the start of the post-war election process</p>
<p>Conducting a sociological survey to assess the possibility of refusing to deliver personalized invitations</p>	<p>CEC, Ministry of Digital Transformation</p>	<p>After the cancellation/termination of martial law and before the start of the electoral process for post-war elections.</p>
<p>Introduction of electronic document management, including electronic processing of protocols, data transfer, automatic verification of correctness of filling, transfer of documents in a FC, publication of election documents through the CEC website by constituency and polling station.</p>	<p>CEC CMU</p>	<p>Before the start of the post-war election process</p>
<p>Simplifying/optimizing complex electoral procedures without compromising the transparency of the electoral process, especially on election day, during the counting, transportation and acceptance documents, as well as setting the results voting</p>	<p>VRU (amendments to the CCU/special law on the first post-war elections), CEC</p>	<p>Before the termination/cancellation of martial law</p>

Enshrine the possibility of engaging temporary election officials to count votes	VRU (amendments to the ECU/special law on the first post-war elections) CEC	Before the termination/cancellation of martial law
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Chapter 7

INFORMATION SUPPORT FOR ELECTIONS AND ELECTION CAMPAIGNING

Introduction

The provisions of the Ukrainian electoral legislation regulating information support for elections and election campaigning have been repeatedly criticized both in Ukraine and abroad, in particular, based on the results of analysis of the legislation or observation of past election campaigns.

Among the main problems in the field of campaign regulation ODIHR identified, in particular, early start of campaigning (before the registration of candidates) and campaigning during "silence days", misuse of public resources to create advantages in media coverage of the activities of candidate officials, lack of proportionate, effective and dissuasive sanctions for campaign violations, lack of adequate funding for public broadcasting, recurrent cases of attacks on journalists, lack of proper regulation of campaigning on the Internet, the narrow scope of the regulatory authority in the media sector (the National Council), biased coverage of information about election participants by commercial broadcasters, and the massive placement by these same broadcasters of covert election campaigning in the interests of individual parties/candidates.²¹ According to the results of the snap elections of people's deputies of Ukraine in 2019, the Civic Network OPORA identified the distribution of campaign materials without source data on printing, placing campaign materials in prohibited places, and illegal influences on the formation of voters' will (voter bribery)²², the spread of hidden political advertising in the media, the lack of proper regulation of Internet campaigning against the backdrop of a constant and significant growth in spending on it by parties and candidates.²³

This list of problems and challenges will expand significantly after the first post-war elections are scheduled. In some areas, due to security risks and the destruction of infrastructure, campaigning and informing voters may be significantly hampered. The forced displacement of millions of Ukrainian voters outside the country will create a problem of comprehensive and impartial information about both electoral procedures and participants in the post-war elections.

²¹See: Office for Democratic Institutions and Human Rights (ODIHR). *Ukraine. Local elections on October 25, 2020. Final report of the ODIHR Limited Election Observation Mission*. - Warsaw, January 29, 2021. - pp. 29-33; <https://www.osce.org/files/f/documents/8/3/480326.pdf>.

²²Civil Network OPORA. *Final report on the results of the observation of the Civil Network OPORA at the early parliamentary elections in Ukraine on July 21, 2019*. - Kyiv, 2020. - Art. 110-113.

²³https://www.oporaua.org/vybory/zvit-mistsevi-vybory_2020-23539

This problem will be relevant not only for the displaced migrants, but also for military personnel, because even if the active phase of hostilities with the aggressor state ends, a significant number of them will be stationed for a long time near the state border with Russia and/or near the actual line of contact at the time of the end of the war. It is also quite obvious that Russia will be interested in influencing the results of the first post-war elections. Among other things, it may do so through disinformation campaigns, the mechanisms for countering which still need to be defined at the legislative level. With the beginning of the large-scale Russian invasion of Ukraine, a single television marathon was launched, forming a unified information policy in covering key events. The level of trust to the marathon has significantly decreased, while the prospects for restoring a pluralistic media environment remain uncertain. This is far from an exhaustive list of war-related problems that the Ukrainian legislature will have to address in the short and medium term.

Another dimension of the challenges in regulating election campaigning is Ukraine's integration into the EU and the need to adapt Ukrainian election and media legislation to the *acquis communautaire*. Although the process of this adaptation has begun, it is far from complete. Accordingly, a number of provisions of the Electoral Code and related legislation require substantial revision.

This section discusses the main challenges in the field of election information support and regulation of election campaigning, and offers recommendations for their elimination.

Key challenges

The European Court of Human Rights in a number of its judgments²⁴ has formulated positions on the relationship between the right to freedom of expression guaranteed by Article 10 of the European Convention on Human Rights and fundamental freedoms; and the right to free elections enshrined in Article 3 of Protocol No. 1 to the Convention. The Court agreed that both rights are fundamental to a democratic system and are in conflict with each other, but at the same time noted that states have a wide margin of appreciation in imposing restrictions on the exercise of these rights, which in turn helps to achieve a balance between them.

The Ukrainian legislator has used this discretion in regulating campaigning in such a way that the provisions on the regulation of information coverage of elections and campaigning are perhaps the most detailed not only in comparison with other sections of the ECU, but also in comparison with the election legislation of other European countries. A number of issues regulated by the ECU (the procedure for conducting TV debates, the procedure for determining and publishing prices for political advertising, the procedure/sequence of broadcasting election campaigning on radio/television, etc.) in most European countries are either not subject to legislative regulation at all or are regulated by a framework or are referred to the sphere of self-regulation. However, due to the lack of legal culture of election participants and their constant desire to circumvent legal requirements or "turn a blind eye" to non-compliance, such detail does not translate into effective law enforcement in this area.

²⁴Bowman v. the United Kingdom, Mathieu-Mohin and Clerfayt v. Belgium, Lingens v. Austria

Another significant challenge is that the approaches that form the basis for regulating campaigning and election reporting at the level of the ECU were developed in the early 2000s and were simply transferred from one election law to another. Since the information sphere is developing extremely dynamically, the regulatory regimes that were effective in the early 2000s are proving to be completely ineffective in the context of the active development of the Internet, the massive spread of disinformation (so-called "bot farms", "deepfakes", etc.) and the expansion of the use of artificial intelligence. Accordingly, the Electoral Code needs to be constantly brought in line with new information challenges, the number of which is only growing from year to year.

Ensuring comprehensive regulation of political advertising during elections and in the inter-election period

The ECU uses the concepts of "political advertising" and "election campaigning" in parallel and without clearly defining the relationship between them. The final and transitional provisions of the ECU provided for amendments to Article 1 of the Law of Ukraine "On Advertising", which defined the concept of political advertising.

According to this definition, political advertising is information in any form, disseminated in any form, which is aimed at popularizing the activities of a political party (party organization), drawing attention to the activities of a political party (party organization) and its position on issues of national (local) importance. Subsequently, even this imperfect definition was excluded from the Law of Ukraine "On Advertising" simultaneously with the adoption of the new Law of Ukraine "On Media" and political advertising was generally outside the scope of legislative regulation. Defining the concept of this advertising by analogy with commercial advertising (i.e., "advertising" within the meaning of Article 1 of the Law of Ukraine "On Advertising") is inappropriate, as these two types of advertising have significant differences (for example, political advertising cannot be unfair, while commercial advertising can).

The absence of a comprehensive approach to regulating political advertising/political messages at the legislative level raises a number of problems:

- The ECU regulates campaigning only in connection with elections, and the requirements for the placement of campaign materials (e.g., sources of campaign funding, placement based on agreements, ensuring equal opportunities in campaigning/access to the media, etc.) cannot be applied during the inter-election period. That is, information that is essentially campaigning, however, it is carried out during the inter-election period and is not subject to legislative regulation at all;
- The simultaneous use of the terms "election campaigning" and "political advertising" in the absence of a legislative definition of political advertising creates not only terminological confusion, but also leads to the fact that the legislator is trying to regulate election campaigning (as evidenced by the provisions of the draft law reg. No. 8310 of December 27, 2022, aimed at comprehensively improving the regulation of campaigning, which does not use the concept of political advertising at all);

- The regulation of election campaigning, not political advertising, is not in line with EU law - Regulation (EU) No. 2024/900 of the European Parliament and of the Council of 13 March 2024 on the transparency and targeting of political advertising regulates political advertising, not election campaigning, which means a much wider range of information relations that arise both in connection with elections and in the inter-election period;
- the definition of election campaigning enshrined in the ECU is extremely narrow and allows to circumvent the requirements for financing and the procedure for campaigning established by the ECU. In this context, Regulation (EU) 2024/900 defines political advertising much more broadly: as the preparation, placement, promotion, publication, dissemination, or distribution by any means of a message – in return for payment or in the context of self-initiated activity or a political advertising campaign – by a political actor or another entity on their behalf or in their interest (except where such a message is of a purely private or purely commercial nature), or where the message is intended to influence the outcome of an election/referendum, voters' electoral behaviour, or a legislative or regulatory process at the EU, national, regional, or local level.

Given the broad definition of political advertising in EU law, the VRU should consider adopting a separate Law of Ukraine "On Political Advertising" long before the start of the election process for the first post-war elections. This law should bring the regulation of political advertising in line with the requirements of Regulation No. 2024/900, in particular, regulate the procedure for the production, placement and financing of political advertising not only in connection with elections but also in the inter-election period, ensure the protection of personal data of users, proper labeling of political advertising, preservation of information on its content and placement, and provision of relevant information at the request of authorized state control bodies. The final and transitional provisions of this Law should provide for amendments to the ECU aimed at harmonizing its provisions with the Law of Ukraine "On Political Advertising".

Preventing covert campaigning

Article 51 of the ECU formally prohibits hidden campaigning and distribution of campaign materials that are not labeled as such. However, the ECU does not contain a definition of "hidden election campaigning", which makes it difficult to enforce this prohibition. Moreover, the absence of this definition at the legislative level actually encourages the media and individual journalists to spread the so-called "jeansa", and parties and candidates to place hidden election campaigning in the media and on outdoor advertising. Its absence also has a negative impact on the transparency of election financing, as the costs of creating/distributing covert campaign materials are covered bypassing election funds and, accordingly, are not reflected in the election financial statements.

The problem of the lack of a legislative definition of hidden election campaigning was once emphasized by the Supreme Court: it found it possible to define it by analogy with hidden advertising, the concept of which is enshrined in Article 1 of the Law of Ukraine "On Political Advertising" as "information about a certain candidate, party (local party organization) - subjects of the electoral process - in a program, broadcast, publication, event, or distributed

material, if such information serves the purposes of election campaigning and may mislead persons about the true purpose of such programs, broadcasts, publications, events, or materials." The Supreme Court listed the possibility of drawing an association between a publication/material/event and a certain party/candidate, the existence of a real (genuine) purpose in the form of encouraging voters to vote for or against a party or candidate, as well as concealing this real purpose in a way that misleads voters about its essence as signs of hidden election campaigning²⁵. A similar definition is enshrined in the draft law reg. No. 8310, which provides for a comprehensive improvement of the procedures for information support of elections and campaigning. The draft law was recommended by the relevant Committee for adoption as a basis by the VRU in March 2023, but at the time of publication of the White Book, it had not been considered at the plenary session.

The ECU should be amended to define the concept of hidden election campaigning as information about a particular candidate, party (local party organization) - subjects of the election process that serves the purposes of election campaigning and may mislead people about the true purpose of such information. This will help ensure compliance with the ban on such campaigning, increase transparency of campaign financing, and help reduce the number of "paid" materials in the media.

Ensuring equal conditions for election campaigning

In most states, a set of mechanisms designed to ensure equal opportunities in election campaigning includes, inter alia, restrictions on paid political advertising, provision of free airtime to parties and candidates, equal access to mass media, prevention of abuse of administrative resources during campaigning, etc. However, the current ECU provides for only some of them, while others are either not provided for at all or are ineffective in practice.

Preventing abuse of administrative resources

According to the reports of international and national election observation missions, the problem of abuse of administrative (including information) resources by officials/authorities in the interests of certain parties and candidates or by the candidates themselves is inherent in all previous election campaigns to a certain extent - only the scale of such abuse differs: as a rule, it is higher in elections based on majoritarian systems and lower in elections based on proportional systems with closed lists. These abuses are caused by a number of factors.

First, under the current ECU, public officials generally have the right to campaign freely both outside of their working hours and during the exercise of their powers. The only exceptions to this rule are officials and employees of executive authorities, authorities of the Autonomous Republic of Crimea, local self-government bodies, law enforcement agencies and courts (Article 57 of the ECU). Thus, directors of state campaigns and representatives of other public authorities who are not subject to restrictions on participation in political activities are free to campaign for pro-government parties and candidates.

²⁵See paras. 35, 39 of the Resolution of the Grand Chamber of the Supreme Court in case № 9901/324/20 of October 25, 2020; <https://verdictum.ligazakon.net/document/92415623>

If a public figure is a candidate in an election, he or she is not subject to any campaigning restrictions at all (except for the ban on using resources at the place of work, which is also rather questionable).

Secondly, under the ECU, the distinction between campaigning and information coverage of the activities of a public figure running for election is rather blurred. According to part six of Article 51 of the ECU, an official communication about the actions of candidates who are public officials related to the exercise of their powers is not election campaigning if it meets the following requirements 1) it does not contain any campaigning comments; 2) it does not contain any photos/video/audio recordings of their actions in their capacity as candidates; 3) it is created in accordance with the Law of Ukraine "On the Procedure for Coverage of Activities of State Authorities and Local Self-Government Bodies in Ukraine by the Mass Media".

At the same time, the question of whether voters are encouraged to vote for a candidate by his or her constant presence in information space and coverage of his actions in a positive light is rhetorical. The OSCE/ODIHR election observation missions in Ukraine have also consistently emphasized the abuse of the media coverage procedure by public officials. The new Law of Ukraine "On Media" abolished the mandatory coverage of public authorities: such coverage will be carried out on the basis of coverage agreements concluded with media entities. However, this does not remove from the agenda the problem of a clearer distinction between coverage of the activities of government bodies and officials and election campaigning.

In order to reduce the abuse of administrative (including information) resources during election campaigning, it is advisable to amend the ECU and the Law of Ukraine "On Media" to provide for:

- **A ban on participation in election campaigning for all public figures, except for holidays and non-working days or vacations;**
- **A ban on participation in election campaigning for employees of state and municipal enterprises, institutions and organizations (in which the share of state/municipal ownership exceeds, for example, 50%) that provide any services to citizens; except for holidays and non-working days or vacations;**
- **Define in the Law of Ukraine "On Media" the specifics/essential terms of contracts for covering the activities of government authorities during the election process to prevent the abuse of information resources in the campaigns of public officials.**

Cancellation of the only telethon

One of the key challenges in the context of a pluralistic media environment and ensuring equal access to media for political actors was the introduction²⁶ of a round-the-clock information marathon "United News #UArazom" and a unified information policy in Ukraine. The main problem with this decision is that it restricts media freedom, especially in the absence of the possibility to freely join or leave the marathon. As a result, some TV and radio organizations that have licenses for nationwide television broadcasting are creating alternative channels to broadcast content outside the single telethon. Continued operation of this marathon before or during the election process will not only complicate the information of voters by individual parties and candidates (primarily opposition ones), but will also increase the influence of administrative resources on shaping the will of voters and violate the principle of equal opportunities in campaigning/access to the media.

According to some opinion polls, as of the beginning of 2024, 43% of Ukrainians believed that the single telethon had lost its relevance, while the level of trust in it had generally decreased from 69% in 2022 to 43% in 2024²⁷. Some participants in the interviews conducted for this study noted that the NSDCU's decision to introduce a single telethon was "controversial in terms of legal certainty."

In its most recent report on Ukraine (October 2024), the European Commission emphasized the need to "reassess whether [the information marathon] is the best platform for the free exchange of views among Ukrainians" and the need to continue "efforts to preserve and gradually restore a transparent, pluralistic and independent media environment."²⁸ The European Federation of Journalists also negatively assessed the functioning of the single marathon. In their opinion, "the fact that several key Ukrainian television channels continue to organize joint news broadcasts 24 hours a day seriously reduces the amount and quality of information received by Ukrainian viewers."²⁹

Ensuring media pluralism and creating equal conditions for parties and candidates to campaign in the first post-war elections requires the abolition of the NSDCU Decision of March 18, 2022, on the introduction of a unified information policy in Ukraine for the period of martial law, as well as the introduction of appropriate amendments to the decisions of the National Council adopted pursuant to this Decision. The NSDCU decision to introduce a single telethon should be canceled immediately after the end of martial law.

²⁶NSDCU Decision of March 18, 2022 "On the Implementation of a Unified Information Policy under Martial Law", enacted by Presidential Decree No. 152/2022 of March 19, 2022.

²⁷<https://detector.media/infospace/article/221467/2024-01-08-43-ukraintsiv-vvazhayut-shcho-iedynny-telemarafon-vratyv-svoyu-aktualnist-sotsopytuvannya/>

²⁸ European Commission Staff Working Document "Ukraine 2024 Report Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of Regions. 2024 Communication on EU Enlargement Policy", Brussels, 30.10.2024, pp. 8, 39; https://neighbourhood-enlargement.ec.europa.eu/document/download/1924a044-b30f-48a2-99c1-50edeac14da1_en?filename=Ukraine%20Report%202024.pdf

²⁹<https://europeanjournalists.org/blog/2024/05/13/ukraine-mfir-partners-highlight-ongoing-press-freedom-issues/>

Partial state funding/coverage of campaign expenses

Since election participants have unequal financial resources, the vast majority of European countries provide parties with the right to receive free airtime on radio and/or television. The only exceptions to this rule are a few countries, such as Estonia and Slovakia, where airtime can be provided to parties and candidates only on a paid basis, as well as some Western European countries (Sweden, Norway, Finland, Austria, etc.), where free airtime to electoral subjects is not provided (although in practice it may be provided on the basis of self-regulatory acts of public broadcasters, as, for example, in Finland).

The Venice Commission and ODIHR have also recommended that Council of Europe member states consider providing free airtime to electoral actors by public service broadcasters on the basis of the principle of non-discrimination and clear and objective criteria³⁰: this should ensure that voters are properly informed (both in terms of programs and linear audiovisual media services, as well as non-linear services).³¹

Instead, in Ukraine, over the past 10 years, there has been a tendency to gradually abandon the limited budgetary funding of election campaigning: first, the provision for free printing of party election programs in print media (which does not contradict international standards and is in line with European electoral practices) was removed from the election laws, and later, the provision for free airtime on television and radio broadcasting channels for parties, their local organizations and election candidates was removed.

These steps were justified by the need to reduce election administration costs, inefficient use of airtime/print space (e.g., there were numerous cases when the same 30-second campaign video was broadcast during 10 minutes of free airtime allocated to a party on a regional broadcasting channel), and low efficiency of the respective methods of informing the target audience (due to short duration of messages, small share of the respective channel's audience, etc.). These arguments are not convincing enough: financing election campaigning exclusively from election funds automatically creates advantages for election participants with better financial resources. If the free airtime is used inefficiently, the state could at least compensate/finance a part of the campaign expenses of parties/candidates equivalent to the actual cost of the respective amount of airtime.

³⁰Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns (Adopted by the Committee of Ministers on November 7, 2007 at the 1010th meeting of the Ministers' Deputies), paragraph II.4; https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d4a3d.

³¹Venice Commission and OSCE Council for Democratic Elections, *Republic of Moldova - Joint opinion on the draft laws on amending and completing certain legislative acts (electoral system for the election of the Parliament)*, paragraph 68; *Guidelines on political party regulation* by the OSCE/ODIHR and the Venice Commission, paragraph 147.

In this regard, it is worth considering amending the ECU to provide parties/local organizations/candidates with free airtime for campaigning, or at least partial funding/reimbursement of campaigning expenses in the amount of the cost of such airtime. This would create a more competitive environment for the campaigning activities of parties and candidates with limited financial resources. If the legislator decides to restore the provision of free airtime to parties/candidates, the Electoral Code should determine the principles of its use to ensure that the information disseminated is meaningful and provides proper information to the voter about the election program of such a party/candidate.

Restrictions/prohibition of paid campaigning in audiovisual media

It's no secret that over the past decades, the lion's share of election participants' expenditures, both in Ukraine and abroad, has been on political advertising on television. In recent years, it has become somewhat smaller due to the development of new media, but it still makes up the bulk of election spending. In most Western European countries and some Eastern European countries, the law imposes a complete ban on paid political advertising. In a number of other countries, the placement of such advertising is limited. Such restrictions serve several purposes:

- reduce the overall cost of election campaigns for parties and candidates;
- create equal conditions for electoral actors regardless of the amount of financial resources at their disposal;
- increase the content of the election campaign in general;
- reduce the level of manipulation of the electorate by parties with significant financial resources.

In general, the prohibition of paid political advertising does not contradict the right to freedom of expression, which is confirmed by both the conclusions of the Venice Commission based on the analysis of the electoral legislation of individual countries and court decisions. The legitimacy of this prohibition was established, for example, by the decision of the European Court of Human Rights in the case of *Animal Defenders International v UK*.³² In those countries where the legislation completely prohibits political advertising, the prohibition applies to both the subjects of placement (i.e., it is believed that a candidate/party can only place political advertising, and therefore cannot be a customer of its placement on radio or television) and content (information that is "political" in nature is considered political advertising). For example, in France, parties, candidates and any other organizations are prohibited from advertising if their messages pursue political goals. In Switzerland, the ban applies to political advertising from any entity, except for non-governmental organizations, which may place ads with political content, but not before elections or referendums. In Denmark, the placement of political messages is prohibited during elections on television, but not on radio.

