

WHITE BOOK ON PREPARATION AND ORGANIZATION OF POSTWAR ELECTIONS

EXECUTIVE SUMMARY

Introduction

The previous national and local elections in Ukraine were held in 2019 and 2020, respectively. The terms of office for Members of Parliament (MPs) and the President of Ukraine under normal (peacetime) conditions are expired and these office holders should have been re-elected in 2023 and 2024. In the case of heads of hromadas and local council deputies, their terms of office are about to expire, and new elections are due in October 2025. The provisions of the 1996 Constitution of Ukraine, based on the principle of continuity of the exercise of state power functions, contains the legal basis for extending the powers of the Verkhovna Rada and President of Ukraine if the term of their mandate expires during martial law. In turn, the scope of the articles under Chapter III “Elections. Referendum” of the Constitution may be limited under martial law conditions, pursuant to Article 64 of the Basic Law. The 2015 Law of Ukraine “On the Legal Regime of Martial Law” and the 2019 Electoral Code of Ukraine prohibit holding 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 may be held only after the end of martial law, allowing for a minimum preparatory period. Experts propose that the length of such a preparatory period should be at least six months before the start of the first postwar electoral process. Such a period was officially agreed upon during the Ninth Jean Monnet Dialogue between parliamentary groups and factions in November 2023 and reaffirmed during subsequent dialogues in April and November 2024. The six-month period, however, is conditional, as it derives from the current circumstances and scale of challenges. If the war lasts longer, this period may not be enough.

The first postwar elections will face a number of challenges, comprising long-standing problems as well as new realities resulting from Russia’s full-scale war against Ukraine. The traditional shortcomings of the electoral process include non-transparent election campaign funding, political engagement and low level of professionalism of election commissions, misuse of administrative resources, vote buying, and violation of election campaign rules.

The war also created new, unprecedented problems. Millions of Ukrainians were internally and externally displaced, while the destruction of electoral infrastructure in many regions complicated voting or made it impossible altogether, especially near the contact line. The number of out-of-country polling stations is insufficient to serve a much larger number of voters, while obsolete data from the State Voter Register creates additional difficulties for

organizing the electoral process. Voting safety is a severe problem in the territories most affected by the war as a result of attacks, shelling, large-scale mine laying, and total destruction of populated areas. Voters throughout Ukraine are also threatened by Russia's potential for armed provocations on election day and circulation of arms. An additional factor is the active development of modern technologies, such as artificial intelligence (AI), bot farms, cryptocurrencies, and other digital tools. All these technologies create new opportunities for abuse by the aggressor country and other actors and increase related challenges for election administrators in Ukraine. The scale of the threats and trends in the use of modern technologies locally and regionally significantly exceed the boundaries of current legislative regulation.

In addition to addressing traditional challenges created or aggravated by the war, Ukraine faces the priority task of reforming its electoral legislation in line with European Union (EU) standards. The status of Ukraine as an EU candidate country comes with obligations, including protection of the rights of national minorities, integration of persons with disabilities in the electoral process, regulation of online election campaigning, and combating media disinformation and information manipulation, etc. Stability of democratic institutions – one of the 1993 Copenhagen criteria – is based on representative democracy, at the heart of which is free and fair elections. Without these democratic practices, Ukraine's EU integration will be significantly complicated.

KEY CHALLENGES OF POSTWAR ELECTIONS

Legal character and regulation

The first postwar elections in Ukraine will require additional legislative regulation since the constitutional deadlines for holding parliamentary and presidential elections were missed due to the state of martial law, and also in view of challenges that emerged because of the war. Determining the sequence of elections, procedure for calling them, and duration of voting are all necessary. In the event of a political decision to hold the elections simultaneously, there will be a need to harmonize the duration of electoral process and the election campaign periods; regulate the procedures for establishing election commissions, and sequence transporting election documentation; and ensure the transparency and safety of the electoral process.

Impossibility of holding elections in certain territories

Due to the consequences of war, elections cannot be properly held in territories with destroyed infrastructure, non-functioning state bodies, and threats to the safety of the electoral participants and population in general. The current legislation of Ukraine empowers the military-civilian administrations to provide the CEC with conclusions on the possibility of organizing, preparing, and holding elections in certain territories. Based on its conclusions, the CEC decides on the possibility or impossibility of holding elections without having the mandate and practical ability to verify the reasonableness of the conclusions of the military-civilian administrations. This procedure could be revised and improved for holding the first post-war elections.