³²*Animal Defenders International v. the United Kingdom*; <https://hudoc.echr.coe.int/eng?i=001-119244>

Table 1: Restrictions on political advertising in selected European countries

Types of restrictions	Examples
There are no restrictions	Bulgaria, Estonia, Latvia, Lithuania, North Macedonia, Poland, Hungary
Limited only for the period of distribution	Bosnia and Herzegovina (only 60 days before election day), Croatia (during the election process)
Advertising of parties is allowed, but not of specific individuals	Greece
Local broadcasters and, under certain conditions, national broadcasters are allowed	Italy (local broadcasters may place paid political advertising if it costs no more than 70% of the cost of commercial advertising; national broadcasters can only place political advertising free of charge)
Allowed on radio, but not on television	Spain (on radio - only on commercial stations and only during the election process), Denmark
Complete prohibition of paid political advertising (with a few exceptions or without them)	Belgium, Ireland, Malta, Germany, Norway, Portugal, United Kingdom, Romania, France, Sweden, Czech Republic, Switzerland

In Ukraine, a number of experts have long supported the idea of introducing restrictions on television and radio advertising during all types of elections. At the same time, it was noted that in the absence of a clear definition of this concept, the introduction of a ban could lead to a number of negative consequences: discouraging the media from publishing materials about any political activity and increasing self-censorship, creating advantages in access to the media for "pro-government" candidates (whose activities may be covered by law as part of the coverage of the activities of the relevant government body), etc. The main arguments for and against the restriction/prohibition of paid campaigning on radio and television are presented in Table 2.

Table 2: The main arguments for and against the ban on paid political advertising/campaigning on radio and television

Arguments in favor	Arguments against
<ul style="list-style-type: none"> ● Political advertising is meaningless and manipulative due to its short duration; ● The active use of such advertising leads to a disconnect between politicians and the electorate - direct action campaigns and meetings with voters are replaced by radio and television advertising; 	<ul style="list-style-type: none"> ● Loss of additional sources of income for the media (which, in the event of a reduction in commercial advertising revenues in the post-war environment, could lead to the termination of media operations); ● It is impossible to define the concept of "political advertising"/campaigning precisely: it will always be evaluative, and the evaluative nature of the ban contradicts the principle of legal certainty;

<ul style="list-style-type: none"> ● The need to raise significant amounts of money to finance the production/placement; ● Political advertising is not subject to commercial advertising quotas, so during the election period, a significant portion of airtime is allocated to commercial and political advertising rather than programs; <p>In the face of falling popularity "traditional broadcasting" and expanding the use of new technologies in campaigning, the ban on political advertising on radio/TV will not affect the effectiveness of campaigns, freedom of expression, or the level of voter awareness;</p> <ul style="list-style-type: none"> ● The absence of restrictions on such advertising/campaigning leads to de facto inequality of parties and candidates in campaigning - those with more financial resources get access to audiovisual media. 	<ul style="list-style-type: none"> ● Since no media outlet can avoid covering political events in the country, it will somehow have to balance the need for such coverage with the prohibition of political advertising - this may be especially problematic for media outlets that are sympathetic to opposition parties/candidates; ● Given the lack of independence of the regulator from political influences and the media's affiliation with party sponsors, the ban will lead to even greater inequality - some parties and candidates will have access while others will not.
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If the legislator decides to impose restrictions/prohibitions on the dissemination of paid election campaigning through audiovisual media, it will also need to do so at the same time:

- **Define the concept of political advertising/campaigning, the duration of the ban on its placement/broadcasting (all the time, inter-election period, election process), control mechanisms and sanctions for violations;**
- **To clearly distinguish political advertising/campaigning from informational coverage of current political events, debates, official reports on the activities of the authorities and other similar forms of information about political processes in the country.**

Regulation of the procedure for online campaigning

The provisions of the current ECU in terms of regulating election campaigning are based on the approaches reflected in the election laws of the early 2000s and do not take into account the gradual weakening of the role of traditional audiovisual and print media in Ukraine and the world in general, as well as the trends in the regulation of new media that have begun to gain popularity in the US and the EU in recent years. Currently, the main focus of regulation is on audiovisual and print media, while the procedure for campaigning through online media and sharing platforms is not regulated in the ECU at all.

Among European countries, Ukraine is not the least progressive example of such regulation: an analysis of the electoral legislation of European countries suggests that they also do not respond promptly enough to the introduction of the latest information dissemination technologies and related challenges. Thus, as of 2024, the distribution of campaigning/political advertising on the Internet was regulated in only 9 EU countries: Austria, Spain, Latvia, Lithuania, Poland, Finland, France, Croatia and the Czech Republic. Meanwhile, this regulation is extremely limited and consists of the following:

- Political advertising on the Internet, social networks and/or electronic data systems must be labeled as such and separated from other content (all 9 states, except Croatia);
- Political advertising must disclose its customer/sponsor and other information required by law, such as the order number, the name of the manufacturer and distributor, etc. (Latvia, Lithuania, Poland, Finland, France, Czech Republic);
- The administrator of the platform or online media outlet must submit a report to the regulator or publish a report on the cost of advertising placed by party/candidate and the amount of funds received (Lithuania, France, Croatia).

With the beginning of the full-scale Russian invasion of Ukraine and the gradual loss of public confidence in the only telethon (for more details, see paragraph "Cancellation of the Single Telethon" in this section), it is the Internet - social networks, messengers, online media - that has become the main source of information for most Ukrainians.

For example, according to the USAID/Internews Annual Media Consumption Survey, in 2024, almost 73% of Ukrainians preferred Telegram as a source of news. Compared to 2023, the share of Ukrainians who receive information from YouTube channels has also increased, while the share of those who receive information from Facebook and the only TV marathon is decreasing³³. It is obvious that in the future, the role of online tools for communication with citizens in Ukraine, both during elections and in the inter-election period, will only grow. However, as of today, Ukraine is not ready for such further growth both at the regulatory level and in practice.

The draft law reg. No. 8310 contains a number of provisions aimed at legislative regulation of campaigning in online media, non-linear audiovisual media, and shared access platforms. They include:

- Placement of relevant campaign materials exclusively on the basis of an agreement with the election fund manager and payment for such materials at the expense of such fund;

³³ <https://internews.in.ua/uk/news/ukraintsi-chastishe-vyznachaiut-informatsiyni-manipuliatsii-iak-nahalnu-proble-mu-shcho-vplyvaie-na-ikhnie-zhyttia-khochha-vrazlyvist-shchodo-rosiyski-dezinformatsii-zrostaie-2/>

- Providing information on the cost and conditions of providing services for the placement of these materials, as well as copies of relevant agreements, payment documents, etc. by entities in the field of online/non-linear audiovisual media at the written request of the NACP, CEC or the National Council;
- Marking the posted campaign materials as such;
- Defining the duties and responsibilities of banner ad distributors;
- To authorize the National Council to enter into agreements and memorandums of cooperation with providers of shared access platforms to fulfill the requirements proposed by the draft law;
- The obligation of Internet users and public access platforms to comply with the requirements and restrictions on election campaigning.

However, even if the proposed novelties are enshrined in the ECU, the implementation may be problematic or ineffective for a number of reasons:

- In order to conclude an agreement and place campaign materials with the election fund manager, a media entity (or at least its separate subdivision/branch) must be registered in Ukraine - however, according to Article 63 of the Law of Ukraine "On Media", registration of such entities is voluntary;
- As practice shows, it is impossible to pay for the services of placing campaign materials in online media at the expense of election funds due to the restrictions of banking legislation (in the 2020 elections, such services were paid for through individuals): this problem could be solved by introducing mandatory registration of online media in Ukraine, which would allow them to open accounts in Ukrainian banks and act as a party to contracts with election fund managers;
- The requirements for labeling and placement of political advertising in online media proposed in the draft law apply only to the election process, i.e., outside of it, political advertising in these media is not subject to legislative regulation at all and is not subject to the proposed requirements;
- There are no tools to ensure compliance with the proposed requirements - both by election fund managers, parties and candidates, and by online media themselves - as well as sanctions for violations;
- The proposed regulation is fragmented and not fully aligned with the requirements of Regulation of the European Parliament and Council No. 2024/900 of March 13, 2024 on transparency and targeting of political advertising. For example, the draft does not provide for online media entities to receive declarations from advertisers on the nature of the relevant advertising (Article 7 of the Regulation); the amount of data on the services provided that must be stored by the entity distributing the advertising is much narrower than that defined in Article 9 of the Regulation; the requirements for designating information as political advertising/propaganda and for the content of information to be disclosed to the regulator are narrower than those of Articles 11-12 of the Regulation; the terms are not defined storage of information on placed advertising (according to the Regulation, it must be stored for at least 7 years); unlike the Regulation, which provides for the creation of a European repository of online political advertising, the relevant requirements are absent in the Law of Ukraine "On Media", the ECU and the draft law reg. № 8310.

Thus, although the draft law reg. № 8310 aims to regulate campaigning on the Internet, its provisions need to be improved, as the threats of using online tools during elections and in the inter-election period are growing every day.

The legislative regulation of the procedure for conducting online election campaigning, in the ECU or a separate special Law of Ukraine "On Political Advertising", should take into account the requirements of EU law, in particular the Regulation No. 2024/900 of March 13, 2024. This regulation should apply to information that is disseminated not only in connection with elections, but also in the inter-election period and is considered political advertising within the meaning of this Regulation. The Law of Ukraine "On Media" should be amended to provide that online media outlets may carry out political advertising activities either if they are registered in Ukraine (in the form of branches and/or representative offices) or if they sign a memorandum of cooperation with the National Council.

Revise the requirements for the timing of campaigning and ensure the accounting of campaigning expenses

According to the ECU, election campaigning begins the day after registration and ends on the last Friday before election day. The practice of ignoring these requirements is widespread during almost all election campaigns: some candidates start campaigning long before submitting registration documents to the CEC (and, accordingly, cannot be held liable for violating the ban, since the subject of liability is the candidate, not the individual/voter), while parties circumvent this ban through hidden campaigning: placing slogans on outdoor advertising media, interviews with party leaders, and other positive coverage of their activities without directly campaigning for votes in their support during elections.

According to the Civil Network OPORA, almost 70 parties and their local organizations started campaigning long before the start of the election process, and in the case of 5 parties, this activity was nationwide.³⁴ A typical violation of the "day of silence" in each election is the placement of hidden campaigning slogans on outdoor advertising media (in particular, with using the appropriate color scheme) that may be associated with a particular party or candidate in the elections to some extent - such materials are placed on these media before the start of voting and until the election results are established or even until the end of the election process.

Early campaigning in itself is not a particular problem:

- In any case, parties and candidates still do not start campaigning at the same time, but depending on their registration (i.e., they receive unequal starting conditions by definition; some candidates may even be able to campaign at later stages of the election process as a result of court settlement of disputes over the denial of their registration);
- The fight against early campaigning makes no sense in principle, except in the case of a complete ban on political advertising during the inter-election period, but such a ban is unlikely to be consistent with the right to freedom of expression.

³⁴https://www.oporaua.org/vybory/zvit-mistsevi-vybory_2020-23539

The main problem of early campaigning is that its costs are not reflected in the financial statements on the receipt and use of election funds, as they are created only after the registration of candidates.

In this context, several mechanisms can be proposed to address the problem of non-transparency of early campaign financing:

- **To oblige potential candidates to submit declarations of intent to run in the elections:** such declarations may be submitted within a certain period of time before the start of the election process of regular elections or immediately after the start of the election process of early elections; submission of such declarations is the basis for opening election fund accounts and financing campaigning before the registration of candidates; if a candidate fails to submit a declaration of intent to run in the elections, the person concerned loses the right to be nominated as a candidate;
- **To include in campaign expenses all expenses incurred to draw attention to a party/individual before it is registered as an electoral subject** (for example, a certain period of time before the start of the electoral process - 1-3 months) **with the mandatory inclusion of such expenses in the party/candidate's election financial statements submitted before the election day.** Another tool to increase the transparency of campaign financing prior to the registration of candidates in the elections could be to require parties/candidates to submit declarations that they have not conducted campaigning within the period established by law before the day of their registration or, if they have, a financial report on the sources of their funding and the use of funds together with the application for registration of a candidate/candidates in the elections.

In the context of the active development of new information technologies, the so-called "day of silence" is largely meaningless, especially given that it can be easy to circumvent. That is why in many countries of the world, the requirements for prohibiting campaigning on the eve and day of voting are gradually liberalized. For example, in several of its decisions, the U.S. Supreme Court has confirmed that the possibility of campaigning on election day at a distance of up to 100 feet from the polling place complies with the requirements of the First Amendment to the U.S. Constitution (*Berson v. Freeman*³⁵) and *Minnesota Voters Alliance v. Mansky*³⁶). In 1997, the Constitutional Court of Bulgaria also formulated a position that campaigning on the eve of the election "constitutes an unacceptable interference with the free expression of the will of the electorate"³⁷. The constitutional courts of Slovenia and Hungary agreed³⁸) that the establishment of a "day of silence" is constitutional, but found unconstitutional the restriction of the period of dissemination of the results of public opinion polls to a period longer than "day of silence".

³⁵*Burson v. Freeman*, 504 U.S. 191 (1992); <https://supreme.justia.com/cases/federal/us/504/191/>

³⁶ *Minnesota Voters Alliance v. Mansky*, 585 U.S. ____ (2018); <https://supreme.justia.com/cases/federal/us/585/16-1435/>

³⁷<https://bnr.bg/en/post/101186366/day-of-silence-before-second-round-of-local-elections-in-bulgaria>

³⁸<https://sloveniatimes.com/proposal-to-ban-pre-election-polls-voted-down/>

In Estonia, Germany, and Finland, the ban on campaigning on election day applies only to polling stations/polling places, while in Austria, Belgium, Denmark, the Netherlands, and Sweden, campaigning can be freely conducted at any time up to and including election day.

The very fact of establishing a "day of silence" contributes to the realization of the principles of equal and free elections. However, the active development of Internet technologies, cross-border broadcasting, and the introduction of advance voting are the main arguments in favor of abolishing the "day of silence" in many countries or liberalizing the restrictions associated with it. The VRU should consider easing restrictions on election campaigning on the eve and day of the election.

Solving the problem of campaigning in a foreign constituency

After February 24, 2022, millions of Ukrainian voters left the territory of Ukraine. The prospects for a significant part of them to return to Ukraine after the end of martial law look dim, especially given that many of them have managed to integrate into the local life of the host country in the past three years. At the same time, these voters, according to the Constitution of Ukraine, have the right to vote in elections, while the state must ensure their free formation and expression of will. Regardless of the electoral system used in elections in a foreign constituency and how voting will be organized (at polling stations at diplomatic missions or outside these institutions), this category of voters should receive proper information about parties/candidates in elections, as well as their election programs, activities if elected, etc. Accordingly, there are discussions in the expert community about the possibility of election campaigning in higher education institutions. The current ECU explicitly excludes this possibility and prohibits the financing of campaigning in higher education institutions. But even if the legislator decides to abolish these restrictions, will it be possible to conduct election campaigning in higher education institutions in practice? Allowing campaigning outside of Ukraine will lead to a number of difficult challenges:

- The need to open current accounts of election funds in foreign countries in accordance with the banking laws of these countries (in some countries, opening such accounts may be impossible in principle);
- Determining the procedure for transferring funds from the accumulative account of an election fund opened in Ukraine to the current accounts of election funds in foreign countries, determining the special status of the accumulative account in Ukraine (since the funds will be transferred in foreign currency);
- The need to develop a network of managers of election fund accounts outside Ukraine and provide them with access to the funds on these accounts (authorization of such access may not be possible under the laws of the host country);
- Inability to effectively control campaigning in higher education institutions and its financing by the CEC and the NACP; limited opportunities to appeal violations in this area and/or restore voting rights - both through the national court system and through the judicial system of the relevant foreign state;
- Impossibility of prosecution for violations, as Ukraine will not have the right to perform jurisdictional actions on the territory of other states without their consent.

If the ECU provides for the possibility of conducting election campaigning outside Ukraine, it should define an exhaustive list of ways to conduct such campaigning that would ensure the possibility of financing the relevant events without opening accounts in foreign banks and the possibility of controlling the campaigning itself and financing by the authorized national control bodies.

Clarifying the procedure and timing for disseminating the results of public opinion polls on elections

Article 50 of the ECU sets out the requirements for information to be disclosed in connection with the publication of poll results and prohibits the dissemination of poll results during the last two days before election day. The same problems arise in the context of the publication of polls during each election: in many cases, they are conducted by little-known companies that do not adhere to recognized polling standards and/or were established shortly before the election; and the results are disseminated at prohibited times. From the published results of polls, it is often unclear whether the poll was conducted at all and whether its results were not simply invented. The problem of violation of the deadlines for publishing the results of polls is also inherent in exit polls, the results of which are often distributed in a covert form (i.e., without specifying the names of parties and candidates, but using expressions that allow them to be easily identified) throughout the election day.

The draft law reg. No. 8310 provides for some steps to reduce the number of manipulative and fictitious polls. In particular, it divides them into representative and non-representative polls and requires the inclusion of a statement in their results that the survey demonstrates the opinion of only its participants. At the same time, the scope of information on the survey (sample, methodology, questions, etc.) to be disclosed is similar to that provided by the ECU. However, the draft law does not provide for the disclosure of any information about the person who conducted the survey (except for his or her name) and his or her experience in conducting national surveys. Those conducting the survey are not obliged to store information that would allow verification of the survey results (records of telephone interviews, keeping copies of questionnaires/questionnaires with answers, etc). In addition, while the draft law provides for the division of surveys into representative and non-representative ones, the authors of the draft law did not answer the question of who should assess/control the representativeness of the survey.

To prevent manipulations during sociological surveys on the elections to the VRU, amendments should be introduced that would provide for:

- **Disclosure of information on the date of state registration/date of birth of the person conducting the survey and the number of representative national surveys conducted by such person over the past 4 years;**
- **Storage of all information on each poll conducted (which would allow assessing its representativeness and establishing the reliability of the published data on the poll methodology) at least until the end of the election process;**

- **The obligation of the organization that conducted the survey to provide information related to its conduct at the request of the CEC;**
- **Establishing effective, proportionate and efficient sanctions for violations related to the conduct/publication of poll results.**

The draft law reg. No. 8310 extends the duration of the ban on publishing poll results from 2 days before the election day to 6 days before the election day. This step seems insufficiently justified for several reasons:

- It is not coordinated with the term of the ban on campaigning, although the purpose of disseminating the results of polls is to convince voters of the popularity of certain parties/candidates and the unpopularity of others, which may affect voter behavior;
- In the context of violations of the 2-day period established by the ECU for the publication of the results of polls, there are no grounds to believe that those who will make public the results of surveys, will adhere to the new 6-day deadline;
- Restrictions can be easily circumvented by disseminating relevant information on the Internet, social media, Telegram channels, etc.

As with the "day of silence," there is a tendency in the world to liberalize the requirements for publishing poll results: in a number of countries, they can be published at any time, including on election day.

Table 3: Timeframe for publishing the results of opinion polls before Election Day

Deadline for publication (parliamentary elections)	Examples
Publication is prohibited only on election day	Latvia
Election day + 1 day before election day	Andorra, Armenia, Bulgaria, Canada, Malta, Poland, Slovakia, France
Election day + 2 days before election day	Bosnia and Herzegovina, Georgia, South Africa, Romania
Election day + 3-5 days before election day	Kyrgyzstan (5 days), Mexico (3 days), Moldova (5 days), North Macedonia (5 days)
Election Day+ more than 5 days before the election day	Spain (5 days), Italy (15 days), Cyprus (7 days), Czech Republic (7 days), Greece (15 days), Luxembourg (one month), Turkey (7 days), Montenegro (15 days), Japan (12 days)
Anytime	Austria, Belgium, Denmark, the Netherlands, Germany, Portugal, the United Kingdom, Finland, Sweden, Switzerland

The deadlines for publishing the results of election polls should be aligned with the deadlines for campaigning: if campaigning is prohibited on the eve of the election, then the results of the polls should not be disseminated on the same day. Similarly to "hidden campaigning," compliance with the prohibition on publishing the results of polls within a certain period of time should include the following definitions in the ECU "hidden publication of poll results" or interpretation of such publication as hidden campaigning.

Improving the regulation of the right of reply

The requirements of the Electoral Code in terms of regulating the right of reply have been repeatedly criticized by both the Venice Commission and ODIHR as contrary to international standards. Thus, according to Article 57 of the ECU, if a party or candidate considers the information disseminated about them to be "manifestly false," the media are obliged to provide, at the request of such a candidate, the opportunity to refute this information. On the one hand, these norms lack legal certainty, because there are no criteria for interpreting information as "clearly false" or "knowingly false": they are defined at the discretion of parties and candidates. On the other hand, parties and candidates in this case actually become judges in their own case, as they can independently assess the accuracy of the information disseminated about them. At the same time, the media (editor) not only cannot refuse to publish a refutation, but can also be held liable for failing to ensure the right to reply.

This regulation not only contradicts the standards of the Council of Europe³⁹ but also does not comply with the practice of most European countries and the new Law of Ukraine "On Media" (Article 46), which allows the media to refuse to provide the right to reply in an exhaustive list of cases. In addition, the Media Law imposes the obligation to ensure the right of reply on both print and audiovisual media and online media, while the ECU actually only imposes it on print and audiovisual media.

The draft law reg. No. 8310 provides for bringing the regulation of the right of reply in line with international standards: the obligation to ensure the right of reply applies to all media entities, not just the press and broadcasting (as provided for in the current ECU), while these entities have the right to refuse to provide the party/candidate with the right of reply in cases specified by the draft law if the disseminated information is obtained from official sources, if the length of the reply exceeds the amount of disseminated information, etc.

The provisions of Draft Law No. 8310 should be taken as the basis for improving the norms of the ECU regarding the regulation of the right to rectification and reply.

³⁹See for more details: Resolution 74 (26) of the Committee of Ministers of the Council of Europe "Right of reply - the status of the individual in relation to the press"; <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805048e1>; Recommendation Rec(2004)16 of the Committee of Ministers of the Council of Europe "On the right of reply in the new media environment"; https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805db3b6

Ensuring accessibility of information about elections and voter information campaigns

Although transparency is one of the principles of the electoral process, the ECU does not fully guarantee access to key election-related information for voters. Reports of international election observation missions periodically document cases of pressure/threats/intimidation of journalists, obstruction of legitimate journalistic activities, as well as unjustified cases of refusals to provide public information, including information included in the registration documents of candidates because it is personal.

Certain stages of the electoral process, in particular, the stage of nomination of candidates at party congresses, remain insufficiently transparent - at least, these are the conclusions of the Civic Network OPORA in the process of monitoring the 2019-2020 election campaigns⁴⁰. Mechanisms to eliminate many of these problems are proposed in the draft law Reg. № 8310.

Ensuring greater accessibility of information on elections requires the following amendments to the ECU:

- **Enshrining the right of journalists and other media workers to unimpeded access to all public events** related to elections, including events related to the nomination of candidates;
- **Determining violations of the procedure for holding party congresses to nominate candidates**, in particular, obstruction of access to such events by authorized members of election commissions, media representatives and NGOs, **violations of the procedure for nominating candidates and, accordingly, grounds for refusing to register nominated candidates** (for more details, see the section "Procedure for Nominating and Registering Candidates");
- **Mandatory publication of all information on parties/candidates in elections included in the registration documents on the CEC website in the open data format, i.e. in a form that would allow for its search, processing and systematization/classification** (for more details, see Section "Election Administration), for example, in the form of the Unified Register of Registered Election Candidates;
- **Determining the mechanism of automated verification of data included in the registration documents of parties and candidates**, mechanisms for the exchange of such information between the CEC, DEC's and main commissions in local elections;
- **Defining a mechanism for automated transmission, processing and centralized accounting and storage of information on the activities of election commissions** (decisions, minutes of meetings, etc.);

⁴⁰https://www.oporaua.org/vybory/zvit-mistsevi-vybory_2020-23539;
<https://www.oporaua.org/longrid/PDF/Остаточний%20звіт%20за%20результатами%20спостереження%20%20at%20the%20early%20presidential%20elections%20in%20Ukraine%2021%20July%202019.pdf>

- **Fixing an exhaustive list of information that is classified as restricted information:** address of residence, passport series and number, contact details;
- **To enshrine provisions that would require information posters in voting rooms to be placed separately from each other** in a manner that would allow voters to read their content without hindrance.

Potential introduction of large-scale changes to the electoral legislation due to the need to regulate the specifics of the first post-war elections and to significantly revise key electoral procedures, as well as significant voter movements within the country and abroad, will require the CEC to play a more active role in conducting information campaigns targeting these categories of voters.

The need to conduct such campaigns abroad will become especially relevant in case of opening of polling stations outside diplomatic missions, changes in voter registration procedures (for example, in case of replacing passive registration with active one), changes in the procedure and/or method of voting.

Strengthening the role of the CEC in conducting voter information campaigns on elections requires amendments to the ECU, which:

- **Define general requirements for the CEC's information campaigns and the specifics of their financing, including the use of international technical assistance funds;**
- **Periodic independent audit of the effectiveness of the CEC's information campaigns and informing the public about the measures taken to implement the recommendations of such an audit;**
- **Define the general procedure for information exchange/interaction between the CEC and the MFA in terms of developing and implementing voter information campaigns for voters residing or permanently staying outside the state.**

Prior to the start of the election process for the first post-war elections, the CEC and the MFA should determine the procedure for cooperation in conducting voter information campaigns outside the country. Such campaigns should be carried out using modern methods of information (specialized Telegram channel, chatbot, etc.) and ensure that voters in foreign constituencies effectively exercise their voting rights.

Clarification/revision of requirements and restrictions on election campaigning

The list of restrictions on election campaigning established by the ECU is perhaps the broadest in Europe, while some of these restrictions (e.g., the ban on campaigning in foreign media on the territory of Ukraine, restrictions on participation in campaigning activities of foreign journalists, grounds for suspension of broadcasting licenses, etc.) have been criticized by the Venice Commission and ODIHR.

Another problem with these restrictions is that in some cases they are not aligned with the requirements of other laws adopted after the enactment of the ECU, or with new challenges related to disinformation, hybrid attacks, and the increased use of the Internet for election campaigning. The draft law reg. No. 8310 provides for the revision or clarification of some of these requirements and restrictions:

- Bringing the content of campaign materials in line with EU law (in particular, in terms of prohibition of discrimination, protection against harmful content, influence on the subconscious, and use of images);
- To enshrine the prohibition of broadcasting and journalistic activities by candidates (such practices have been repeatedly recorded during previous election campaigns, while the legislation of many Eastern European countries explicitly prohibits them);
- To enshrine the prohibition on including election campaigning in news programs, and to make a clearer distinction between commercial, political and social advertising;
- Specifying restrictions on the use of premises/other resources and campaigning in public authorities;
- Establishing clearer requirements for the labeling of election campaigning (in particular, when it is placed on LED screens, outdoor advertising media, etc.) and ensuring equal access to various means of campaigning.

In general, the requirements and restrictions provided for in the draft law no. No. 8310 requirements and restrictions on election campaigning, except for those that are questionable (e.g., in terms of placing election campaign materials only in specially designated places).

Ensuring effective control over election campaigning

The current ECU does not provide an unambiguous answer to the question of who should monitor compliance with the established requirements for campaigning and informing about the electoral process. The controlling powers in this area are divided between the National Council and the respective election commissions, but the powers themselves are not clearly defined. At the same time, the CEC and other commissions are authorized to pass on information about campaigning violations to the authorized law enforcement agencies for further response if such violations are grounds for bringing the perpetrators to administrative or criminal liability. And since this category includes almost all violations, election commissions in practice simply forward the information received to the relevant law enforcement agencies. Similarly, the latter often lack trained personnel and other resources to bring perpetrators to justice. The possibility of filing complaints against actions/inactions of media and journalists to any election commissions is excluded altogether - this category of disputes is resolved through administrative proceedings.

The system of control over campaign finance is no less chaotic: controlling powers in this area are divided between the NACP and election commissions. At the same time, theoretically (under a broad interpretation) the NACP can control not only the financing of campaigning, but also evaluate the campaign itself, because if certain activities that the NACP may consider campaigning are not included in the financial statements of a party or an election fund manager, the NACP has the right to bring the reporting entity to justice. The absence of a clear division of roles/powers between the bodies controlling election campaigning is one of the reasons for the massive number of violations in this area.

Draft law No. 8310 proposes certain steps to address these issues. In particular, it is proposed to assign key powers in the field of campaign control to the National Council, minimizing the role of election commissions in exercising such control. The second novelty of the draft law is the creation of an Expert Council on Election Campaigning under the National Council. A similar Council was created during the preparation for the 2007 early parliamentary elections in Ukraine, and its experience has shown its effectiveness in preventing the spread of campaigning that contradicts the requirements of the electoral law.

The ECU should be amended to provide for:

- **A clear division of powers between media regulators and the CEC to control election campaigning;**
- **A clear delineation of powers between the NACP and election commissions in the area of campaign finance control;**
- **Specifying the procedure for interaction between law enforcement agencies and state regulators in the field of campaigning/information coverage of the electoral process** after the former receive information about violations that constitute grounds for legal liability;
- **Establishment of the Expert Council on Election Campaigning with advisory functions** (preliminary assessment of the content of materials received from the media and election process subjects for compliance with the requirements of the ECU).

Countering disinformation and threats to sovereignty

Post-war elections can be characterized by a significant amount of disinformation and Russian propaganda. On the one hand, the fight against such phenomena is intended to counteract violations of state sovereignty, but on the other hand, it should not disproportionately restrict freedom of speech and expression.

Therefore, the ECU should define the concept of disinformation, provide for mechanisms to counteract the spread of disinformation about elections, including through the Internet, identify actors responding to the spread of disinformation materials, their rights and responsibilities, delineate the competence of the authorities, and clarify legal instruments for appeal and prosecution. There should be developed instructions on detecting disinformation for authorities, empowered to exercise control and bring to justice, and an educational campaign for citizens are carried out.

Recommendations

Content of the recommendation	Responsible actors	Deadlines for implementation
<p>Holding public discussions on:</p> <ul style="list-style-type: none"> • problematic/needs to be finalized provisions of the draft law reg. № 8310 to determine the list of amendments to be made to the ECU in terms of information support for elections and regulation of election campaigning; • the expediency of regulating election campaigning in higher education institutions, accounting for election campaigning expenses before the registration of candidates, restoring the provisions on providing free airtime to parties/candidates in elections, the expediency of prohibiting paid political advertising on television and radio channels, the expediency of establishing a "day of silence" and requirements for the publication of results public opinion polls on elections 	<p>VRU Committee on Organization of State Power, Local Self-Government, Regional Development and Urban Planning</p>	<p>Before the termination of martial law</p>
<p>Adoption of the Law of Ukraine "On Political Advertising", harmonized with Regulation (EC) No. 2024/900 of the European Parliament and of the Council on the transparency and targeting of political advertising</p>	<p>VRU</p>	<p>Before the termination of martial law</p>
<p>Adoption of amendments to the VKU and related laws that will provide for: defining the concept of "hidden campaigning", ensuring openness of information about elections, equal conditions for campaigning and access to the media, harmonizing the requirements for and restrictions on campaigning</p>	<p>VRU</p>	<p>Before the termination of martial law</p>

in accordance with EU law, other laws and trends in the development of information technology, improving the regulation of the right of reply, creating an effective system of control over election campaigning and countering disinformation, ensuring the effectiveness of regulation of campaigning in online media		
Cancellation of the only telethon and resumption of pluralistic media	NSDCU, President of Ukraine	In advance of the election process, but no later than the lifting of martial law
Signing memorandums of cooperation with online sharing platforms and online media (such as Meta, Google, etc.)	National Council, CEC, representatives of online media	Before the start of the post-war election process and after the relevant amendments to the ECU
Organize training on election campaign control for representatives of regulators in this area and relevant law enforcement agencies/courts	CEC, National Council, National Police of Ukraine, National School of Judges of Ukraine, civil society organizations, institutions education	Before the start of the postwar election process
Developing and adopting guidelines for detecting disinformation for bodies authorized to monitor and prosecute disinformation violations	The National Police of Ukraine, the Security Service of Ukraine and other security and defense agencies, the National Council	Before the start of the postwar election process
Conducting information campaigns on the procedures for exercising voting rights, in particular abroad	The CEC together with the MFA	After the adoption of amendments to the ECU regarding the relevant electoral procedures, but not before the termination of martial law

Introduce electronic services aimed at increasing the availability of key election information (registered candidates, results of election commissions, etc.)	CEC	After the relevant amendments to the ECU are made and funding is received, but no later than the start of the election process of the first post-war elections
Establishment of the Expert Council on Election Campaigning under the National Council	National Council	After the start of the election process for the first post-war elections

Chapter 8

FINANCING OF ELECTION CAMPAIGNS

Introduction

Since 2015, the Law of Ukraine "On Political Parties in Ukraine" and the election laws have been subject to a number of significant amendments aimed at improving the regulation of party and election finance, in particular, in terms of bringing the requirements of these laws in line with international standards. The election laws transferred the provisions on electoral finance regulation to the Electoral Code, and with some exceptions⁴¹, they generally remain unchanged.

The main challenges/problems in the field of electoral finance include the following⁴²:

- the start of election campaigning before the registration of candidates in the elections - the costs of such campaigning are not included in the election financial statements;
- hidden financing of election campaigning bypassing election funds by third parties, for example, in the form of media support, payment for office rent, and financing the production of election campaign materials;
- significant spending by parties and candidates on campaigning in audiovisual media and outdoor advertising;
- delays in opening election fund accounts (this problem is more relevant for local elections and in some cases is caused by the appointment of political figures as heads of local organizations, but may also be relevant for national elections);
- Significant amounts of candidates' own contributions to election funds, which raise questions about transparency, the sources of such contributions and potential risks of political corruption;
- there are widespread cases of failure to submit financial reports on the receipt and use of election funds and ineffective control over the financing of election campaigns in general;

⁴¹In 2020, a number of amendments were introduced to the CCU aimed at improving the regulation of certain aspects of election campaign financing, for example, the concept of election campaign financing was introduced, the maximum size of election funds in elections was set, etc.

⁴²See: International Foundation for Electoral Systems. Campaign finance in the 2020 local elections: key achievements and challenges;

<https://ifesukraine.org/wp-content/uploads/2021/01/IFES-Ukraine-2020-Local-Elections-Campaign-Finance-Report-d1-2020-12-29-Ukr.pdf>; Civil Network OPORA. Final Report on the Observation of the Civil Network OPORA at the Early Parliamentary Elections in Ukraine on July 21, 2019; pp. 71-78;

<https://www.oporaua.org/longrid/PDF/Остаточний%20звіт%20за%20результатами%20спостереження%20%20at%20the%20Early%20Elections%20of%20People%20Deputies%20of%20Ukraine%2021%20July%202019%20p.pdf>; ODIHR Limited Election Observation Mission. Ukraine. Local elections on October 25, 2020. Final report, pp. 26-28; <https://www.osce.org/files/f/documents/8/3/480326.pdf>

- lack of proper access to information contained in the reports on the receipt and use of election funds;
- lack of proportionate, effective and dissuasive sanctions for violations in the field of campaign finance.

Although local elections are not the subject of this publication, the list of campaign finance problems during them is much wider than in national elections, in particular due to the inconsistency of the local elections financing rules with the rules for financing election campaigns at the national level.

A number of challenges in the field of campaign finance are caused by the development of technology. For example, the use of cryptocurrencies to finance election campaigns is becoming increasingly popular around the world. In many countries, such financing is either not regulated at all or is still of a framework, experimental nature (the United States, Canada). Unlike many other aspects of the electoral process, the impact of the war on campaign finance has been limited - the destruction of banking infrastructure in some areas is still not an obstacle to opening bank accounts and conducting banking transactions. However, such an impact could be significant on the already low economic capacity and motivation of the population to finance election campaigns. In particular, research "Political Party Financing and Political Corruption Practices in Ukraine" commissioned by the Civil Network OPORA and supported by the International Foundation for Electoral Systems (IFES) in Ukraine shows that there is no reason to expect an increase in the activity of the population in financing existing political parties or politicians (even those whose political position is shared by citizens). Indeed, only 3% of respondents with such sympathies indicated that they plan (or consider it right) to finance the respective political party or candidate; 89% have no such plans.⁴³

This section discusses the main problems in the field of campaign finance in national elections and offers recommendations for their solution.

It is worth noting that during the work on this document, the VRU registered the draft law reg. No. 11462 of August 05, 2024 "On Amendments to Certain Legislative Acts of Ukraine on Improving the Rules for Financing Election Campaigns and Controlling Election Funds"⁴⁴, which was developed jointly with experts from the International Foundation for Electoral Systems (IFES) in Ukraine, the All-Ukrainian Civil Network OPORA and other civil society organizations within the framework of the Committee's Working Group on the Organization of State Power, Local Self-Government, Regional Development and Urban Planning.

⁴³Political party financing and political corruption practices in Ukraine. The survey was conducted by the Razumkov Center at the request of the Civil Network OPORA with the support of IFES in Ukraine. March 21-27, 2024. URL:

<https://oporaua.org/vybory/doslidzhennya-finansuvannya-politichnih-partiy-ta-praktiki-politichnoyi-korupciyi-v-ukrayini-25314>

⁴⁴<https://itd.rada.gov.ua/billInfo/Bills/Card/44660>

Draft law reg. No. 11462 takes into account some of the OSCE/ODIHR proposals and recommendations made here⁽⁴⁵⁾ (in particular, the transfer of controlling powers to the NACP, the introduction of a special information and communication system for election reporting (similar to the POLITDATA registry) and prompt publication of data received from banks, determination of the maximum size of the election fund based on the amount of expenditures per voter and taking into account inflation, establishment of restrictions on contributions to the election fund by candidates' own funds, etc.).

Key challenges

Ensure transparency of campaign financing before the registration of candidates in elections

One of the problems in the field of election campaigning is that it almost always starts long before the registration of candidates for elections, often even long before the start of the election process. Since the financial election reports are submitted only for the period between the opening of election fund accounts and the termination of spending from these accounts, expenditures made before the registration of candidates are not included in the election financial reports. This problem is less relevant for parties, since their expenditures made before the start of the election funds' functioning are still included in the party financial statements. However, they are still not separately disclosed, while party financial reports themselves may be submitted after the election process is over, when the information they contain will no longer be of practical value in the context of ensuring an informed choice for voters. In the case of candidates, the premature start of campaigning is much more important: since a person does not have the status of a candidate at all before he or she is registered, any expenses made before registration are considered to be his or her private expenses and are not subject to the election law. They are also not subject to disclosure in the reporting on the receipt and use of election funds. In practice, this means that it is impossible to find out even the origin of funds, from which self-nominated candidates pay a cash deposit for their registration. For example, in the 2019 presidential election, 20 self-nominated candidates paid a total of 50 million hryvnias (almost 2 million dollars) as a cash deposit. The origin of these funds is still unknown.

These problems can be solved by introducing one of the following models:

⁴⁵Mokhonchuk B. Campaign finance reform: what recommendations of international observation missions have been taken into account? Civil Network OPORA. 2024 <https://www.oporaua.org/vybory/reforma-finansuvannya-viborchih-kampaniy-yaki-rekomendaciyi-mizhnarodni-h-misiy-zi-sposterezhennya-bulo-vrahovano-25352>

- **lifting restrictions on election campaigning and its financing in the period before the registration of candidates;**
- **determining a certain period of time before the nomination of candidates (for example, 60-90 days before the start of the nomination), which is considered the period of campaigning and is subject to the established requirements and restrictions on campaign financing;**
- **obligation of parties and persons submitting documents for registration of candidates in the respective elections to either declare the absence of expenses during the above period or submit a report on campaign finance expenditures made prior to the registration of the candidate/candidates and the sources of their financing along with other registration documents. An alternative in this case may be to include the income/expenditures for campaign financing in the period before the registration of candidates in the interim report on the receipt and use of election funds;**
- **mandatory analysis of the submitted declarations/reports in accordance with the procedure established by the ECU for audits of reports on the receipt and use of election funds.**

An alternative model of regulation may include:

- **mandatory submission of applications for registration as candidates for the respective elected positions by persons planning to stand for election by the deadline specified by the ECU (e.g., 60-90 days before the election day);**
- **enshrining in the ECU provisions according to which only persons who have submitted applications for registration as candidates for elected office have the right to be nominated as candidates for elected office;**
- **opening of separate bank accounts by candidates to finance their election campaigns (including fundraising for election deposit, campaigning before the start of registration of candidates for elected office, etc.), as well as extension of restrictions on the sources and amount of contributions to election funds to contributions to such accounts;**
- **mandatory submission of reports on the receipt and use of funds from such accounts simultaneously with the documents submitted for candidate registration (and if a candidate decides not to submit documents for his/her registration as a candidate, within 3 days after the deadline for candidate registration in the relevant election), and analysis of such reports in accordance with the procedure established for the analysis of reports on the receipt and use of election funds;**
- **the possibility of transferring the balance of funds from the account opened to finance the election campaign of a candidate to the account of his election fund after registration as a candidate in the elections.**

Determining the content of election and pre-election campaign expenses

In July 2020, the Electoral Code was amended to establish two separate categories of election-related expenditures: expenditures for financing an "election campaign" and expenditures for financing "pre-election campaigning." Obviously, the concept of an election campaign is much broader than the concept of pre-election campaigning-the latter primarily refers to the production and distribution of election campaign materials in various forms and related expenses, such as transportation, communication costs, payment for other similar services, etc. Election campaign expenses should include expenses for the maintenance of party/candidate headquarters, payment for the services of political technologists and consultants, campaigners, and any other election-related expenses that cannot be directly included in the campaign expenses. However, neither the ECU, nor related legislation, nor the bylaws of the regulators - the CEC and the NACP - provide a clear answer to the question of how exactly the concepts of campaign finance costs and election campaign finance costs are related. Certain expenses - for example, labor costs - cannot be paid from election funds at all due to legal restrictions, as the manager of election funds cannot, for example, act as a tax agent, make payroll deductions, etc. Closely related to this terminological problem is the problem of determining the period/term for which certain expenses should be defined as election-related expenses, discussed in the previous paragraph.

Solving these problems requires amending not only the ECU, but also other laws, including the Tax Code of Ukraine, the Law of Ukraine "On Banks and Banking", laws on social security and other legislative acts. These changes should include:

- **a broad definition of campaign finance.** The respective regulation should cover contributions in cash and in kind (including those made not through the election fund), all expenses directly or indirectly related to the participation of a party/individual in the elections, while being made before their registration as relevant subjects of the election process. The list of such expenses must be approved by a joint act of the CEC and the NACP long before the election and included in the structure of the financial reporting form;
- **replacement of the concept of "report on the receipt and use of election funds" with the concept of "campaign finance report".** The election campaign finance report must contain information on the movement of funds both on the accounts of the election fund and on the accounts of a political party or a private current account of a candidate/person planning to become a candidate, if such movement of funds is related to his/her participation in the elections. A person, along with the documents submitted for his/her registration as a candidate, must submit a written permission to disclose bank secrecy regarding the movement of funds to his/her accounts for the period that will be included in the period of the "election campaign" for a special audit of the legality of the financing of this campaign (in terms of sources, amount of contributions);

- **Ensuring that election funds can be used to pay expenses that are not possible under current tax and social security legislation** (wages, etc.).