Electoral system and territorial organization of elections

The open-list proportional representation system variant provided by the 2019 Election Code of Ukraine includes elements that unjustifiably restrict voters' influence on the order and distribution of mandates between candidates and should be amended (e.g., top nine "reserved" seats on the nationwide electoral party list, and the need to overcome the 25-percent electoral threshold to advance on the regional electoral party list). The parliamentary and local electoral systems do not consider current challenges, as voter migration, changes in administrative-territorial structure, and the need to ensure the rights of voters abroad.

Voter registration

The State Voter Register data are not accurate and complete due to the large-scale displacement of citizens and limited access to information about individuals residing in occupied territories or living abroad. The absence of an independent regular audit of the State Voter Register and low automation of the process of updating its database through interaction with other state bodies, insufficiency of personnel, and material and financial support for the State Voter Register maintenance bodies could threaten the stability of organizing and holding postwar elections.

Nomination and registration of candidates

The permanent residence requirement for candidates in national elections fails to take into account the forced departure of citizens abroad due to the war, which limits their participation in the electoral process and could have a disproportionately negative impact on women.

Numerous cases of collaboration of citizens with Russia's occupying or military authorities necessitate introduction of mechanisms to prevent the influence of compromised persons on political and electoral processes in accordance with the Constitution of Ukraine and international standards.

The traditional problems of the electoral process not related to the war include non-transparent nomination of candidates, excessively high cash deposits, inadequate legal certainty of the grounds for refusal of registration, and insufficient use of IT for the submission of candidates' registration documents.

Gender equality

Despite progressive changes in the 2019 Election Code, which introduced requirements on gender quota, and legislation on political parties, the parties are still able to cancel the registration of women candidates after the lists have been approved or force them to renounce their mandates. The legislation fails to create adequate incentives for ensuring balanced representation of women in the governing bodies of political parties.

Administration of elections

Although the current composition of the Central Election Commission ensures political representation of all parliamentary factions and demonstrates an understanding of the challenges associated with holding postwar elections, electoral reform should provide enhanced guarantees of this body's political neutrality once these elections are completed. This is particularly relevant because 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 capabilities of the Central Election Commission are particularly limited due to the de facto absence of its representative territorial offices, even though their creation was envisaged by the 2019 legislation. At the same time, the process of forming election commissions at the district and precinct levels and ensuring the appropriate level of professionalism of their members will encounter new challenges caused by the mass movement of citizens both within the country and abroad and by restrictions on budgetary resources.

Information support and campaigning

Russia's ongoing aggression led to the introduction of the United News (telethon), which creates the need for proactive 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 during the inter-election period. Legal regulation of campaigning in online media and on shared access platforms also remains insufficient. Political entities are still capable of covert campaigning and violating the principle of equal opportunities, while candidate officials can still abuse their status while campaigning.

Election campaign funding

The control authority in the area of political and election finance are neither clearly defined nor demarcated between the National Agency on Corruption Prevention and Central Election Commission. Sanctions for violating the legislation also remain disproportionate, ineffective, and inefficient. Election campaign funds begin to be spent long before candidate registration, which makes them non-transparent and unaccountable. Election funds continue to be administered in an outdated way.

Preparation for voting, conduct of voting, vote counting, establishing voting, and election results

The considerable increase in the number of internally and externally displaced voters in Ukraine requires a significant expansion and revision of the polling station network. Without stabilizing the safety situation, the voting process for military personnel and residents of the regions most affected by war will remain at risk and require additional efforts. At the same time, as a result of Russia's aggression, there has been a sizable increase in the number of persons and veterans with disabilities, which will require an essential expansion of mechanisms for ensuring the accessibility of polling stations.

Appealing violations and holding perpetrators accountable

The system for appealing election disputes and holding perpetrators of electoral offences accountable remains insufficiently effective; this problem was already relevant before Russia's attempted full-scale invasion of Ukraine. Judicial and procedural capacity building is necessary to strengthen liability for violations of electoral legislation, ensure high-quality training of judges and law enforcement officers, and regulate mechanisms for investigating violations committed outside the country.

PRIORITY RECOMMENDATIONS

Legal character and regulation: Consideration could be given to adopting a legislative act to determine the order in which overdue elections will be held, the procedure for calling them, and to coordinate other key deadlines and procedures.

Impossibility to hold elections in certain territories: It is important to establish mechanisms and define criteria for adopting, revising, and appealing a decision on the impossibility of holding elections in certain war-affected territories.