Regulation of campaign financing from sources other than election funds

According to the Electoral Code, election campaign/pre-election promotion expenses may be financed only by transferring contributions to the election funds of parties and candidates. This provision excludes the possibility of financing election campaigning through in-kind contributions and contributions from third parties that could cover certain categories of campaign expenses directly if they are unwilling to transfer money to election funds for one reason or another. The expediency of narrowing the list of ways to finance election campaigning to transferring funds to the election fund account is questionable for several reasons:

- **This restriction does not contribute to the transparency of campaign finance:** if it is necessary to finance a certain event/expenditure outside the campaign fund, it will still be financed, but these expenses will not be included in the election financial statements and will be difficult, if not impossible, to identify. For example, a printing company may finance a candidate's campaign by producing more copies of campaign materials than were ordered and paid for, and the cost of this excess will actually be a campaign contribution made bypassing the election fund. The list of such examples can be continued;
- **This restriction contradicts the principle of equal opportunities in campaigning.** According to the Law of Ukraine "On Political Parties in Ukraine", parties may receive in-kind contributions, while candidates do not. A party may freely use an indirect contribution for election campaigning purposes (e.g., to produce election campaign materials on the equipment received as a contribution), while a candidate may use it only in cases provided for by the ECU.

In the medium term, the VRU should consider lifting the restrictions on financing a party/candidate's election campaign only from election funds, providing for the possibility of in-kind contributions, as well as the possibility of financing election campaign expenses by third parties. Such contributions should be subject to the general requirements/restrictions on the amount, sources of their payment and the procedure for their return after the end of the election process established by the ECU. The lifting of such restrictions should be considered after the introduction of the electronic campaign finance reporting system and analysis of its effectiveness in practice, as well as after the introduction of the corresponding module in the POLITDATA electronic reporting system.

If the electoral law allows third-party funding of election campaigning bypassing election funds, the question will arise as to who should report such contributions and how. In this context, three models are possible:

- funding is made without the knowledge of the electoral subject, the obligation to report such a contribution is on the donor;
- the donor notifies the electoral subject of the contribution, but the contribution does

not require the consent of the party/candidate in the election;

- before making a contribution, the donor must obtain the consent of the party/candidate.

The advantages and disadvantages of each of these approaches are described in **Table 1**.

Table 1: *Potential advantages and disadvantages of the main models of regulating third-party contributions to campaign finance*

Approaches to regulation financing by "third parties"	Advantages.	Disadvantages
Contributions do not require the consent or notification of the party/candidate	<ul style="list-style-type: none"> • convenience for parties/candidates in terms of administration (if the contribution is unknown, it does not need to be reported); • Convenience for the donor - the donor determines where to allocate funds and controls their use; • less bureaucracy compared to approaches that require consent/notification of contributions; • the ability to clearly delineate responsibility for compliance with contribution requirements - in all cases, the responsibility lies solely with the donor. 	<ul style="list-style-type: none"> • Risks of discrediting the party/candidate, for example, as a result of a contribution by an entity with a dubious reputation or a political opponent; • Significant risks of violation of reporting obligations by donors and impossibility/difficulty of detecting contributions and violations by the regulator; • significant risks of making contributions from prohibited sources; • dispersion of information on campaign finance due to its coverage in party/candidate reports and a large number of donors (the problem can be solved by electronic integration of reporting

		data into one party/candidate report).
<p>Contribution requires post factum notification, but not party/candidate consent</p>	<ul style="list-style-type: none"> ● Relative convenience for the donor, the ability to make a contribution quickly; ● the ability to integrate information on contributions known to a party/candidate into their financial statements; ● the effective functioning of the system allows for transparency of campaign financing. 	<ul style="list-style-type: none"> ● risks of making contributions from prohibited sources; ● the party/candidate has no leverage to control the legality of the contribution and the risk of discrediting them; ● the need for the party/candidate to establish the fact of making a contribution after receiving the notification and to assess the compliance of the contribution information with the information provided in the notification; ● the risk of ignoring the requirements for mandatory notifications and late submission of such notifications; the related risk of non-transparency of campaign financing; ● the difficulty of delineating responsibility for compliance with contribution requirements (verification of the fact of receipt of the contribution, the fact of receipt of the notification and its content).
<p>Contribution requires the consent of the candidate/party</p>	<ul style="list-style-type: none"> ● the possibility of discrediting the party/candidate is minimal due to the possibility of refusal to make a contribution; ● the party/candidate controls the origin and amount of the contribution; ● The responsibility for evaluating the contribution lies with the donor; contributions may be disclosed in the party/candidate's reporting on the receipt and use of election fund resources for based on the 	<ul style="list-style-type: none"> ● The party/candidate must establish the donor's compliance with the law in each case, and evaluate the information in the contribution request against the actual contribution made; ● making a contribution requires time and a certain bureaucratic procedure (approval); the approval must be properly documented to ensure that any disputes over them can be effectively resolved in court.

	<p>information received from the donor;</p> <ul style="list-style-type: none">● state control over the financing of election campaigns is not complicated;● the possibility of a clear delineation of responsibility between the donor and the recipient for compliance with the requirements of the law regarding the contribution.	
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Comparing the advantages and disadvantages of the main approaches to regulating the procedure for making contributions to election campaigns by third parties, it can be argued that **in the Ukrainian reality, the most promising approach is the one where a third party contribution outside the election fund can be made only with the consent of the party or candidate in the election. If such an approach to regulation is enshrined in the ECU, the Electoral Code should determine:**

- **the procedure for sending a request for consent to make a contribution and the procedure for documenting the fact of its sending and receipt;**
- **the timeframe for consideration of such a request;**
- **the consequences of making a contribution without obtaining the consent of the party/candidate or not in accordance with the request for such contribution;**
- **the obligation of the donor to inform the party/candidate about the contribution in accordance with the request after it is actually made;**
- **inclusion of information about the contribution in the financial report of the party/candidate based on the information provided in the request;**
- **imposing responsibility for compliance with the requirements on the sources of campaign funding on the donor, not the party/candidate** (for more details, see "Specifying the procedure for returning illegal contributions and unused balances of election funds").

Restrictions on parties/candidates' own contributions to election funds

According to the Electoral Code, parties' and candidates' own contributions to their election funds are not subject to restrictions on the number and amount of transfers.

Unlike self-nominated candidates, party-nominated presidential candidates can use not only voluntary contributions and their own funds to form their election funds, but also the funds of the parties that nominated them, which is important - without any restrictions. Following the 2019 presidential election, ODIHR Election Observation Mission emphasized the fact that the possibility of banning campaign financing for self-nominated candidates by parties is discriminatory⁴⁶ **!** - as "party" candidates can use unlimited financial support from their nominating entities. It is difficult to agree with this conclusion of ODIHR for several reasons:

^{1 46}ODIHR Election Observation Mission *Ukraine. Presidential elections on March 31 and April 25, 2019. Final report*, p.25; <https://www.osce.org/files/f/documents/a/b/441931.pdf>

- By analogy, such restrictions typical for the Ukrainian electoral legislation and/or the laws of European countries as non-admission of lists of independent candidates to the distribution of compensatory mandates under the proportional representation system (as practiced in many European countries), different amounts of election deposits for parties and candidates, the procedure for depositing such deposits (for a "party" candidate, the deposit is paid by the party, for a self-nominated candidate - by the candidate), differences in the lists of documents required to be submitted for;
- the possibility of financing a candidate by several parties will actually allow circumventing restrictions on contributions to support parties and candidates: a donor will be able to transfer contributions to several parties, and those parties will be able to transfer contributions to one candidate;
- limiting a party's contribution to support its nominated candidate (in the case of presidential elections) makes the nomination of such a candidate by that party meaningless, because if the party cannot properly finance his campaign, he may well be nominated by himself without being affiliated with the relevant party;
- It also undermines efforts to remove barriers and stimulate public fundraising campaigns, which, for obvious reasons, should be launched long before the registration of candidates. In such circumstances, it would be much more appropriate to create conditions for early and transparent fundraising by self-nominated candidates rather than to limit such opportunities for parties and their candidates.

In its report on the 2020 local elections, ODIHR's Limited Election Observation Mission noted that "various interlocutors ... emphasized that this allows for the use of schemes to replenish election funds, circumventing prohibitions and restrictions on the amount of voluntary contributions."⁴⁷ According to the information provided by the Civil Network OPORA, in the 2019 early parliamentary elections, 11 out of 21 election funds of the parties were filled at the expense of the parties' own funds. The lack of revenues from voluntary contributions was explained by OPORA as the reluctance of political forces to disclose their sponsors during election campaigns - party donors during the election process were covered in the party's financial reporting (and not not reports on receipts and the use of election funds) after the election - after the end of the reporting quarter in which the election process took place⁴⁸.

⁴⁷ODIHR's limited election observation mission.

Ukraine. Local elections on October 25, 2020. Final report, p.26.

⁴⁸Civil Network OPORA. Final report on the results of the observation of the Civil Network OPORA at the early parliamentary elections in Ukraine on July 21, 2019; https://www.oporaua.org/vybory/zvit-mistsevi-vybory_2020-23539

The absence of any restrictions on personal contributions to election funds creates a number of problems and threats:

- circumvention of the established restrictions on the sources of formation and the maximum amount of contributions to election funds. The financial activities of a citizen before he/she becomes a candidate in the elections are not subject to legislative regulation at all. Prior to submitting registration documents, they can receive unlimited funds from, for example, Chinese, Russian companies or Ukrainian oligarchs, take loans from banks and direct them to their election fund under the guise of "own contributions";
- Risks of political corruption. Obviously, if a candidate receives a multi-million dollar contribution from a commercial campaign, which he then transfers to his own election fund as his "own contribution," there is a high risk that after he is elected to office, the donor will demand certain "services" in the area of lawmaking in exchange for the financial support provided in the past;
- lack of transparency of campaign financing in general. If a party has formed its own election fund at the expense of its "own contribution", which essentially consisted of private contributions transferred long before the party nominated candidates, it is virtually impossible to establish who is really behind such "own contribution". If the deadline for submitting final financial reports of parties on the receipt and use of election funds expires before the end of the reporting quarter for which the party must submit its financial report, it is impossible to identify the real donors of such parties' campaigns until they submit their party financial reports, when information about those who financed the party during the election process will lose its relevance and the election results will have already been established. In the case of candidates, their real donors cannot be identified at all, as candidates do not report on contributions received before the start of operation of election fund accounts.

The ECU should be amended to provide for:

- **setting limits on a candidate/party's own contribution to its election fund, for example, at the level of a double contribution to the party from an individual or (in the case of a party) a legal entity during the year;**
- **disclosure in the election financial statements of the sources of origin of the candidate's "own contribution" - by disclosing information on the movement of funds on his/her accounts for a certain period before the registration as a candidate in the elections.**

For more details, see the section "Ensuring Transparency of Campaign Financing Before Candidate Registration").

Preventing excessive funding of election campaigns

According to the ECU, in presidential and parliamentary elections, the size of the election fund of a candidate for the post of President of Ukraine and, accordingly, of a party in the election of people's deputies is 90,000 minimum wages. At the same time, the size of the election fund for each candidate for people's deputies included in the regional party list is limited to 4,000 minimum wages.

Although the Recommendation of the Committee of Ministers of the Council of Europe on the Common Rules against Corruption in the Financing of Parties and Electoral Campaigns sets limits on the size of election funds as a positive step to prevent both excessive election spending and increased dependence of parties on a limited number of donors, in the Ukrainian context these limits are, on the one hand, too liberal to ensure a level playing field for election contestants, and, on the other hand, insufficient to prevent further increases in the cost of election campaigns.

Thus, in every election where a limit was set on the amount of expenditures from election funds, parties and candidates never exceeded this limit. Instead, if they needed to finance certain expenditures in an additional amount (above the fund's limit), they would bypass the election fund. An indirect confirmation of the growth of parties' and candidates' election expenditures is the fact that the expenditures on audiovisual, outdoor and online advertising constitute the major part of the election funds of the leading parties and candidates for the post of the President of Ukraine. Given the prevalence of hidden advertising (the so-called "jeansa"), the lack of effective control over the financing of outdoor and online advertising due to shortcomings in legislative regulation, it can be assumed that the actual amount of political advertising spending by many parties and candidates is higher than the allowed amount of funds: the excess can vary from tens of percent over the established amount, to several times. The participants of the interviews conducted for this study agreed with this, although any estimates are still subjective and cannot be supported by empirical data.

That is why, along with limiting the amount of spending of election funds, the legislator should consider introducing additional mechanisms aimed at reducing the overall cost of election campaigns and weakening the dependence of parties on private donors, in particular:

- **refusal to reimburse election campaign expenses, as the possibility of reimbursement of a significant part of the expenses from election funds does not encourage parties and candidates to use them economically and efficiently;**

- **reducing opportunities for covert campaigning, in particular by expanding the possibilities of using election funds (see recommendations in the paragraphs above), enshrining a clear definition of "covert campaigning" in the ECU, and enshrining a new definition of "political advertising" in accordance with the latest acts of the *acquis communautaire* (for more details, see the section "Information Support of Elections and Campaigning");**
- **limiting/prohibiting some of the most costly election campaign expenditures, primarily expenditures on paid political advertising in audiovisual media, while simultaneously establishing safeguards for the placement of hidden political advertising and establishing criteria for distinguishing informational coverage of political events from election campaigning/political advertising (see section "Information Support of Elections and Election Campaigning").**

Among the shortcomings of the regulation is the fact that the size of the election fund was determined by the legislator without proper justification. It is quite possible that it was determined at the level fixed by the election laws that were in force before the adoption of the Electoral Code. Therefore, the calculation of the limit on spending of election funds should be tied to more reasonable criteria, such as the number of voters registered in Ukraine and the average cost of advertising per voter. According to IFES research, in many European countries, the amount of spending by election funds per voter usually varies from 1 to 5-7 euros. Given the constant depreciation of the national currency, the amount of election fund expenditures per voter should be indexed to consumer prices, i.e., the inflation index.

The Electoral Code should be amended to provide that the maximum size of the election fund of a candidate for the post of President of Ukraine or a party in the election of people's deputies of Ukraine is determined as a result of multiplying the total number of voters in the nationwide constituency by 15 hryvnias and the value of the consumer price index divided by 100 percent. For a parliamentary candidate, the calculation may be based on the number of voters in the respective electoral region in which the candidate was nominated. The amount of expenses per voter may be reduced to UAH 5, indexed to the consumer price index.

Regulation of cryptocurrency contributions to election campaigns

Ukrainian law formally excludes the possibility of making campaign contributions in cryptocurrencies - by definition, it is impossible to transfer them to election funds, while paying for goods, works and services for campaign needs would be a violation of election law. Nevertheless, there are numerous mechanisms to circumvent these provisions. For example, an activist may call for support for a candidate with cryptocurrency payments, provide details of the respective wallets, convert the received cryptocurrency into hryvnia through P2P transactions, and transfer it to the election fund of the candidate he supports as his own contribution. Formally, such fundraising activities and the transfer of the contribution (if it does not exceed the established limit for an individual) will not be a violation of the Election Code. Another example of a completely legal use of cryptocurrencies to finance election campaigning is when a candidate creates, for example, his or her own meme coin, sells it to interested

supporters or investors on decentralized cryptocurrency exchanges, and transfers the proceeds to the election fund as his or her own contribution. Numerous examples of such meme coins were created during the recent US elections - some of them were related to the candidates in the elections, and some were not and only exploited their popularity (e.g. MAGA, TRUMP, STRUMP, KAMA, TREMP, MAVA). Interestingly, on the day of the televised debate between the presidential candidates (which was assessed as successful for Kamala Harris), the meme coins associated with Donald Trump's name lost 30-50% or more of their value in one day, while the tokens associated with his rival in the election grew on the contrary. After the election results were finalized and Donald Trump won, the price dynamics were the opposite.

The use of cryptocurrencies to finance election campaigns poses a number of risks:

- contributions are anonymous, and if they are made using cryptocurrencies that provide enhanced privacy protection (Zcash, Monero), they are almost completely anonymous, making it virtually impossible to establish who is behind a particular contribution;
- contributions can be made regardless of borders within seconds and are not limited to any amount;
- the use of cryptocurrencies actually allows to circumvent any of the restrictions established by the ECU. They can be used to finance election campaigns by sanctioned companies and states, terrorist sponsors, criminal organizations, etc.

These risks are balanced by significant advantages, such as the availability of cryptocurrencies, high transaction speeds (which are tens or even hundreds of times faster than bank transactions), and minimal fees that often do not depend on the amount of payment (transferring \$1 or \$1 billion may involve the same amount of commission depending on the network chosen for the transaction).

That is why in many countries, legislators/regulators have chosen to regulate the use of cryptocurrencies in campaign finance rather than ban them. In the EU, for example, consultations are ongoing around a comprehensive regulatory act, aimed at regulating procedures for use of markets in Crypto-Assets Regulation (MiCA), in particular in the context of campaign finance. In Canada, back in 2018, the Election Commission prepared Guidance Notes on the use of cryptocurrencies.⁴⁹ Similar regulation has been introduced at the federal level and in some states and in the United States⁵⁰. One of the features of the Canadian and American approaches to regulation is the desire to increase the level of transparency of cryptocurrency contributions, in particular, by requiring transactions to be made exclusively through registered processing centers that ensure KYC policy, i.e. verification of cryptocurrency wallet owners.

Although the use of cryptocurrencies requires a comprehensive approach to regulation, the CEC and the NACP, together with the Verkhovna Rada Committee on Organization of State Power, Local Self-Government, Regional Development and Urban Planning, should start public discussions on the areas of regulation of the use of cryptocurrencies in the field of election campaign financing.

Optimizing the administration of election funds

The division of election fund accounts into accumulative and current accounts was first introduced by the laws on presidential and parliamentary elections in the early 2000s, and later transferred to the ECU, as well as most other provisions of the previous election legislation regulating the administration of election funds. The existence of several types of election fund accounts leads to problems and confusion:

- In practice, there are cases when banks open current accounts of election funds without opening accumulative accounts;
- the need to constantly move funds from the savings account to the current account only increases the number of banking transactions, their total duration and the amount of fees/costs for their execution, and does not affect the transparency of the funds flow;
- since each account is administered by separate managers, there is a problem of effective interaction between them, including at the stage of preparing reports on the receipt and use of election funds, identifying those responsible for failure to submit/late submission of a report on the movement of funds on the respective account;
- the need to open a large number of current accounts (one account per constituency) necessitates interaction with a large number of bank branches, whose staff may have different levels of awareness of the procedures for administering this particular type of account.

⁴⁹https://www.elections.ca/res/gui/app/2018-10/2018-10_e.pdf

⁵⁰See, for example:

https://fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/new-laws/Cryptocurrency_Fact_Sheet.pdf

According to the Electoral Code, in parliamentary elections, managers of party election fund accounts are appointed either from among the party's authorized representatives in a national or territorial constituency or from among the candidates. The account manager of a candidate's election fund may be either the candidate himself or his authorized representative. A similar approach is envisaged for the presidential election: trustees in the national or respective territorial constituency may be the managers of the presidential election fund accounts. The nature of these restrictions is not entirely clear - a candidate or party should be able to determine who to entrust with the administration of the election fund account. For example, a party may trust only its accountant, but it seems unreasonable to appoint an accountant as a party's authorized representative in a nationwide constituency only so that he can administer the accumulative account of the election fund.

The ECU should provide for the establishment of a single election fund account to which contributions to election funds will be credited and from which election campaign expenses will be financed. The number of managers of such an account should be limited to two, and parties and candidates should be given full freedom to choose such managers.

Improving the procedure for reporting on campaign finance

The Electoral Code provides for the submission of two types of financial reports on the receipt and use of election fund resources - interim and final. These reports are submitted by the managers of the accumulative accounts of the election funds to the CEC and the NACP, the candidate for the post of President of Ukraine and the respective party (in the elections of people's deputies of Ukraine). The manager of the current account of the election fund of a candidate for MP submits the financial report to the respective party and to the regional or territorial office of the CEC. The decentralized submission of reports in paper and electronic form significantly complicates the automated verification of the data included in them, in particular, the legality of the sources of contributions received, compliance with the limitations on their maximum value, etc. The fact that parties submit reports on property, income, expenses and financial liabilities to the NACP electronically through the unified reporting register (POLITDATA) raises the question of whether the same approach could be extended to the submission of election financial statements for both national and local elections.

According to the ECU, interim financial reports on the receipt and use of election funds are submitted to the NACP and the CEC no later than 5 days before the election day and should cover the period from the opening of the election fund account to the 12th day before the election day. The final reports are submitted no later than 15 days after the election day and cover the entire period of operation of the election fund account. This approach to determining the reporting deadlines raises several problems:

- information on contributions to the election fund and expenditures made later than 12 days before the election day are disclosed in the financial statements after the election, when this information loses its practical value. Meanwhile, it is in the last days before the election that the receipts and expenditures to election funds can increase significantly;
- submission of reports only 5 days before the election day and their publication the day after the day of receipt actually excludes their qualitative analysis and verification - both by the regulator (NACP) and the public.

The transition to the electronic reporting form and the automated exchange of information on the movement of funds on the accounts of election funds between banks and the Reporting Register will allow election fund managers to update information on the movement of funds on fund accounts more quickly, as well as to ensure the automated generation of election financial statements by the POLITDATA Register.

To increase the efficiency of the audit of accounts, the ECU should provide for:

- designation by the party/candidate of one election fund account manager authorized to submit reports on the receipt and use of election fund funds (campaign finance report);
- submission of all electoral financial reports in electronic form to the POLITDATA Registry; determination of the terms, procedure for submission and clarification of such reports, determination of the procedure for electronic identification and authentication of the authorized manager of the election fund account in the POLITDATA Registry;
- round-the-clock electronic access to the election financial statements for any interested parties (except for data to which access is restricted by law);
- the obligation for election fund managers to update information on the movement of funds in election fund accounts at least every 3 days and to draft the final financial report by electronic means of the POLITDATA Register based on the information on the movement of funds in election fund accounts included in it.

The relevant amendments should be made to the ECU before the termination of martial law in Ukraine, while the commercial operation of the POLITDATA Registry modules intended for submission of electoral financial statements in electronic form should be launched before the start of the election process of the first post-war elections.

Improving the effectiveness of campaign finance control

The ECU defines three subjects of control over the receipt and use of election funds in national elections - the CEC (in the case of candidates for deputies - regional and territorial offices of the CEC), the NACP and banks where these funds' accounts are opened. It follows from the ECU that certain powers of primary control are also vested in election fund account managers, who conduct a preliminary assessment of the admissibility of contributions to the election fund (amount, source of origin) and have the right to refuse a contribution or return it if there are grounds provided for by the ECU.

Meanwhile, the ECU does not clearly define the powers of the CEC, the NACP and

banks to control the receipt and use of election funds. In the case of banks, the question of what control functions they exercise - apart from those defined by the legislation on banking - is left unanswered by the ECU. There is also no clear division of control powers between the NACP and the CEC. For example, the NACP and the CEC jointly analyze interim and final financial reports on the receipt and use of election funds; they also prepare joint conclusions based on the results of such analysis. The expediency of such duplication of powers and involvement of several bodies in the analysis of reports is questionable, especially in the context of the fact that the analysis itself is actually limited to checking the timeliness of submission and correctness of filling in the reports, as well as comparing the information provided in them with the information received from banks.

The question of who exactly should control campaign finance outside the election funds remains unresolved in the law. On the one hand, the ECU narrows the NACP's powers in the field of campaign finance to the verification of election financial statements (control of election funds). On the other hand, according to the Law of Ukraine "On Political Parties in Ukraine", the NACP controls contributions to support parties, which allows it to extend its controlling powers to the electoral process, since receiving a contribution by a party bypassing the election fund is a violation not only of the requirements of the ECU, but also of the Law of Ukraine "On Political Parties in Ukraine". **In the case of candidates, the situation is even more complicated - the NACP is not authorized to control the financing of their campaigns either by the CCU or the** Law of Ukraine "On Political Parties in Ukraine". Formally, the CEC is responsible for compliance with the electoral law (including campaign finance), but in practice it has no significant powers in this area. The CEC does not review complaints about this category of violations (the CEC's powers to review complaints are limited to reviewing complaints about inaction of DEC's) and if these violations entail administrative or criminal liability (and campaign finance violations fall into this category of violations), it transmits information about them to law enforcement agencies for further response. Practice shows that law enforcement agencies in many cases ignore this information or react to it only formally, as evidenced, in particular, by the small number of people brought to justice for campaign finance violations against the background of large-scale practices of hidden campaign financing.

To improve the effectiveness of control over the financing of election campaigning, the ECU should be amended to provide for:

- transfer of powers to control the financing of election campaigns in national elections to the NACP;
- narrowing the controlling powers of banks in the field of election campaign financing to monitoring compliance with banking legislation when making/receiving contributions and compliance with the requirements for the maximum amount of a contribution from an individual or legal entity;
- obligation of the CEC to inform the NACP about violations in the field of campaign financing, including making contributions bypassing election funds, if it becomes aware of such information;
- clarify the subject of analysis of financial reports on election campaign financing, which should include an assessment of the timeliness of submission of reports, compliance of the information provided in them with the data on the movement of funds in the election fund account received from the bank; compliance with restrictions on contributions; assessment of the compliance of the actual amount of election campaign

financing with the amount indicated in the report.

If these amendments are adopted and the electronic register of financial reporting on campaign finance is launched before the start of the election process for the first post-war elections, the Cabinet of Ministers of Ukraine should provide the NACP with the resources necessary to exercise its new control powers, and the NACP should organize training on campaign finance control for its own employees and on new reporting procedures for representatives of parties or other stakeholders.

Specifying procedures return of illegal contributions and unused balances of election funds

The Electoral Code stipulates that the manager of the accumulative or current account of an election fund must refuse a contribution that exceeds the maximum amount established by the ECU and the Law of Ukraine "On Political Parties in Ukraine." He or she must also refuse a contribution from a prohibited source within three business days from the date he or she becomes aware that the contribution made by the donor does not meet the requirements of the law. The implementation of the second of these requirements is problematic:

- the election fund manager may not be aware of the non-compliance of the source of the contribution with the law or may become aware of this fact after the contribution is used;
- Given the rapid pace of the election process and the potentially large number of contributions, the election fund manager has extremely limited time to verify the compliance of donors with the established requirements - to find out the structure of their authorized capital, the ultimate beneficial owners of the legal entity, the existence of public procurement contracts concluded with the donor, the dates of their termination and price, etc.

It is advisable to provide in the ECU that the responsibility for compliance with the requirements on the sources of contributions lies with the donor. The election fund manager should be responsible only for receiving contributions exceeding the established maximum, as well as for receiving contributions from sources whose compliance with the law can be verified on the basis of a statement of funds flow on the election fund account (e.g., receiving a contribution from a religious organization, another party, non-resident legal entity, etc.) In all of these cases, the election fund manager must return the contribution/excess amount to the respective donor within 3 days of receiving the contribution. If the donor is responsible for compliance with the contribution requirements, the received contribution is not refundable.

The ECU regulates differently the procedure for using the remaining balances of election funds that were not used by parties and candidates to finance their election campaigns in the elections of people's deputies of Ukraine and the presidential elections. For example, in the presidential elections, the balances of the election funds of self-nominated candidates are transferred in full to the state budget. Instead, the balances of the election funds of candidates for the post of President of Ukraine nominated by parties are transferred to the respective

parties at the request of the candidate. In parliamentary elections, candidates for deputies - unlike candidates for the post of President of Ukraine - receive unused balances of their election funds in the amount of the contribution made. Such an approach violates the principle of equality of candidates and is controversial, since if a candidate makes a contribution to his/her election fund and has unused balances in the amount of such contribution or at least a part thereof, returning the balances to the state revenue will essentially be a punishment for the candidate. In addition, the possibility of recovering such balances to the budget in full encourages candidates to find less than honest ways to withdraw the remaining funds from the election fund in order to avoid their actual confiscation after the election.

For similar reasons, the provision of the Electoral Code that provides for the collection of the election fund to the state budget in case of cancellation of registration of a candidate or party-nominated candidates for deputies is also controversial. Such collection of funds is essentially a punishment to the party/candidate for the emergence of grounds for deregistration of candidates.

The provisions of part ten of Article 152 of the ECU, according to which a party must hold a congress and pass a resolution to receive the remaining funds of its election fund after the election, are too bureaucratic. It is obvious that any party will be interested in receiving funds from its own election fund, and it is not necessary to hold a congress to receive such funds. Equally questionable is the provision of the ECU, which requires that in order to receive the remaining funds of the election fund of a presidential candidate nominated by a party, the party actually needs to obtain the consent of the following candidate - he or she must submit a corresponding application to the CEC, and only if it is submitted will the party receive such funds.

Thus, the provisions of the ECU regarding the procedure and grounds for returning the remaining unused funds of election funds to parties and candidates need to be revised. It should provide for the following:

- automatic transfer to the party of the balances of unused funds of the election fund of the candidate for the post of President of Ukraine, the election fund of the candidate for people's deputies and the party's own election fund in the elections of people's deputies of Ukraine within ten days after the election results are established (the account for crediting such balances may be indicated in the application for registration of candidates for people's deputies or a candidate for the post of President of Ukraine nominated by the party);
- transfer of the balances of the election fund of a candidate for the post of President of Ukraine nominated by self-nomination to the respective candidate in the amount of available balances, but not more than his/her own contribution to his/her election fund;
- return of the remaining funds of the election funds to the state revenue only if the party or candidate refuses to use them or if the amount of the remaining funds exceeds the contribution of the candidate for the post of President of Ukraine nominated by self-nomination (in the amount of the excess);
- application of the above approaches to the return of election fund balances to cases of cancellation of candidates' registration in elections - regardless of the reasons for the cancellation of registration.

Strengthening sanctions for violations and ensuring their effectiveness and efficiency

The legislation establishes liability for violation of campaign finance rules and reporting requirements. For example, Article 159-1 of the Criminal Code of Ukraine establishes liability for knowingly providing false information in financial election reports and intentionally making/receiving an illegal contribution (from a prohibited source or in a large amount), while Articles 212-15 and 212-21 of the Code of Administrative Offenses provide for administrative liability for violation of the procedure and deadlines for submitting election financial reports (a fine of UAH 5100-6800) and violation of the procedure for providing/receiving financial support for election campaigning (a fine of UAH 1700-5100) with confiscation of the contribution.

These sanctions do not meet the criteria of proportionality, efficiency and effectiveness set out in the Common Rules against Corruption in the Financing of Political Parties and Electoral Campaigns - the amount of administrative fines does not prevent violations, while the Criminal Code of Ukraine does not provide for imprisonment for the inclusion of false information in the reporting or the commission of illegal large-scale campaign contributions. It is also worth noting that it is not always possible to confiscate a contribution (for example, if it was made in the form of work or services, discounts, etc.). The very terminology of the Criminal Code of Ukraine and the Code of Administrative Offenses (e.g., "provision of financial support", "provision of material support for election campaigning") in terms of liability for this category of violations is not consistent with the terminology of the ECU (e.g., in terms of campaign financing), while some violations (failure to open/untimely opening of an election fund account, etc.) do not provide for any liability.

In addition, it is very difficult in practice to prove the deliberate inaccuracy of the data provided in the reports, as well as the intent to make or receive contributions or financial support. The defendants may claim technical errors in the reports and lack of awareness of the violations. All this is complicated by the fact that most criminalized violations of political finance rules are classified as criminal offenses. In its turn, Article 215 of the criminal procedure code of Ukraine provides that pre-trial investigation of criminal misdemeanors takes place in the form of inquiry. This is confirmed by the fact that under Art. 159-1 of the Criminal Code of Ukraine (violation of the procedure for financing a political party, election campaigning or referendum campaigning), the Unified State Register of Court Decisions contains only 7 rulings and 1 verdict. This verdict established that a person intentionally and by prior conspiracy with other persons paid contributions to support a political party without having the right to do so. However, this person was brought to criminal responsibility under Part 4 of Article 159-1 of the Criminal Code of Ukraine after the approval of a plea agreement (i.e. an agreement under which the prosecutor and the suspect/accused agree to unconditionally admit guilt). The Civil Network OPORA has made recommendations for improving legal liability for violation of political finance rules and discussed them, but there is a need for further discussion with broad involvement of all stakeholders (including the NACP, the CEC, law enforcement agencies, representatives of political parties, civil society organizations and academia).

The elements of violations in the field of election campaign financing provided for in the Code of Administrative Offenses and the Criminal Code should be brought in line with the CCU. Administrative and criminal sanctions for these violations should meet the requirements of proportionality, efficiency and effectiveness.

Recommendations

Content of the recommendation	Responsible actors	Deadlines for implementation
Amendments to the ECU aimed at increasing transparency of campaign finance and simplifying/reviewing certain procedures related to such financing (regulation of campaign finance before registration of candidates, establishment of mechanisms to reduce campaign costs, limitation of parties'/candidates' own contributions to election funds, transition to electronic financial election reporting, regulation of third-party contributions, definition and delimitation of controlling powers in the field of election finance, clarification of the grounds and procedure for returning to the election fund account, etc.)	VERKHOVNA RADA	Before the termination of martial law
Amendments to the Criminal Code of Ukraine and the Code of Administrative Offenses to introduce proportionate, effective and dissuasive sanctions for violations in the field of party and election financing campaigns, reporting on campaign contributions/expenditures	VERKHOVNA RADA	Before the termination of martial law
Amendments to the Tax Code and laws on social security to enable financing of expenditures that cannot be financed by account of election funds	VRU	Before the termination of martial law
Determination of the list of election campaign expenses and the list of election campaign expenses	NACP, CEC	Before the start of the post-war election process
Putting into commercial operation the modules of the POLITDATA Registry, which will ensure the submission of reports by election fund managers during elections	NACP	Before the start of the post-war election process

<p>Providing the NACP with human, organizational and financial resources for the effective exercise of its control powers in the field of electoral finance</p>	<p>CMU VRU (budget allocations)</p>	<p>Before the start of the post-war election process and after the start of the functioning of the modules of the Election Reporting Register</p>
<p>Training of NACP staff, party representatives and other stakeholders on the new electoral finance regulation</p>	<p>NACP</p>	<p>Immediately after the POLITDATA Registry modules are put into commercial operation, which will ensure the submission of reports by election fund managers to elections</p>
<p>Hold public discussions with stakeholders on new trends in campaign finance and legislative challenges in this area</p>	<p>CEC, NACP, Committee on Organization of State Power, Local Self-Government, and Regional Development and urban planning</p>	<p>Before the termination of martial law</p>

Chapter 9

PREPARATION FOR VOTING, CONDUCTING VOTING, COUNTING VOTES AND ESTABLISHING RESULTS VOTING/ELECTION RESULTS

Introduction

According to the Electoral Code, the next parliamentary elections in Ukraine will be held under a proportional representation system with voting for open party lists. At ordinary polling stations, voters will be able to vote for regional lists of political parties and, if they wish, for one of the candidates included in them. The voting procedure at foreign polling stations will be different: since there will be no candidates in the foreign constituency, voters at foreign polling stations will be able to vote only for one of the national electoral lists.

A similar system with certain peculiarities (in particular, without voting for a single list) has already been tested in the 2020 regular local elections, and the experience of its practical application has generally shown that voters are well aware of both the voting procedure and the procedure for "converting" votes into mandates. Accordingly, under "normal" conditions, the system introduced by the ECU could be applied in the next parliamentary elections in Ukraine. However, as a result of the war, a number of significant complications arose on the way to its further application.

In particular, a significant number of voters were forced to move outside of Ukraine or to other regions that are less threatened by military threats. This created significant logistical and theoretical challenges, such as the question of which list an internally displaced person (IDP) should vote for in "new" electoral region: for the regional list at the place of new actual residence, for the regional list in the electoral region to which his/her electoral address belongs and which he/she was forced to leave (if the electoral address does not coincide with the place of actual residence in another electoral region), or - by analogy with voters in a foreign constituency - only for the national electoral list?

Voting at foreign polling stations may become no less problematic if the voting procedure and approach to the formation of the foreign polling stations (FPSs) remain unchanged. Even before the war with Russia started, the number of voters at some of the FPSs reached about 50,000. After the end of the war, this number will no longer be an exception to the general rule, but a common one (at least in states with a large number of Ukrainian citizens displaced to the respective states after the outbreak of war) practice. In view of this, the question arises: how to organize voting in a foreign constituency in order to ensure the proper exercise of their voting rights. Allow voting by mail or via the Internet? Should additional foreign polling stations be set up outside diplomatic missions? If so, how many and in which cities, and how to ensure the security of the vote? Or is it better to create "voting centers" - locations that would "serve" several polling stations at the same time (for example, in stadiums, concert halls, and similar premises) and be located in large cities? This is just the tip of the

"iceberg" of problems related to the organization of voting for voters who were forced to leave the territory of the state as a result of the war.

Some voters lost their documents, which, according to the ECU, are the basis for receiving ballots at the respective polling stations on election day, while traveling abroad, and were unable to renew them. Accordingly, the requirements of the ECU regarding the grounds for issuing a ballot to a voter need to be liberalized or at least revised, otherwise the principle of universal suffrage guaranteed by the Constitution will not be properly ensured.

It should not be forgotten that millions of Ukrainian citizens have found themselves in the territories temporarily occupied by Russia (including the territories occupied after February 24, 2022) and have not lost their Ukrainian citizenship. The question arises: how to ensure that these citizens vote in the elections in Ukraine and in which elections - all or only national elections. The answer to this question is not easy, because depriving voters in the occupied territories of the opportunity to exercise their voting rights would actually mean the state's abandonment of both the voters and the territories in which they live.

Logistical difficulties and the need to ensure the principle of universal suffrage may also significantly affect the time (duration) of voting, as certain categories of voters (e.g., military personnel whose service borders the line of combat, as well as voters outside the state who are far from polling stations) may not have enough time to vote within the 12 hours allotted by the Electoral Code. This may require extending the voting period to several days (this approach is not unusual in foreign practice), but its constitutionality may raise some reasonable doubts.

Ukraine is already facing significant problems in financing public expenditures. This trend is likely to continue for some time after the war. In this regard, in the course of preparations for the election, there may be a need to reduce the costs of such preparations, primarily by reducing the cost of producing ballots. Reducing these costs may also help to reduce other categories of expenditures, such as transportation of election documents, production of ballot boxes, and remuneration of election commission members (in case of accelerated vote counting and tabulation).

This section outlines the legal and practical challenges related to the preparation and actual conduct of voting, tabulation of results and election results, and suggests possible solutions.

Key challenges

Voting in the post-war elections and preparations for them will be carried out in the context of a number of war-related challenges that must be addressed both by amending legislation and by taking appropriate organizational measures. The main such challenges are discussed below.

Organization of voting by voters residing/permanently staying outside Ukraine

A significant increase in the number of voters outside Ukraine (given the uncertainty of their return to Ukraine) may make it impossible to properly organize their voting at the PECs at Ukrainian diplomatic missions abroad, as in some countries with a significant number of voters (Poland, Germany, Czech Republic, etc.), thousands or even tens of thousands of voters will have to be assigned to each polling station. Accordingly, there is a need to establish additional polling stations outside the premises of diplomatic missions. This problem is discussed in more detail in the section "Territorial organization of elections" (paragraph "Establishment of additional polling stations").

The creation of such polling stations involves a number of risks:

- the problem of the so-called extraterritoriality of a polling station, i.e., ensuring that Ukrainian laws are in force on its territory, in particular, regarding the procedures for organizing voting and counting votes, organizing the storage of election documents, ensuring law and order, etc;
- Risks of provocations by persons affiliated with the aggressor state or others who may disrupt the voting/counting process or question its credibility/legitimacy;
- obtaining a permit to establish a polling station from the authorized bodies of the relevant foreign state, since not all states grant such permits (for example, according to preliminary information, such permits are not granted in Belgium, Estonia, Kazakhstan, Germany, Serbia, Slovenia, and the Czech Republic);
- the need for a significant increase in spending on voting (installation of equipment, communications), staffing (formation of a large number of PECs outside diplomatic missions) and logistical needs (transfer of documentation, identification of authorized persons to receive documentation that may require diplomatic immunities, ensuring the protection of transportation of documentation), etc.

Therefore, even if, following negotiations with the authorized bodies of a foreign state, it is possible to establish a certain number of additional polling stations outside diplomatic missions, the establishment of such polling stations and the organization of voting at them may face serious obstacles. For example, if, as of May 2024, there were 950,000 employed Ukrainians in Poland (most of whom are eligible to vote), and polling stations are to be established with up to 2,500 voters, then more than 380 premises will need to be provided for the functioning of PECs, a personnel reserve for the formation of PECs (about 7,000 people, depending on the composition of such commissions), computer equipment, communication equipment, ballot boxes, secret voting booths, party information posters, etc. will need to be transferred to the relevant PECs. Meanwhile, it is also necessary to ensure the safety and return of the relevant material assets. If the voter turnout on election day in such a state is low, the amount of money spent on organizing voting outside the voting premises will be disproportionate to the effect of the vote - ensuring the exercise of one vote in this case can cost several tens or even hundreds of thousands of hryvnias.

Participants in the focus group studies conducted during the preparation of this document generally supported the need to ensure the voting rights of citizens who will be outside the state after the war. However, in their opinion, the best ways to ensure these rights are either voting at polling stations established at diplomatic missions outside the state or voting at a "specially equipped point" outside diplomatic missions.

Given the limited capacity of the state budget of Ukraine, both during the war and after, several options for organizing voting are possible:

- creating polling stations with a larger number of voters;
- allocating sufficient funds to rent premises for PECs with 2,500 voters;
- use of one voting room by several PECs in a large city of the state (e.g., in the administrative center of a province in the case of Poland).

The disadvantages of the second of these three approaches were mentioned above - it is inefficient in terms of using the state budget of Ukraine, although it is the most convenient for voters, as the premises of polling stations will be located near their places of permanent residence.

The increase in the number of voters per polling station, in case of a significant voter turnout, will significantly complicate the organization of voting and only partially reduce the cost of renting the premises of the PECs. Thus, if 5000 voters are assigned to each polling station, the number of polling stations to be established will be 150. At the same time, the increase in the number of voters per polling station with the equalization of number of voters at all polling stations will result in low turnout at some polling stations and difficulties in organizing voting at others. In addition, the establishment of polling stations with a large number of voters may lead (in case of a high voter turnout) to a significant increase in the duration of the vote count and the risk of incorrect filling of protocols or other irregularities in the organization of voting and vote counting.

During the interviews conducted for this study, the interviewed experts emphasized that in order to organize voting outside diplomatic missions, the grounds and conditions for establishing additional polling stations outside diplomatic missions should be clearly defined at the legislative level. In addition, it was noted that even if there are grounds for the establishment of such polling stations, the staffing and logistical support for the organization of voting in higher education institutions may become a significant challenge: in a number of countries, the staff of diplomatic institutions is up to 10 people, respectively, and it is unlikely that they can meet the staffing needs related to the staffing of PECs of additional polling stations; printing voter lists requires special printers that support printing in A3 format, while in many diplomatic institutions such printers are not available.

In view of the above, the third option for ensuring voting may be a compromise - the use by several election commissions simultaneously of one large room located in a large city of the state in the territory of compact residence of Ukrainian voters, in other words, a kind of "voting center", for example, in a stadium, concert hall or other similar premises with a large area. Such a center can be used both for voting and for the work of the respective PECs, but in the latter case, there will be a need for long-term lease of the respective premises. Accordingly, such premises should be used specifically for organizing voting, which will reduce the cost of renting them.

The main advantages and disadvantages of each approach are summarized in **Table 1** below.