Electoral system and territorial organization of elections: The openness of the proportional electoral system should be enhanced by forsaking the nine reserved seats in the nationwide electoral party list and reducing the threshold for the advancement of a candidate on the regional electoral party list from 25 percent to 5 or 10 percent. It is also important to revise the administrative-territorial structure based on new circumstances and create additional polling stations for internally displaced persons and Ukrainians abroad.

Voter registration: It is reasonable to introduce an independent regular audit of the State Voter Register, to ensure its updates take into account the large-scale movement of voters, and to automate data exchange with other state registers. Strengthening personnel and resource support for the State Voter Register maintenance bodies is also important.

Nomination and registration of candidates: It is necessary to count the period of a citizens' stay outside Ukraine during the legal regime of martial law as a period of residence in the territory of Ukraine to avoid unjustified restrictions on their participation as a candidate during elections. It is important to ensure that voters are provided with comprehensive information about facts of candidates' collaborationist activities. Regulate the issue of lustration at the level of a law in compliance with the requirements of the Constitution of Ukraine and international standards. Moreover, it is advisable to reduce the cash deposit amount during elections and to increase the legal certainty of the procedures for registering candidates.

Gender equality: It is necessary to strengthen financial incentives for political parties that provide for equal representation of women and men to consolidate control over compliance with the gender quotas. Increasing the threshold for a party's eligibility for state funding from 30 to 40 percent of its elected female deputies is also recommended, as well as Prohibiting parties from deregistering female candidates after the approval of their lists. It is also advisable to regulate for candidates on the nationwide electoral party list to be replaced with candidates of the same gender should be provided for.

Administration of elections: It is important to significantly limit the possibility for parties and candidates to recall members of election commissions representing them and to empower the Central Election Commission and district election commissions to determine the maximum and minimum composition of election commissions in a flexible way. Ensuring sustainability of election administration and consider previously effective practices of the Central Election Commission should be essential to preparing for postwar elections. During the comprehensive electoral reform, it is important to strengthen the legislative guarantees of the independence of the Central Election Commission. Eliminating the possibility of early termination of the powers of the entire Central Election Commission or its individual members for political reasons could also be considered.

Information support and campaigning: It is necessary to comprehensively regulate political advertising in traditional and online media based on EU standards. Equally important is to create mechanisms to counter disinformation, misinformation, and malign influence, and to ensure transparency during election campaign financing. Separate information coverage of the activities of state bodies and officials should be ensured. Prior to starting the first postwar electoral process, it is important to stop the United News Telethon broadcasting. As early as possible, it is advisable to regulate and separate through a law the control authority of the Central Election Commission, National Agency on Corruption Prevention, and National Council for Television and Radio Broadcasting.

Election financing: It is necessary to legally entrench the lead role of the National Agency on Corruption Prevention to implement an effective control system in the area of political and election finance. It is also advisable to enable more effective control by ensuring the submission of all types of reports during all types of elections and referendums in electronic form through the POLITDATA Register, as well as to establish proportionate, effective, and dissuasive sanctions for violations related to election campaign funding.

Preparing for voting, conduct of voting, vote counting, establishing voting, and election results: It is necessary to create legislative mechanisms designed to ensure effective exercise of the right to vote by military personnel, internally displaced persons, voters abroad, and voters with disabilities. Simplifying vote counting procedures by using information technologies should also be considered.

Appealing violations and holding perpetrators accountable: It is recommended to strengthen liability for election violations, tensure high-quality training of judges and law enforcement officers to consider election disputes. Establishing international cooperation between law enforcement agencies in investigating violations of Ukrainian election legislation abroad is also important. Consideration should be given to unifying appeals procedures to contribute to increased efficiency and transparency of the electoral process.

For reference:

The White Paper on Preparation and Organization of Postwar Elections has been prepared with the aim of forming and expressing the comprehensive position of three partner organizations (authored by Center of Policy and Legal Reforms, Civil Network OPORA with expert contributions from International Foundation for Electoral Systems in Ukraine) on the war-induced challenges that will affect the organization and holding of elections and on ways to overcome or minimize them. These experts have examined the obvious problems occurring at various stages of the electoral processes for the postwar national elections and provided proposals for their elimination.

The material was prepared by analyzing electoral legislation, official documents of state authorities, and statistical data. Experts also obtained information from interviews with stakeholders related to or participating in the electoral process, public discussions, regional focus groups, and discussions with Ukrainian MPs, Central Election Commission representatives, and other leading state authorities and experts.

The White Paper on Preparation and Organization of Postwar Elections is focused specifically on analyzing and identifying ways to overcome or minimize the challenges of the first postwar elections, considering the priorities of European integration, and reinforcing the mid- and longterm objectives of electoral reform.