***Table 1:** Advantages and disadvantages of different ways of organizing voting at foreign polling stations*

Method.	Advantages.	Disadvantages/risks
Additional PECs with the number of voters up to 2500	<ul style="list-style-type: none">● Accessibility for voters;● Possibility of voting by all voters during the voting period (even in case of a large turnout);	<ul style="list-style-type: none">● Significant rental costs;● Security and other risks in the process of transportation of electoral documents to PECs;

Method.	Advantages.	Disadvantages/risks
	<ul style="list-style-type: none"> ● Relative efficiency of vote counting; ● The requirements for voting premises, the number of ballot boxes, the maximum composition of the commission, etc. are the same as for large conventional or special polling stations; ● Convenience of observation and transparency of the voting process; ● Possibility to organize voting during one day. 	<ul style="list-style-type: none"> ● The need to create a significant personnel reserve to form PECs; ● Risks of not forming polling stations in places of significant concentration of voters in the absence of the consent of the competent authorities of the host state; ● Significant security costs election documentation.
<p>Additional PECs with the number of voters more than 2500</p>	<ul style="list-style-type: none"> ● A certain reduction in expenditures for renting the premises of the PECs; ● Possibility to organize more secure transportation of election documents; ● Possibility to use more suitable premises for the proper organization of voting; ● There is a higher probability of reaching an agreement with the authorized bodies of the host state on the opening of polling stations. 	<ul style="list-style-type: none"> ● Lower accessibility of polling stations for voters; ● Impossibility for individual voters or a significant number of voters to exercise their voting rights due to overcrowding of the polling station/queue (in case of high turnout); ● The potential need to introduce multi-day voting and the resulting need to preserve and record election documents; ● The need to form PECs with a large number of members to effectively distribute responsibilities on election day;

		<ul style="list-style-type: none"> ● Increase in the duration of the vote counting process and the risk of errors/violations; ● Difficulty in monitoring the voting process; ● The need to provide additional number of voting booths and ballot boxes to the PECs; ● Increase in the functional load on PEC members in case of PEC formation in disproportion to the the number of voters in the composition.
<p>Use by several FPSs in the same voting room</p>	<ul style="list-style-type: none"> ● Significant reduction of expenditures on renting voting premises; ● The possibility of maintaining the accessibility of voting for voters (in case of successful location of voting centers); ● The ability to simultaneously monitor the voting process at several polling stations in one room; ● A smaller number of premises means a higher probability of obtaining consent to use them for a limited period of time; ● More secure transportation of election documents from voting premises after the election results are established; 	<ul style="list-style-type: none"> ● Greater remoteness of voting centers from voters compared to PEC premises; ● The location of voting centers must be carefully planned; ● The need to ensure the safe transfer of election documents from the PEC premises to the voting room; ● The proper organization of voting in one room for several PECs requires careful planning of the distribution of duties on election day among commission members; ● Voting disruptions, intimidation or terrorist attacks will affect the results at several polling stations at once; ● Possibility of confusion in the voting process (lowering ballots in the

<p>Use by several FPSs in the same voting room</p>	<ul style="list-style-type: none"> ● Significant reduction of expenditures on renting voting premises; ● The possibility of maintaining the accessibility of voting for voters (in case of successful location of voting centers); ● The ability to simultaneously monitor the voting process at several polling stations in one room; ● A smaller number of premises means a higher probability of obtaining consent to use them for a limited period of time; ● More secure transportation of election documents from voting premises after the election results are established; ● The possibility of using the same equipment and transport by different PECs; ● Reducing the cost of protecting election documents; ● Possibility to organize voting within one day. 	<ul style="list-style-type: none"> ● Greater remoteness of voting centers from voters compared to PEC premises; ● The location of voting centers must be carefully planned; ● The need to ensure the safe transfer of election documents from the PEC premises to the voting room; ● The proper organization of voting in one room for several PECs requires careful planning of the distribution of duties on election day among commission members; ● Voting disruptions, intimidation or terrorist attacks will affect the results at several polling stations at once; ● Possibility of confusion in the voting process (lowering ballots in the ballot boxes at another polling station); ● Potential inconveniences for voters in case of improper information about the voting procedure; ● Possibility of violations during voting due to the large area of the voting room and the difficulty of controlling movement voters.

In case the ECU enshrines the possibility of voting at EMBs established outside diplomatic missions, the MFA (in cooperation with the CEC, if necessary) should ensure that it is possible:

- **determining the number of voters in each foreign country and their places of compact residence;**
- **hold negotiations with the authorized bodies of states where a large number of Ukrainian citizens are located to establish such polling stations (including states that currently do not allow the establishment of polling stations outside diplomatic missions);**
- **to develop cost estimates for the organization of such voting and to assess the needs for material and technical support of PECs;**
- **determining the procedure for transferring documents and material assets to PECs from the EMB, their storage and return after the election;**
- **formation of a personnel reserve (list of potential candidates) for inclusion in PECs;**
- **addressing security/ law enforcement issues in the process of preparing for voting, conducting voting and counting votes, resolving the issue of temporary extraterritoriality of voting premises;**
- **submitting a proposal to the CEC to establish PECs and FPSs for the election of the PECs.**

If the ECU provides for the establishment of voting centers in higher education institutions (voting premises in several EMBs simultaneously), the ECU should also determine the procedure for the presence in such premises of persons entitled to attend PEC meetings without permission or invitation, as well as the limits of their powers in connection with such presence, while the MFA together with the CEC should additionally determine the location of such centers. In addition, the CEC should further define:

- **the procedure for transferring/transporting election documents from/to such centers by the respective PECs FPSs, ensuring their preservation/protection;**
- **the procedure for organizing voting in such premises (distribution of responsibilities among PEC members, etc.);**
- **the procedure for PECs to act in case of violations on election day that make it impossible or suspend the lawful course of voting;**
- **the procedure for the joint use of property/other material assets by PECs during the organization and conduct of voting.**

Organization of voting by IDPs

After the end of the war, a significant number of IDPs will integrate into the new communities to which they have moved and are unlikely to be willing (or even physically able) to vote at the polling stations to which their electoral addresses were assigned as of February 24, 2022. **Such voters should be able to register a new electoral address at their new place of residence in a simplified manner, following the procedures established for IDPs who have been displaced due to the temporary occupation of the Autonomous Republic of**

Crimea, the city of Sevastopol, and certain districts of Donetsk and Luhansk oblasts since 2014.

On the other hand, voters who plan to vote in the future at their electoral addresses determined as of February 24, 2022, should also be able to vote under the procedure of changing their voting place without changing their electoral address. Such voting may be carried out both at a regular polling station and at an additional regular polling station established in a place of compact accommodation of IDPs (tent cities, modular settlements/houses, etc.). **In the latter case, voters assigned to other regular or special polling stations should not be eligible for inclusion in the voter lists at such additional regular polling stations.** Since the ECU provides for a limit on the maximum number of ballots to be produced for each polling station, the **deadline for submitting an application to change the place of voting without changing the electoral address should precede the deadline for ordering ballots - if persons who have changed their place of voting without changing their electoral address will vote only for national electoral lists. Retaining the current deadline for submitting the relevant applications (5 days before election day) may result in insufficient number of ballots being printed for those who changed their voting place without changing their voting address.**

Alternative voting methods: mail and Internet

The principle of universal suffrage in post-war elections can be ensured not only by creating additional polling stations abroad or by introducing multi-day voting at the legislative level (see below), but also through the use of alternative voting methods, in particular, voting by mail or the Internet.

Participants in the focus groups held as part of the preparation of this study generally did not support the idea of introducing postal and electronic voting, noting the need to organize personal voting by voters in higher education institutions directly at the polling station. The main counterarguments for these voting methods were lack of trust in the results of such voting, unreliability of electronic applications due to hacker attacks, distrust in the results of identity verification and the fact that a person voted in person and not through third parties. The focus group participants also noted that the possibility of voting via the Internet, if it is to be provided at all, should be limited to a clearly defined category of voters, for example, military personnel, provided that they are unable to vote at a polling station.

The Venice Commission's Code of Good Practice in Electoral Matters allows the use of both voting methods, but only under certain conditions:

- they must be secure, i.e., exclude the possibility of external interference in the formation and expression of the voter's will;
- they are unacceptable in the context of widespread practices of collective voting or other similar violations;
- the form of the ballot (including for electronic voting) should not mislead the voter and should be clear to him/her;
- voting must begin within a specified and sufficient period of time before election day at polling stations;
- the secrecy of voting should be ensured;

- electronic voting equipment and software must be safe, reliable and protected from cyberattacks and similar interference;
- it should be possible to check the correct functioning of the system for electronic voting;
- during electronic voting, the voter must be provided with confirmation of the results of his/her expression of will without violating the principle of secrecy of voting.

Although postal voting (including in national elections) is relatively common in the world (it is allowed, for example, for all or certain categories of voters in elections in the United Kingdom, the United States, Canada, Australia, Greece, India, Nepal, Japan, New Zealand, Germany, France, Spain, the Netherlands, Ireland, Iceland, etc.

The practice of electronic voting is even less widespread. Among all European countries, electronic voting is used only in elections in Estonia, while in a number of other countries it has not gone beyond testing or has been abandoned altogether. **As of today, Ukraine does not fully comply with the Venice Commissions standards for safe and reliable postal/electronic voting, which essentially excludes the possibility of using these methods of expression in the short term (including post-war).** The main advantages and disadvantages of postal voting and voting via the Internet are disclosed in **Table 2**.

Table 2: Main advantages and disadvantages/risks of using postal and Internet voting in post-war elections.

Voting method	Advantages.	Risks/disadvantages
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<p>Post Office</p>	<ul style="list-style-type: none"> ● The ability to vote regardless of location and health status; ● Convenience of voting; ● The possibility of significant voter coverage; ● Reducing the burden on polling stations and their members. 	<ul style="list-style-type: none"> ● Impossibility of prompt replacement of a spoiled ballot in case of its incorrect filling; ● The need for active voter registration to participate in voting; ● Significant logistical costs for organization (sending envelopes, ballots); ● Unreliability of postal services in some countries; ● Lack of guarantees of personal voting/risks of violation of voting secrecy; ● Potential participation in voting of persons involved in collaborationist activities; ● Different delivery times for postal items and the risk of untimely receipt of items, the need for additional storage space (if items are accepted by diplomatic institutions) and security; ● Potentially significant time spent on processing the ballots, the need to hire additional staff to count the votes; ● Risks of non-transparent vote counting/ irregularities in processing shipments;
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Method. voting	Advantages.	Risks/disadvantages
		<ul style="list-style-type: none"> ● The need for a large-scale voter education campaign.
<p style="text-align: center;">Internet</p>	<ul style="list-style-type: none"> ● The ability to vote regardless of location and health status; ● Convenience of voting; ● The possibility of significant voter coverage; ● Reducing the burden on polling stations and their members; ● The ability to change voting results before the election day; ● Prompt processing of voting results (seconds); ● Potential reduction of absenteeism (although practice does not confirm this decrease). 	<ul style="list-style-type: none"> ● Corruption risks in the procurement of hardware/software; ● Time spent on testing hardware and software; ● Risks of interference with the system and disruption of the elections in general; ● Impossibility for voters to assess the correctness of the conversion of votes into results; ● Distrust of voting in case of discrediting the system/software; ● Risks of violation of the principles of secret and personal voting, risks "organized" voting; ● Internet voting means allowing voters to participate in it on the territory of aggressor state, collaborators; ● The need for large-scale voter education.

Ensuring voting for people with disabilities

A systemic problem and, at the same time, a serious challenge in the process of preparing for voting in the post-war elections in Ukraine will be ensuring the proper participation of persons with disabilities in the voting. Obviously, the number of such citizens will increase significantly as a result of active hostilities. Accordingly, special attention should

be paid to focus on the accessibility of voting premises and commission premises for this category of voters, as well as ensuring that they are able to exercise their will, taking into account their health and disability needs.

The accessibility of commission premises and voting facilities, as well as opportunities for voters with disabilities to properly express their will, were not ensured even during the pre-war elections. Given the massive destruction of infrastructure in the frontline areas and the likely limited budgetary resources, these problems will become even more acute. Additionally, in the process of preparing for the elections, there will be the problem of approaches/entrances to voting premises/commission premises, as roads in the respective territories may be destroyed, which will not allow for effective voting at the voter's place of residence or his/her personal participation in voting at such a polling station.

In this regard, in the territories remote from the areas of hostilities, it is necessary to assess the condition of the electoral infrastructure (PEC, DEC/TEC premises, access roads, etc.) for accessibility for voters with disabilities even before the end of martial law. The inspection of such infrastructure in the rest of Ukraine (i.e., in the areas of hostilities and in the frontline territories) should be carried out immediately after the end of martial law.

If such infrastructure is available, but inaccessible to voters, the relevant local self-government bodies/local state administrations should identify other premises for PECs/voting organizations that meet the state building standards for meeting the needs of people with disabilities, and if this is not possible, determine the amount of funding needed to ensure the accessibility of the existing premises. The CMU should ensure funding for the arrangement of such premises after the end of martial law.

In case of absence of infrastructure due to its destruction, voting should be carried out in temporary premises/structures that must meet accessibility requirements and be located in a way that allows voters with disabilities to vote in person.

The ECU provides that voters who are unable to fill out a ballot paper and put it in the ballot box for health reasons may use the assistance of another voter upon agreement with the chairperson or another PEC member. **This provision should be reconsidered - such a voter should be able to exercise the right to vote through a person whom he or she can trust and who may not necessarily be a voter (e.g., a foreigner, a minor, etc.). The need for appropriate assistance to be provided by the voter actually forces a voter with a disability - in the absence of a voter whom he or she would trust - either not to vote at all or to fill out the ballot in person and personally put down to the ballot box, or to use the help of an unfamiliar person, which increases the risk of abuse or influence of administrative resources on the voting process.**

Article 119 of the ECU actually preserved unchanged the procedure for organizing voting at the voter's place of residence, including the automatic inclusion of voters who are unable to move independently in the extract from the voter list. This approach is contrary to international standards and does not meet the repeatedly expressed positions of public associations of people with disabilities, as voters should be able to independently determine the way they express their will (at their place of residence or directly), and not vote at home

only because the state considers them unable to move.

It is worth considering the feasibility of amending the ECU and the Law of Ukraine "On the State Register of Voters", according to which the inclusion of marks in the Register's database on the voter's inability to move independently and the determination of the period of storage of such marks (permanently, one-time) in the SRV database should be made at the request of a voter with a disability. In such an application, the voter should also be able to determine the type of reasonable accommodation necessary to ensure the exercise of his/her right to vote (stencil, audio guide, other device, etc.). The Ministry of Digital Transformation of Ukraine, in coordination with the CEC, should consider expanding the functionality of the Diia app to enable the submission of such applications through the app before the end of martial law. The CEC, together with the Ministry of Digital Transformation of Ukraine, should conduct a broad information campaign on such innovations before the boundaries of regular polling stations are revised, i.e. before the start of the electoral process for the first post-war elections.

Article 7 of the ECU declares the right of voters with disabilities to reasonable accommodation in accordance with their needs to exercise their right to vote and participate in the electoral process without hindrance. However, this declaration is not supported by real mechanisms for its implementation. Making reasonable accommodations for polling stations where there are no voters with disabilities can lead to inefficient use of budget funds. And failure to do so due to lack of financial resources may result in violation of the principles of universal and equal suffrage. **Thus, the solution to this problem lies in the "golden mean" - in each territorial electoral district, at least a few polling stations should be equipped with the necessary reasonable accommodations to ensure voting by voters with disabilities. Information about such polling stations and available devices should be published on the CEC website no later than the deadline set by the ECU for the formation of PECs.**

The form and content of the ballot, the procedure for making changes to the ballot and the procedure for filling it out

According to the Electoral Code, the ballot paper for the election of people's deputies of Ukraine at ordinary and special polling stations includes not only the names of all parties that nominated candidates for the election, but also the names of candidates included in the national election list under the first 9 numbers, as well as the names and initials of all candidates included in the regional election list of each party. Including such an array of information in each ballot significantly increases its length, the amount of budgetary funds spent on their production, may require the installation of an additional number of stationary ballot boxes in voting premises, and make it difficult (or impossible) for voters with disabilities to use stencils. The considerable length of the ballot and the large amount of information included in the ballot also means that a voter will need more time to find the name of the party/local party organization and the name of the candidate on the respective party list for whom the voter plans to vote, which will increase the time it takes each voter to fill out the ballot. The inclusion of the names of the first 9 (in local elections under the proportional system - one) candidates in the national/unified electoral list in the ballots at ordinary and special polling stations is

questionable, since voters at the respective polling stations do not vote for candidates in such lists at all.

All these problems become even more important in the context of discussions about the possibility of holding simultaneous national elections, or even national elections at the same time as local elections (although the possibility of simultaneous presidential, parliamentary and local elections is currently excluded by part four of Article 4 of the ECU), since voting in different elections on the same day will mean that voters will have to fill out ballots for each of these elections, which will significantly increase the time for each voter to vote, and may lead to queues and will potentially require additional budget expenditures for organizing the vote, including the production of ballots.

In 2021, analysts of the Ilko Kucheriv Democratic Initiatives Foundation commissioned by the Civil Network OPORA conducted a study on voters' perception of different forms of ballots, including those with different order of text placement. Certain variants of ballot layouts, which provided for a significant reduction in their length, were positively assessed by the participants of the focus groups in terms of intuitive perception of the order of filling them out. At the same time, since the study was conducted before the full-scale aggression, it could not objectively take into account the challenges and new initiatives created by the war (such as initiatives to abandon control coupons, introduce control stamps and change the ballot form).

The next question that arises in the context of potential changes to the form and content of ballots and the procedure for filling them out is the degree of unification of such changes for different elections. For example, if a voter is given the opportunity to enter the serial number of a party/candidate in an election, should this option be provided only for certain elections (national, local) or for all elections. There is no clear answer to these questions. The potential benefits and risks of such unification are discussed below.

Table 3. *Unification of the form, content and procedure for filling out ballot papers in elections (entering party/candidate numbers): arguments for and against "against"*

Arguments in favor	Arguments against
<ul style="list-style-type: none"> ● Lower costs for the production of ballots (compact ballot) and organization of voting (fewer stationary ballot boxes per polling station, etc.); ● No need to make changes to the ballot using the "Withdrawn" stamp; ● Lower risks of confusion during voting regarding the order of filling out the ballot in different types of elections (the order of filling out the ballot is the same for all elections); ● Possibility of standardizing the procedure for informing voters about the voting procedure regardless of the election (a single format of the information campaign for all elections); ● Smaller areas for the distribution of completed ballots (due to compactness of the ballot and the use of party/candidate numbers); ● The same method of voting/procedure for filling out ballots at all types of polling stations, including in the foreign constituency. 	<ul style="list-style-type: none"> ● Potential difficulties in identifying the results of the voting (due to handwriting, corrections made by the voter, etc.); ● Writing in numbers is an atypical way of voting in Ukrainian elections (in all previous elections, a different procedure for filling out ballots was used); ● Potential risks of invalidation of a significant number of ballots (entering non-existent numbers or not entering numbers that should be entered to identify the results of the voting); ● The need for accessible posters/booklets - every voter should be able to identify the party/candidate number they are voting for before filling out the ballot; ● The need to make changes to information posters/booklets using the "Withdrawn" stamp; ● Risks of manipulation (informing voters of incorrect/known false party/candidate numbers, placing information posters/brochures of certain electoral subjects in inaccessible places); ● If a poster/booklet is placed in a voting booth, there is a risk of its theft, destruction, substitution, or unauthorized alteration; ● The need to produce posters and booklets with a margin in case of misuse of the stamp ● The "disappearance"/destruction/damage/stealing of posters and booklets, as well as an increase in related expenses.

Any changes to the form, text of ballots and/or the procedure for filling them out should be preceded by quantitative and qualitative public opinion surveys and model (experimental) voting, which will include a preliminary study of the proposed changes in terms of their perception, potential mistakes in filling out ballots and possible risks.

Procedure for the production of ballots

The establishment of increased levels of security for ballots in national elections means that their production cannot be decentralized in principle, since only one company can actually produce "secure" ballots.

Accordingly, the withdrawal of candidates from the race or the cancellation of the registration of all candidates included in the electoral list shortly before election day effectively makes it impossible to promptly produce/reprint ballots and requires changes to be made to ballots and/or information posters and booklets using the "Withdrawn" stamp, which the Venice Commission opposed when analyzing draft amendments to the electoral legislation of Ukraine. These problems are especially relevant in the context of organizing voting in a foreign constituency, where transportation, reception, transfer and accounting of election documents are more complicated than in Ukraine. Decentralization of the procedure for producing ballots (e.g., by having them produced by election commissions or other printing companies) minimizes the need to amend ballots with the "Withdrawn" stamp and allows for prompt production of ballots in response to challenges that arise shortly before election day. The possibility of decentralized production of ballots also allows for a few days' extension of the time limit for changing the place of voting without changing the electoral address established by the Constitution of Ukraine. However, such decentralization still does not eliminate the need to ensure the accounting of election documentation, create mechanisms to prevent fraud and distinguish between "real" ballots and falsified ballots during the counting of votes at the polling station. In the context of decentralization of the ballot production process, the CEC was proposed to provide for the following at the legislative level the possibility of producing ballots by PECs themselves and validation of such ballots with the help of special control stamps that will have degrees of protection against forgery and will be transferred to PECs according to the procedure established by the ECU for the transfer of ballots produced in a centralized manner. The CEC proposes to limit the scope of the control stamps to foreign constituencies. The main advantages and disadvantages of this initiative are disclosed in **Table 4**.

Table 4. *Use of control stamps for ballot validation in a foreign constituency: advantages and challenges*

Advantages.	Disadvantages/challenges
<ul style="list-style-type: none"> ● Possibility of prompt production of ballots (even on election day); ● Transfer of stamps to the FPS may be faster and cheaper than transferring "secure" ballots; ● No need to keep track of unused ballots; ● Reducing the total cost of producing ballots; ● Possibility to extend the deadline for changing the place of voting without changing the voting address; ● Reducing the need to use the "Withdrawn" stamp (by promptly reprinting ballots); ● The production of control stamps requires less time, and additional stamps can be ordered/produced shortly before the election day; ● Distribution opportunities "experiment" to the remaining polling stations and the rest of the election; ● The ability to quickly research and take into account the results of the "experiment". 	<ul style="list-style-type: none"> ● The limited nature of the "experiment" (a foreign constituency) will not significantly affect the overall cost of producing ballots on a national scale; ● The use of the "experiment" only within a foreign constituency will lead to de-unification of electoral procedures; ● There is a risk that ballots may not be produced for various reasons (equipment failure at the last minute, deliberate actions of PECs, etc.); ● Risks of inefficient use/waste of budget funds (in case of procurement of ballot production services by third parties/companies); ● The need to ensure that the content of the produced newsletter is fully consistent with its actual content "official" content (in the event of a candidate's withdrawal from the race, etc.); ● The use of control stamps will not expand the possibilities of ensuring voting rights (the number of voters who can vote cannot exceed the number of control stamps received by PECs); ● Challenges related to the accounting, production and circulation of control stamps are generally similar to challenges related to circulation "secure" ballots; ● The amount of information to be indicated on the stamp is smaller than the amount of information on the "secure" ballot, which may increase the risk of abuse (unauthorized transfer of stamps from one PEC to another, etc.).

If the Electoral Code provides for the possibility of decentralized production of ballots in national elections and the use of control stamps for the validation of the respective ballots, the scope of such stamps should be limited to voting in the absentee voting areas. If the experiment is successful, it should be extended to all types of polling stations and all types of elections in the next regular/extraordinary post-war elections, which will ensure unification of regulation of the relevant electoral procedures. The ECU should provide for mechanisms to minimize challenges related to simplifying the procedure for the production of ballots and the use of control stamps for ballot validation.

Use/refusal to use control coupons

According to the ECU, a ballot paper is made together with a control coupon, which is separated from the ballot paper by a tear line. At the same time, the ECU establishes a special procedure for filling out, recording and storing (packaging) used control coupons. The need for separate sorting and packaging of such coupons, as well as the need for their filling by authorized PEC members when issuing ballots to voters, to some extent increases the time to ensure the voting of one voter, as well as complicates the procedure for counting votes and further increases its duration. The ECU also stipulates that in case of discrepancies between the number of control coupons and the number of voters' signatures in the voter list, the PEC must draw up an act indicating the reason for the discrepancy. Since in many cases the preparation of such acts has become a mere formality (in case of discrepancies between the number of voter signatures in the voter list and the number of control coupons, PECs in many cases state that the reasons for the discrepancy were not explained), one of the latest initiatives of the CEC was to abandon the use of control coupons, which, according to its authors, was supposed to reduce the time for issuing a ballot to a voter and optimize the vote counting process.

However, not in all cases does the discrepancy between the number of control coupons and the number of signatures on the voter list lead to any legal consequences. For example, in the 2013 elections in Vasylykiv settlement, during the vote count (at the stage of control check), the number of signatures in the voter list did not match the number of control ballots, which was higher. The counting process was suspended, as there were suspicions that the control coupons had already been separated from the respective part of the ballots in order to put these ballots into the ballot boxes before or after their opening. These ballots were found under the desk of one of the PEC members, which prevented their illegal stuffing into ballot boxes and falsification of the voting results at this polling station. Such cases were not uncommon and were recorded in other elections monitored by the Civil Network OPORA.

The need to establish security levels for ballots similar to those established for notarial document forms, banknotes and other strict accountability documents is highly questionable, as the practice of ballot forgery is largely a thing of the past, observers are present at the polling stations to control the process of receiving/using ballots, while the experience of local elections (where ballots are printed in a decentralized manner) has not shown any cases of mass ballot forgery.

Moreover, in terms of falsifying election results, the use of the so-called "Carousels" are a much more effective tool for influencing the voting results than throwing fake ballots into ballot boxes in addition to the real ones - their detection in a significant number may create grounds for invalidating the results of voting at a polling station.

Therefore, it is worth considering the possibility of introducing decentralized production of ballots, including by election commissions themselves (at least in certain elections or within certain constituencies, for example, a foreign constituency). An increased degree of protection of such ballots can be ensured by validating them with additional security elements, such as control stamps, the form of which will allow for their centralized production and transfer to the commissions within a short time. If the ECU provides for the centralized production of such security elements, it should also provide for mechanisms for their accounting, storage control, and take into account the need to apply them to ballots at the stage of preparation for voting.

Use of the stamp "Withdrawn"

The regulation of the procedure for using the "Withdrawn" stamp in different elections (moreover, even within the same election process) is also not unified. In case of cancellation of the registration of a candidate included in the regional electoral list, changes are made to the party's information booklet rather than to the ballot paper, while in the elections to higher education institutions and the presidential elections, this stamp is used to make changes to the ballot paper. Under certain conditions, the absence of a unified procedure for using the "Withdrawn" stamp may either distort the results of the expression of will (e.g., when a voter votes for a candidate on the list included in the ballot whose registration was canceled after the ballots were produced). In the context of the upcoming post-war elections, the form of stamps and ink used to make changes with it is also important.

If the provisions of the ECU on the content/form/procedure for filling out ballots (i.e., the obligation to indicate information about candidates) remain unchanged, the "Withdrawn" stamp should be used only to amend ballots, not information posters and booklets. If the relevant information is not indicated in the ballots, the "Withdrawn" stamp should be used to amend information posters and ballots. The CEC (by adopting a relevant resolution) should provide for the use of special fluorescent ink for the use of the "Withdrawn" stamp. The size of the stamp should ensure the accuracy and correctness of its affixing, as well as the possibility of clear identification of its affixing by the voter, depending on whether it is used to amend ballots or posters/booklets. Given the significant number of mistakes and violations related to the use of stamps, information on the procedure for their use should be included in training programs for PEC members.

Documents that are the basis for receiving a ballot

The provisions of the Electoral Code that define the list of identity documents that can be used by a voter to receive a ballot generally duplicate the provisions of the election laws of the 2000s, when numerous abuses were recorded in the process of issuing ballots by election observers. For example, at regular and special polling stations, voters are prohibited from receiving a ballot on the basis of a Ukrainian passport for traveling abroad, while at foreign

polling stations, voters are prohibited from receiving ballots on the basis of a Ukrainian passport (unless entry to the relevant country is allowed on the basis of a Ukrainian passport). Given that many Ukrainian citizens have lost their identity documents in the context of hostilities/occupation, such a narrowing of the list of documents seems unjustified. In addition, the ECU does not take into account the fact that an identity document can be an electronic document in the Diia application.

Article 8 of the ECU should be amended to provide for the possibility for a voter to receive a ballot at any polling station (except for a special polling station in a penitentiary or pre-trial detention center) on the basis of both a passport of a citizen of Ukraine and a passport of a citizen of Ukraine for traveling abroad, a temporary certificate of a citizen of Ukraine, a diplomatic or service passport. The CEC long before the voting (no later than the deadline for changing the place of voting without changing voting address) must ensure that the list of polling stations where voting on the basis of an electronic document is allowed is published in the Diia application, and that the verification of such a document is possible. The number of such polling stations should ensure accessibility of voting for the relevant category of voters.

Duration of voting

According to the Constitution of Ukraine, regular national and local elections are held on Sundays. The Basic Law does not specify the dates and duration of all other elections - early, intermediate, and first. Moreover, even in the case of regular elections, the provisions of the Constitution can be interpreted as defining only the deadline for the end of the voting procedure, not the period of its duration. Under such an interpretation, the relevant provisions of the Constitution can be understood as not excluding the possibility of multi-day voting. Such multi-day voting is not an exception in the global practice. For example, in the Czech Republic, voting starts on Friday and ends on Saturday. Multi-day voting is also provided for by the electoral laws of India, North Macedonia, Switzerland, and some other countries (although the general practice is to hold voting during one day, except in cases of postal voting, early voting, and voting via the Internet - in these cases, voting usually starts long before election day). In Ukraine, the need for multi-day voting can be justified if it is impossible to vote by post or via the Internet and there are no conditions for voters to exercise their right to vote during Sunday, from 8 to 20 hours. Such conditions, in particular, may be absent if a significant number of voters are assigned to a polling station (in the outlying areas in states with a significant concentration of Ukrainian voters) or if voting is organized for certain categories of citizens, primarily military personnel serving in areas with destroyed infrastructure/near the line of contact or areas with significant security risks that require them to move long distances from their permanent locations. The organization of multi-day voting poses a number of risks:

- the need to keep unused election documentation (unused ballots, etc.) for several days in a row;
- the need to protect the used election documents (voter lists, control coupons, ballot boxes);
- the need to record daily the actions taken to organize voting - counting voters' signatures in the voter lists, on control coupons, as well as actions preceding the voting (opening the safe, checking the integrity of the tape, counting available ballots, compiling relevant information, etc.);
- the need for round-the-clock security of voting premises during all days of voting;

- the risk of absence of commission members due to illness or other factors;
- the risk of disruption of voting on one of the days of its conduct (reports of mining, etc.);
- providing additional funds to pay for the work of commission members and a significant functional burden on commission members;
- the risk of losing access to the voting room or the safe with election documents.

If the legislator envisages the possibility of organizing and conducting multi-day voting, it should take into account the above risks and allow such voting only in exceptional cases - at FPSs with a significant number of voters, as well as at certain regular polling stations located near the places of deployment of military personnel. If the possibility of multi-day voting is envisaged by the ECU, it should establish the same preparatory and final procedures for each day of voting as for "one-day voting". The deadlines for updating voter lists, transferring electoral documents to the respective polling stations, etc. should be linked to the first day of voting. The duration of repeat voting (in the case of presidential elections) should be the same as voting in the "first round" of elections. The terminology defined by the ECU ("voting day", "election day") should be brought in line with the changes caused by the introduction of multi-day voting ("voting start day", "voting end day", etc.).

Voting "against all"

Although for a long time Ukrainian electoral legislation provided for the possibility of voting against all parties and/or candidates in the elections (the ballot contained a box "I do not support any candidate/any electoral list"), the current ECU does not provide for such an option. The exclusion of this option was a positive step in implementing the recommendations of the OSCE/ODIHR and the Venice Commission, as well as in strengthening voters' responsibility for the results of their choice. At the same time, the results of the focus group studies conducted during the preparation of this document showed that the idea of restoring the possibility of voting "against all" still retains considerable popularity among citizens.

The main arguments against restoring the possibility of voting "against all" are as follows:

- this possibility is not provided for by the legislation of any state of the European Union;
- the possibility of voting "against all" calls into question the legitimacy of elected bodies and elected officials, especially if the majority or at least a significant part of voters voted "against all."
- the existence of the possibility of voting "against all" stimulates political irresponsibility of voters;
- the procedure for counting votes and establishing election results is further complicated, as the respective votes must be counted separately;
- the results of the "against all" vote do not affect the election results, including the distribution of mandates between parties/candidates, holding/not holding a second vote, etc.

The CEC should emphasize the need for voters to vote for specific lists/candidates in the respective elections and inform voters about the disadvantages of voting "against all" in the context of voter information campaigns that will be conducted in preparation for the first post-war elections. To a certain extent, the idea of restoring the voting option in the ballot is popular "against all" could be reduced by allowing self-nomination of candidates under the proportional system, at least in local elections (although in the longer term, in particular, after the party system stabilizes and the number of parties participating in electoral processes decreases, such a possibility may be envisaged in parliamentary elections).

Ensuring security during the reception/transfer and transportation of election documents

Undoubtedly, one of the biggest challenges of the post-war elections in Ukraine will be security issues. The reception/transfer and transportation of election documents is no exception.

For territories with high security risks, the ECU should provide for the possibility (at the request of the CEC) of involving additional forces from law enforcement and security agencies, in particular during the transportation of ballots after they are received, and during the transportation of election documents to DEC's after the vote count.

Grounds for invalidation of voting

Article 122 of the ECU defines the list of grounds for invalidating voting at a polling station. These include the detection of a certain number of cases of illegal voting (5% of the number of voters who received ballots), the detection of ballot boxes with a number of ballots that exceeds 10% of the number of voters who received ballots, and the destruction or damage of ballot boxes with a number of ballots exceeding 5% of the number of voters who received ballots. If these three grounds are present, the PEC may-but is not obliged to-recognize the voting at the polling station as invalid.

In the context of these provisions of the ECU, several problems arise that have been emphasized by both the Venice Commission and international election observation missions of the OSCE/ODIHR. First, the provision of the right, rather than the obligation, for PECs and DEC's to invalidate votes creates fertile ground for abuse and selective enforcement in the interests of certain electoral actors (for example, if a particular polling station was voted primarily for a political opponent of the respective actor or mainly in favor of the actor). Secondly, the Venice Commission emphasized that the relevant quantitative indicators that are the basis for invalidating a vote are unreasonable and set a kind of threshold for tolerating electoral violations: if only 4.99% of illegal voting is detected, there will be no grounds for invalidating the vote. Thirdly, the mere fact that a ballot box is damaged does not mean that the result of voting at a polling station cannot be established. Accordingly, ignoring the will of the voters just because the damaged ballot box contained more than 5% of such ballots can hardly be considered justified and proportionate to the goal. It is worth noting that such "thresholds" are not provided for in the legislation of any democratic European state. **The list of grounds for invalidation of voting at a polling station should be supplemented by the**

establishment of facts of violations in the voting process that do not allow to establish the election result reliably and/or affected the voting result. If the grounds for invalidating a vote are established by law, the PEC or the relevant DEC should be obliged to invalidate the vote.

Clarification of protocols on vote counting

According to the Electoral Code, if inaccuracies or errors in the figures in the vote count protocol are found after it has been signed, the PEC must draw up a new protocol marked "Revised" at the same meeting. A higher-level election commission may also force a PEC to draw up such a protocol. As practice shows, some PECs abuse the right to clarify protocols - not just correcting typos and inaccuracies, but completely changing the protocol data.

The ECU should explicitly provide that, subject to the protocol's clarification, changes may be made only to those digital indicators in respect of which an error/omission occurred. The need to clarify the protocols can also be significantly reduced in case of transition to their automated preparation and filling - errors can be corrected by the software of the commission's computer equipment.

Optimization of the procedure for establishing voting results

Establishing the results of voting within a constituency is perhaps the most problematic aspect of the electoral process. The main problems of this stage of the electoral of the process have remained unchanged over many election cycles and are as follows:

- Despite legal prohibitions, meetings to establish the results of the voting are continuous;
- The reception and processing of election documents is lengthy and chaotic;
- The transfer of election documentation to a higher-level commission is a serious challenge for PEC members, who may wait hours, if not days, for their turn to receive protocols and ballot packages.

In this context, several areas of improvement are possible:

- **introduction of automated protocols and their preliminary verification** both by the system that will ensure their preparation and by DEC/TECs. If the protocol is drawn up in compliance with the law, election documents can be quickly accepted for consideration in the tabulation of results, which will significantly reduce queues at DEC/TECs;
- **determining the order in which each PEC transfers ballots to DEC/TECs.** This will allow PEC members not to wait for their turn in the DEC/TEC premises for hours or days, but to remain in the PEC voting room until their turn comes;
- **determining the places of storage of election documents in the DEC/TEC premises until they are reviewed by the relevant commission.** This will also reduce queues in the process of handing over documents, but will require the introduction of mechanisms to ensure that PEC members arrive at the designated time to hand over documents, as well as to protect the documents themselves until they are received/reviewed by the DEC/TEC.

Recommendations.

Content of the recommendation	Responsible actors	Deadlines for implementation
Determining the procedure for the formation and organization of voting at additional foreign and additional ordinary polling stations	VERKHOVNA RADA	Until the end of martial law
Organizational measures related to the establishment of additional polling stations abroad and the determination of voting centers	MFA and CEC	After the end of martial law, before the beginning of of the electoral process

Establishment of additional regular polling stations	CEC	After the start of the election process
Conducting a comprehensive risk assessment of the introduction of electronic and postal voting, a public awareness campaign on the following risks	CEC	Until the end of martial law
Amendments to the Electoral Code regarding the form and text of the ballot, the use of the "Withdrawn" stamp in elections, the production of security stamps for ballots, decentralization of ballot production, specification of the procedure for drawing up protocols marked "Clarified", grounds for invalidating votes and optimization of the procedure for establishing the results voting	VERKHOVNA RADA	Until the end of martial law
Testing of draft forms (layouts) of new ballots	CEC	Before introducing the relevant amendments to the CCU
Audit of the accessibility of polling stations/voting premises	The CEC together with the relevant local administrations/local self-government bodies	After the end of martial law
Providing designated polling stations with reasonable accommodations	CEC	Prior to the appointment of PEC members
Introducing the possibility of multi-day voting in national elections in exceptional cases	VERKHOVNA RADA	Until the end of martial law

Section 10

APPEALING AGAINST VIOLATIONS AND LIABILITY

Introduction

An important component of the principle of fair elections is to ensure the inevitability of punishment for violations. In its Code of Good Practice in Electoral Matters, the Venice Commission emphasizes the importance of combating violations in the context of other principles of free suffrage and secret ballot. In addition, in para. 29 of the Explanatory Report to the Code of Good Practice in Electoral Matters emphasizes that voting procedures play a crucial role in the electoral process as a whole, as the highest probability of irregularities exists in the voting process.

Over the past almost 20 years, a number of significant changes have been made to the Criminal Code and the Code of Administrative Offenses in terms of liability for violations of electoral legislation. However, despite these changes, the legislation in the relevant area remains imperfect: the substantive and procedural norms of the Code of Administrative Offenses are outdated and ineffectively applied in practice; it is impossible to bring a legal entity to administrative responsibility in most cases; sanctions do not meet the criteria of proportionality, efficiency and effectiveness. These problems were relevant even before Russia's large-scale invasion of Ukraine. Russia's full-scale invasion of Ukraine has also exacerbated the issue of prosecution for collaboration (including participation in pseudo-elections and pseudo-referendums organized by the aggressor country in the temporarily occupied territories) and the application of sanctions in the form of deprivation of the right to hold certain positions or engage in certain activities (primarily restrictions on voting rights) (see more in the Section "Nomination and Registration of Candidates").

In addition, the effectiveness of mechanisms for countering, investigating and prosecuting offenses in post-war elections is important given the significant attention of the democratic community of states and international organizations, the changing crime situation, possible security challenges and threats of influence from other countries, especially the aggressor country.

This section outlines the main problems related to ensuring the inevitability of punishment for violations of electoral law and proposes mechanisms to address them.

Key challenges

Staffing and training of judges and law enforcement officials

Staffing is one of the common challenges for any public authority. According to the Prosecutor General's Office (PGO), as of March 1, 2024, 1347 prosecutor positions remained vacant in the prosecution authorities of Ukraine, including 1320 in regional and district prosecutor's offices. Although competitive selection procedures for the relevant vacancies are currently underway, it is extremely important to staff the prosecution bodies before the election process, given the special functions it has (supporting public prosecution in court and supervising compliance with the law by bodies conducting operational and investigative activities, inquiries, and pre-trial investigations). The same applies to pre-trial investigation bodies and courts. In March 2024, the Head of the High Council of Justice noted that our judicial system had never experienced such a difficult situation with judicial personnel.

In addition, the PGO prioritizes the investigation of war crimes, the fight against corruption, investigations in criminal proceedings on criminal offenses related to the use of budget funds, in particular those directed to the maintenance and reconstruction of civilian protection facilities, etc. Such priorities are quite natural given the active phase of the war in Ukraine. However, since it is impossible to hold elections during martial law, the PGO considers it inappropriate to conduct training for prosecutors on election issues. However, the absence of elections for a long time may require a refreshing of institutional memory (which was previously ensured by the periodic holding of different types of elections). This problem is further exacerbated by the fact that the war creates a number of new challenges, while the electoral legislation may undergo even more changes, and the first post-war elections themselves will have a number of peculiarities.

Given this, training of pre-trial investigation bodies, prosecutors and judges should begin long before the first post-war elections and be based on high-quality programs aimed at strengthening the institutional capacity of the relevant bodies to counter and prosecute electoral violations.

Administrative responsibility

The current Code of Ukraine on Administrative Offenses (CUAO) was adopted in 1984. Despite substantial and numerous improvements, the substantive and procedural law provisions enshrined in it remain extremely outdated.

The sanctions provided for by the Code of Administrative Offenses in the form of small fines do not meet the requirements of efficiency, proportionality and effectiveness and are unlikely to prevent the commission of new violations by the offender and any other persons. For example, according to a review of court practice following the 2019 presidential and parliamentary elections, one of the most common electoral administrative offenses was the production and distribution of printed campaign materials without source data (Articles 212-13 of the Code of Administrative Offenses). In particular, for the production or ordering of such materials, the fine (which has never changed despite inflation) ranges from UAH 170 to 510 (for officials - from UAH 850 to UAH 1190), and for distribution - from UAH 51 to 85

(for officials - from UAH 340 to 510). At the same time, in other cases, amendments to the CUAO in terms of increasing liability for certain administrative offenses are carried out in a haphazard manner: fines for certain violations are set at levels higher than those provided even for criminal offenses (for example, Articles 212-21 of the CUAO and part one of Article 159-1 of the Criminal Code of Ukraine, see below for more details), while administrative offenses similar in terms of public danger/illegality have been subject to minimal fines since the 1990s-2000s, the amount of which have never been revisited.

In the process of reforming the legislation, the position of the National Council should be taken into account, as it states in its letter that drawing up administrative protocols for violation of the electoral law is an ineffective tool and an uncharacteristic, unnatural function for the National Council. In particular, it emphasizes the complex and lengthy procedure for bringing perpetrators to justice, the small size of fines, the need to submit protocols on administrative offenses to the local general court at their location, which may be difficult in the de-occupied territories, the lack of clear coordination between the provisions of the Code of Administrative Offenses, which establishes the elements of the offense; and the Electoral Code of Ukraine, which defines the provisions mandatory for media entities. Therefore, the National Council proposes to apply sanctions (fines) to the media as legal entities for violation of restrictions on election campaigning, as provided for by the Law of Ukraine "On Media" and to exclude the provision on drawing up administrative protocols under the Code of Administrative Offenses.

This indicates the need for a systematic update of the current Code of Administrative Offenses. On June 28, 2024, the draft Code of Administrative Offenses No. 11386 was submitted to the Parliament. The VRU should prioritize its consideration and adoption as a law. If this draft is not adopted before the end of martial law, the parliament should amend at least those provisions of the Code of Administrative Offenses that establish liability for electoral offenses. These changes should primarily provide for: 1) the inevitability of punishment (violation of any of the restrictions and prohibitions provided for in the ECU should always entail either administrative or criminal liability - if such sanctions are possible in principle); 2) the establishment of administrative penalties for committing electoral administrative offenses in accordance with the criteria of proportionality, efficiency and effectiveness.

On July 1, 2020, the institute of criminal misdemeanors was introduced. This has led to the problem of positioning administrative offenses in the general system of offenses and blurring the distinction between criminal and administrative offenses and sanctions for them. In some cases, sanctions for similar criminal offenses are lower than for administrative offenses. A striking example of this is electoral offenses related to violation of the procedure for submitting a financial report on the receipt and use of election fund resources. Thus, under Article 212-21 of the Code of Administrative Offenses, the sanction in the form of a fine is provided for in the amount of 300 to 400 tax-free minimum incomes (hereinafter - TFMIC) - UAH 5100-6800, and under part one of Article 159-1 of the Criminal Code of Ukraine (which provides for the presence of intent - knowingly false information provided) - from 100 to 300 NMIT (UAH 1700-5100). The classification of offenses, including electoral ones, as administrative or criminal should be based on the degree of their public danger/illegality.

The procedural norms of the Code of Administrative Offenses also contain significant shortcomings. For example, two approaches to the outcome of the court review of protocols on administrative offenses have been formed. If such protocols are drawn up in violation of the established requirements, in some cases they are sent for revision/elimination of deficiencies, while in others they are not. This problem was also emphasized by the Supreme Court, which recommended that courts take into account the fact that Article 284 of the Code of Administrative Offenses does not provide for the adoption of such resolutions as a referral for elimination of deficiencies or for finalization of the administrative offense protocol. Both positions have their mutually exclusive advantages and disadvantages. Thus, the possibility of sending materials for revision should obviously be carried out within the time limits for imposing administrative penalties and will help ensure the inevitability of punishment, but may worsen the quality of the initial versions of the documents and procedural actions. At the same time, the impossibility of sending materials for revision will put the person being held administratively liable in a more "favorable" position, although it will allow him or her to avoid punishment even if the authorities drawing up the protocols make technical mistakes.

The authority of candidates, authorized persons and official observers to draw up reports on administrative offenses for certain electoral offenses under Article 255 of the CAOU is questionable (since they are not subjects of power and cannot be subject to the special permissive legal regime provided for in part two of Article 19 of the Constitution of Ukraine), as well as members of election commissions (since most of them do not have proper training, election commissions themselves are collegial bodies without clear legal status). Also, the CAOU does not allow to submit an appeal to the body that drew up the administrative protocol (Article 294), which is possible only in cases where prosecutorial supervision is exercised (Article 250), but electoral offenses do not belong to them.

We recommend to clearly regulate the issue of sending materials for finalization to the Code of Administrative Offenses (by directly stating the possibility or impossibility of sending for finalization), as well as to exclude the authority to draw up administrative protocols by candidates, authorized persons, official observers and members of election commissions. As for the appeal, possible solutions to the problem are either to grant this right to the bodies authorized to draw up administrative protocols in general, or to identify the most socially harmful electoral offenses for which prosecutorial supervision should be provided.

Liability of legal entities

For a long time, Ukrainian legislation did not provide for criminal and administrative liability of legal entities. The first precedents for revising this concept were set in the 1990s in the field of environmental law, when certain environmental laws provided for fines for environmental violations and the procedure for imposing them. This concept was subsequently extended to the media industry (the Government determined the amount of fines for media outlets, including legal entities, for violations of media legislation). Eventually, in accordance with the recommendations of the Group of States against Corruption (GSAC), the institution of criminal liability of legal entities was enshrined in the Criminal Code of Ukraine.

Thus, there are currently no convincing arguments against the impossibility of bringing

legal entities to criminal and administrative liability, as the relevant precedents were established more than 10 years ago. Despite the fact that Article 27 of the Code of Administrative Offenses defines a fine as a monetary penalty imposed on citizens, officials, and legal entities, its other provisions still do not provide for mechanisms for imposing sanctions on legal entities. This is not conducive to ensuring the efficiency and effectiveness of administrative sanctions mentioned above: if, for example, the policy of a party (its collegial governing bodies) is to not submit financial statements to the NACP, imposing small administrative fines on the party's leader or accountant will not change this policy. This problem is less relevant for parties that have received state funding for their statutory activities (because in case of failure to submit financial reports or other violations, their funding may be suspended or terminated), but parties that have not received state funding may actually violate the requirements for submitting financial reports to the NACP with impunity. In addition, if a party receives significant funding from private contributions, the loss of state funding may be a much lesser "evil" for it than the submission of detailed information on its own donors, private contributions received, and expenses incurred. In this situation, only bringing a party to administrative responsibility as a legal entity can encourage it to comply with the law.

The institute of criminal legal measures against legal entities (Section XIV-1 of the Criminal Code of Ukraine), which is provided for the commission of criminal offenses under parts 2-4 of Article 159 of the Criminal Code of Ukraine (providing or receiving illegal contributions in support of a political party or support for election campaigning), is also unviable in relation to political parties. In order to apply it, criminal offenses must be recognized as committed in the interests of a legal entity, i.e., if they led to the receipt of unlawful benefit or created conditions for obtaining such benefit, or were aimed at evading statutory liability. According to the experts of the Centre of Policy and Legal Reform, the respective contribution is not an undue advantage, since the concept of "undue advantage" is not used in Article 159-1 of the Criminal Code of Ukraine. Also, making or receiving a contribution obviously cannot be considered as a form (method) of evading statutory liability. Therefore, in accordance with paragraph 2 of the Note to Article 96-3 of the Criminal Code of Ukraine, there are no grounds to recognize the crimes under paragraphs 2-4 of Article 159-1 of the Criminal Code of Ukraine as committed in the interests of a legal entity. In other words, without clarification of the existing wording of clause 2 of the Note to Article 96-3 of the ECU, it is impossible to apply criminal legal measures to a political party.

The Electoral Code and the Law of Ukraine "On Political Parties in Ukraine" and the Law of Ukraine "On Media" should be amended to define administrative sanctions that may be imposed on relevant legal entities (e.g., party donors, parties themselves, media, etc.) and the procedure for their application. The procedure for appealing against decisions on the application of such sanctions should be determined by the Code of Ukraine on Administrative Offences. These changes should be reinforced by amendments to the Criminal Code of Ukraine, which will provide for the possibility of applying criminal sanctions to them under Section XIV-1 of the Criminal Code of Ukraine.

In the process of reforming the legislation, the position of the National Council should be taken into account, as it states in its letter that drawing up administrative protocols for violation of the electoral law is an ineffective tool and an uncharacteristic, unnatural function for the National Council. In particular, it emphasizes the complex and lengthy procedure for

bringing perpetrators to justice, the small size of fines, the need to submit protocols on administrative offenses to the local general court at their location, which may be difficult in the de-occupied territories, the lack of clear coordination between the provisions of the Code of Administrative Offenses, which establishes the elements of the offense, and the Electoral Code, which defines the provisions mandatory for media entities. Therefore, the National Council proposes to consider the possibility of applying to media entities for electoral offenses only the sanctions provided for by the Law of Ukraine "On Media". In particular, we are talking about the exclusion from Article 255 of the Code of Administrative Offenses of the provision on drawing up protocols on administrative offenses under Articles 212-9 and 212-11 of the Code of Administrative Offenses by the National Council and the specially authorized central executive body for the implementation of state policy in the field of television and radio broadcasting, information and publishing.

This position of the National Council indirectly raises a broader issue, namely the application of legal liability measures to legal entities. The Code of Administrative Offenses does not provide for the possibility of imposing sanctions on legal entities, so such sanctions are sometimes provided for in certain laws (as in the case of the Law of Ukraine "On Media"). However, in the case of the aforementioned offenses related to violation of the rules of political financing and reporting (Articles 212-15 and 212-21 of the Code of Administrative Offenses), the question of proportionality of sanctions and the need to apply them to political parties as legal entities also arises. However, the current Law of Ukraine "On Political Parties in Ukraine" contains only suspension or termination of state funding, which is currently received only by "parliamentary" parties (i.e. those that have passed the 5% electoral threshold and participated in the distribution of mandates), among the effective sanctions for violation of political financing and reporting rules. In addition, the application of criminal law measures provided for in Section XIV-1 of the Criminal Code of Ukraine is problematic in relation to legal entities such as political parties.

This indicates the need to address the issue of applying sanctions for electoral violations to legal entities, in particular, this can be done by enshrining them in special laws (this has been done with regard to the media, while there are no effective sanctions for political parties that do not receive state funding), reforming Section XIV-1 of the Criminal Code of Ukraine (which deals with criminal law measures against legal entities) or the Code of Administrative Offenses (however, such changes will require a comprehensive approach, as they will not only apply to electoral offenses).

Criminal liability

The PGO's response states that in 2020, it studied the state of organization of supervision over the observance of laws in criminal proceedings on crimes related to the local elections held on October 25, 2020. In particular:

- During the election campaign and the regular elections of deputies of local councils and village, town and city mayors held on October 25, 2020, the territorial police departments and local prosecutors received 9195 statements and reports of criminal offenses related to the preparation and conduct of local elections;
- 894 criminal proceedings were initiated as a result of their review, including 126 under

Article 296 of the Criminal Code of Ukraine, 15 under Article 194 of the Criminal Code of Ukraine, 52 under Article 185 of the Criminal Code of Ukraine, and 491 under Articles 157-160 of the Criminal Code of Ukraine;

- based on the results of pre-trial investigation in criminal proceedings of this category, 91 people were served with notices of suspicion in 64 criminal proceedings;
- 106 criminal proceedings were closed on the basis of paragraph 2 of part one of Article 284 of the Criminal Procedure Code of Ukraine due to the absence of corpus delicti. Indictments in 6 criminal proceedings were submitted to the court;
- in criminal proceedings on criminal offenses related to the exercise of electoral rights, as well as those that indicate counteraction to the legitimate electoral process and relate to the preparation and conduct of local elections, the courts did not issue decisions during the study of criminal proceedings in this category, and were not appealed on appeal or cassation.

Despite the fact that the PGO does not see any risks, the Civil Network OPORA in its final report on the results of observation of the local elections (2020) emphasized the preliminary results of the investigation of criminal proceedings, which revealed both positive and negative aspects of the application of the provisions of the Criminal Code of Ukraine.

Thus, during the local elections, the National Police of Ukraine initiated 1,297 criminal proceedings, 863 of which were directly related to violations of the electoral law (Articles 157-160 of the Criminal Code of Ukraine) and 434 were indirectly related. At the time of preparing OPORA's report, the police had decided to close the case in 728 criminal proceedings, 116 criminal proceedings were sent to court, and pre-trial investigations were ongoing in 416 proceedings. In total, from September 05, 2020 to January 31, 2021, 28 verdicts in cases of electoral criminal offenses detected during the 2020 local elections were published in the Unified State Register of Court Decisions, 58 cases (out of the decisions published in the register) are pending in courts (scheduled for a hearing in a preparatory hearing or for trial), and 7 cases were closed (see the table for more details).

First, the small number of cases of vote buying that resulted in concrete court verdicts is indicative. The reasons for the discrepancy between effective investigations and the real scale of bribery in local elections may be related to the difficulties of collecting and documenting evidence and should be comprehensively investigated by law enforcement agencies. In addition, the repeated cases of citizens abusing the procedure for changing their electoral addresses have resulted in only a few convictions. According to the current version of part one of Article 158 of the Criminal Code of Ukraine, mainly authorized persons who have access to and enter relevant information into the SVR are held liable. Therefore, proving the guilt of voters or organizers of schemes to change the electoral address was problematic.

Secondly, the absence of convictions under Article 157 of the ECU requires special attention, as it may indicate problems with the qualification by law enforcement agencies and courts of such acts as obstruction of the free exercise of the voter's right to vote and obstruction of the activities of another electoral subject. For example, violation of time requirements for preparatory PEC meetings impedes the right of electoral subjects to observe all electoral procedures. Although, according to statistics, compared to the 2015 local elections, the intensity of attempts to directly obstruct the activities of official observers has decreased, the observation results show that such cases did occur (2020 - 1.1% of polling stations, 2015 - 3%). However, based on the results of the observation of the 2021 early mayoral elections in Kharkiv, OPORA stated that at 3.23% of polling stations, observers faced facts of obstruction of the count (in 2015, there were 1% of such PECs).

Thirdly, we can note the positive effect of the changes to decriminalize the act of damaging, concealing, or destroying a voter's ballot in the 2020 local elections (currently Article 212-23 of the Code of Administrative Offenses), as the police were properly prepared to draw up the relevant administrative protocols.

Fourthly, the absence of verdicts and pending court proceedings under Article 159 of the Criminal Code of Ukraine on violation of the secrecy of the vote is indicative of the need to review the existing criminal offense of violation of the secrecy of the vote. Thus, one of the most frequent violations on the election day of the parliamentary elections on July 21, 2019 was the disclosure of the secrecy of the vote by voters showing a completed ballot or by failing to comply with the requirements for the installation of booths and arrangement of voting places in the premises of the PEC. Such cases were recorded at 4.2% of polling stations. For the repeat voting in the presidential elections, this figure was 5%, but in the parliamentary elections it was lower - 3.9% of polling stations. At the same time, the public disclosure of the results of the voter's expression of will by demonstrating the ballot in the voting room was included in 2020 in a separate Article 212-22 of the CAO, while under Article 159 of the Criminal Code of Ukraine "Violation of the secrecy of the vote" the USRCD still has no documents (despite the sanction for investigation in the form of a pre-trial investigation in 2020), which indicates the need to study and discuss the specified elements of the criminal offense.

Electoral offenses committed abroad

Given the massive displacement of Ukrainian citizens abroad due to the war, as well as the CEC's proposal to establish additional polling stations abroad that will exist on a temporary basis, it is important to prevent and prosecute electoral offenses committed in higher education institutions.

The organization of voting abroad takes place on the territory of other states and requires compliance with the principle of state sovereignty in the respective territory. In order to avoid a conflict of legal statuses of subjects of legal relations, the international community has formed the concept of extraterritoriality - a special status of individuals and legal entities that are not subject to the jurisdiction of the state of actual residence to a greater extent, but are not exempt from the need to comply with the legislation of the country of citizenship or registration.

The extraterritorial status is granted to diplomatic missions, which, in accordance with Article 22 of the Vienna Convention on Diplomatic Relations of 18.04.1961 and Article 31 of the Vienna Convention on Consular Relations of 24.04.1963, are inviolable. By establishing polling stations and voting premises (places) on the basis of extraterritorial diplomatic missions, the country minimizes security risks and is able to fully exercise its powers to organize and conduct elections on their territory.

However, the Civil Network OPORA conducted a study "Interaction of Law Enforcement Agencies of Ukraine and Poland to Prevent and Counteract Violations of the Electoral Rights of Ukrainian Citizens in Poland", which emphasizes that with regard to electoral administrative offenses, it should be borne in mind that heads of diplomatic missions do not have the authority to carry out initial procedural actions to record them (which is a gap in Ukrainian legislation), so statements by official observers about administrative electoral offenses to the head of a diplomatic mission of Ukraine will not be taken into account or processed.

In the case of a criminal offense committed on the territory of a diplomatic mission or consular post of Ukraine abroad, the head of the diplomatic mission or consular post of Ukraine has the right to detain a person for the necessary period, but not more than 48 hours; is obliged to provide the detained person with access to legal assistance; ensure that the detained person is brought to a unit of the state authority in Ukraine authorized to detain detainees; and report the fact of lawful detention at the place of conducting the pre-trial investigation in Ukraine (Article 522 of the Criminal Procedure Code of Ukraine).

However, in the case of offenses committed outside diplomatic missions, which will be especially relevant in the case of non-extraterritorial voting premises outside diplomatic missions, the question of extending the jurisdiction of the state to the relevant territory will arise. And it can only be resolved through international cooperation.

International cooperation

In its response, the PGO stated that the mechanisms of international cooperation do not need to be improved, but that their application in the field of investigation of electoral rights violations may raise problematic issues. Thus, given that offenses of this category may be considered by the requested parties as political, international legal assistance in criminal proceedings may be denied on the basis of Article 2(a) of the European Convention on Mutual Assistance in Criminal Matters of 1959 or similar provisions of other international treaties on mutual legal assistance in criminal proceedings.

Among the international treaties in the field of mutual legal assistance in criminal matters, Ukraine most often applies conventions within the Council of Europe, which are cooperation mechanisms for many states. The most frequently used are the European Convention on Mutual Assistance in Criminal Matters of 1959, as well as the Additional Protocol of 1978 and the Second Additional Protocol of 2001 to it. The legal basis for mutual legal assistance in criminal proceedings can also be universal multilateral conventions concluded within the framework of the UN and other international organizations, and their subject matter is the fight against crime in various fields.

However, the PGO notes that the most effective way for the requesting and requested parties to apply for international legal assistance is a specialized bilateral treaty on legal assistance in criminal matters, which most accurately takes into account the specifics of the legislation of both states. To date, Ukraine has concluded such treaties with more than 20 states from different regions of the world.

The Agreement between the Prosecutor General's Office of Ukraine and the Ministry of Justice of the Republic of Poland pursuant to Article 3 of the Treaty between Ukraine and the Republic of Poland on Legal Assistance and Legal Relations in Civil and Criminal Matters, signed on November 10, 1998, played a significant role in regulating relations with the competent authorities of the Republic of Poland regarding cooperation in criminal proceedings.

The need to update this and other relevant treaties is an open question. At the same time, the PGO emphasizes the need to take into account the entry into force for Ukraine and Poland of the Second Additional Protocol of 2001 to the European Convention on Mutual Assistance in Criminal Matters.

However, the study "Interaction of Law Enforcement Agencies of Ukraine and Poland to Prevent and Counteract Violations of the Electoral Rights of Ukrainian Citizens in Poland" emphasizes additional challenges in the case of electoral offenses outside diplomatic missions. In particular:

- Polish pre-trial investigation authorities are not authorized to initiate criminal prosecution of persons who committed criminal electoral offenses during the elections to the state authorities of Ukraine committed on the territory of Poland outside the diplomatic missions of Ukraine. Therefore, for example, if additional voting places or premises are created outside the territory of Ukraine's diplomatic missions in the Republic of Poland, it will be impossible to bring the offenders to justice either under the Criminal Procedure Code of Ukraine or under the Criminal Code and the Criminal Procedure Code of Poland.
- holding voting outside extraterritorial diplomatic missions sharply actualizes the issue of combating electoral administrative and criminal offenses with all the resulting, primarily jurisdictional, challenges. The least jurisdictional problems will arise if the principle of extraterritoriality applies to voting places or premises outside diplomatic missions, and they are equated in legal status with the premises of diplomatic missions.
- in order to avoid possible misunderstandings in the future with the definition by the courts of the Republic of Poland of criminal offenses against the electoral rights of citizens as political criminal offenses, criminal offenses related to a political criminal offense, or criminal offenses for political reasons, a future possible agreement between Ukraine and the Republic of Poland should specify that electoral criminal offenses are not considered by the Contracting States as political or having a political nature.

In view of the above, it is necessary to improve both existing bilateral international agreements on cooperation (in particular, in terms of the possibility of initiating investigations and taking primary evidence by the authorities of the contracting states, extending certain immunities to voting places outside diplomatic missions, not classifying electoral offenses as political offenses, etc.) and concluding new ones, at least with the countries where a significant number of Ukrainian voters reside.

Recommendations.

Content of the recommendation	Responsible actors	Deadlines realizations
Comprehensive reform of general (primarily procedural) provisions of the Code of Administrative Offenses or adoption of a new code	VERKHOVNA RADA	Before the termination of martial law
Regulation of sanctions for electoral violations against legal entities	VERKHOVNA RADA	Before the start of the election process
Analyze the effectiveness of prosecution for criminal offenses (in particular, obstruction of the exercise of the right to vote and violation of the secrecy of the vote) and improve the reform of the relevant inefficient compositions or procedural rules	VRU, CMU, civil society organizations, courts, prosecutors and the National Police of Ukraine	Before the start of the election process
Improving the provisions on criminal liability for collaborative activities in order to apply proportionate and effective sanctions related to the restriction of voting rights	VERKHOVNA RADA	Before the termination of martial law
Regulation of procedural aspects of bringing to legal liability for electoral offenses committed abroad	VERKHOVNA RADA	Before the start of the election process
Establishment or improvement of international cooperation (primarily through the conclusion of international agreements) on the prosecution of to legal liability for electoral offenses	President of Ukraine, VRU, CMU, OGP	Before the start of the election process
Developing training programs and conducting exercises on prevention, investigation and prosecution of electoral violations for bodies authorized to draw up administrative protocols, pre-trial investigation bodies, and prosecutors and courts	Higher education institutions, civil society organizations, the National School of Judges of Ukraine, the Prosecutor's Office and the National Police of Ukraine	Before the start of the election process