



POLICY BRIEF

The Electoral Code of Ukraine 2019: Amendments needed to advance human rights-based approach to elections

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→ Key Recommendations

Remove restrictions to the right to vote for people deprived of legal capacity.

Improve the voting procedures for people with visual impairments. The participatory approach should be applied by the State while elaborating any new mechanisms.

Secure electoral information in accessible formats for various categories of people, particularly, easily-to-read format and audio description of video materials.

Introduce liability for the inaccessible voting facilities, procedures and violation of the gender quotas on the party list.

Identify the responsible persons or/and institutions for the collection, processing and systematization of information on the facts of voting rights violation.

→ Summary

It took 10 years of amendments and discussions to finally adopt on January, 2020 the long-expected Electoral Code of Ukraine, which unified 7 different acts regulating the electoral process. Despite the immense efforts to accomplish this vital reform, in its approved version the new code does not provide significant improvements on the voting process in the human rights field. Originally the idea of the new code was also conceived (alongside with other purposes) to increase the women's political representation, improve procedures for voters with disabilities and simplify the voting process for IDP's and travelers. However, the targets can not be considered as achieved. The paper examines how the new norms influence the exercising of voting rights by various categories of people. Basically, through the human rights-based approach (the HRBA) the paper analyzes how in/effective is the mechanism of accountability and responsibility of the state as a duty bearer and provide recommendations on strengthening the capacity of excluded and marginalized voters.

→ Introduction

Human rights-based approach (HRBA) "seeks to analyze inequalities that lie at the heart of development problems and to redress discriminatory practices"¹ by identifying and strengthening the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations.

The possibility to take part in the political life of the country is the fundamental inherent human right, which is protected by Article 21 of the Universal Declaration of Human Rights (1948), Article 25 of the Covenant on Civil and Political Rights² (1966), Protocol No.1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (1950)³, Article 29 of the Convention on Rights of Persons with Disabilities (2006)⁴ and other documents. Ukraine took responsibility to fulfill the provisions of all the above mentioned documents.

The right to vote and stand for elections is a form of political participation. It is of crucial importance for the citizens, since electoral rights are one of the most influential instruments of participation in the decision-making process in Ukraine. They serve as barometer to measure the democracy in the country. That is why the state should take all measures to secure the effective mechanism to exercise electoral rights by all people in the country. However, due to the several shortcomings the new Electoral Code of Ukraine and electoral system in whole can not be characterized as inclusive and human rights oriented, even though the evidential progress towards it has been achieved for the last 20 years. According to the Freedom House survey, 2018 Ukraine is still considered as "partly free" country with 3 points out of 7⁵.

¹ OHCHR (2006).

² The Covenant on Civil and Political Rights was ratified by Ukraine on the 19th of October, 1973.

³ The Protocol №1 and the Convention for the Protection of Human Rights and Fundamental Freedoms was ratified on the 17th of July, 1997.

⁴ The Convention on Rights of Persons with Disabilities was ratified by Ukraine on the 16th of December, 2009.

⁵ 1=Most Free, 7=Least Free.

→ Legal barriers

The new Electoral Code of Ukraine excludes or marginalizes the following categories of people: people deprived of legal capacity, people with health conditions (for example, with dyslexia), illiterate people, non-Ukrainian speakers, people with limited mobility, people with disability.

By ratifying the International Covenant on Social and Political Rights, the Convention on Rights of Persons with Disabilities and its Facultative Protocol Ukraine recognized the principle of universality and equality of voting rights and undertook the obligation

to implement its electoral principles accordingly. However, the newly adopted Electoral Code of Ukraine still envisages provisions preventing people deprived of legal capacity from voting and standing for elections in Ukraine. Thus, 30 000 people with intellectual and psychosocial disability⁶ are excluded from the electoral process in the country.

Disenfranchisement on the basis of impairment is a direct discrimination and is prohibited both by international and national law. However, in this regards, the State took an official position not to drive any legislative changes by revoking several Draft Laws and CSO initiatives.

→ Violation of the personal and secret voting principles

The ECU does not envisage the secret and personal voting procedure for people with visual impairments.

The principles of personal and secret voting are enshrined in the Articles 16 and 17 accordingly of the Electoral Code of Ukraine. However, the this comprehensive law does not contain sufficient provisions to apply these principles in favor of all voters. Visually impaired people can not vote independently and secretly due to the inaccessibility of voting procedures, facilities and materials. Namely, the Electoral Code of Ukraine sets forth the following voting procedure: voter with visual impairment enters the voting booth with another elector picked up randomly by the Head of the polling station, discloses his/her will and let this elector cast the vote on his/her behalf. There is no other mechanism to execute the voting rights by visually impaired people in Ukraine.

The State has never considered the suffrage by people with visual impairments as a problem to solve. The former Act “On Election of People’s Deputies” (substituted by the Electoral Code) envisaged the obligation to produce the tactile plastic templates in



Source: naiu.org.ua

Braille for ballots, however for the 10 years it was never implemented. Additionally, the fact that the ballots in Ukraine are particularly large to use the Braille templates and that not all people with visual impairments use Braille makes this mechanism merely effective. That is why this provision was not included in the Electoral Code, but regrettably no alternative measure have been provided either.

⁶ Unofficial data provided by the National Prevention Mechanism in Ukraine at the conference “Voting Rights of People with Disabilities”. The State does not collect statistical and research data over the people with intellectual and psychosocial disability.



→ Inaccessibility

The accessibility of election materials is considered as a goodwill approach of the State.

The architectural accessibility of the polling stations have to be secured by local authorities. However, the ECU does not foresee the liability of local authorities for violation of this provision.

The ECU analysis shows some deficiency also regarding the information accessibility. In fact, the Code limits itself to very generic provisions, leaving various categories out of its scope of applicability therefore out protection.

See for instance Article 47:

“Voters, including people with visual and hearing impairments, shall get the possibility to have access to objective and diverse information needed to perform free, conscious and informed choice.

Information for people with visual and hearing impairments can be provided in accessible formats in a capacity and following the procedure defined by the Central Election Commission”

The first Paragraph of the quoted Article deals only about two disabilities ignoring voters other than those having visual and hearing impairments. No reference is made in relation to information accessibility measures for other vulnerable categories such as: the easy-to-read format for non-Ukrainian speaking minorities, electors with intellectual and psychosocial disabilities, elderly and more generally all voters having comprehension difficulties. For example, one fourth of the Roma population in Ukraine is illiterate⁷ as well as around 80% of voters with intellectual disabilities⁸. These large minorities are usually excluded from any voting process and neither State nor any political actors bear any legal bound to secure accessible electoral information.

Moreover, the second Paragraph of Article 47 violates a number of international conventions and covenants since providing accessible information does not correspond to a goodwill or charity approach, on the con-



Source: chesno.org

trary it represents a full international obligation for Ukraine. Thus, it cannot be described with the formalization “can”. Limiting the capacity of accessible information to be provided to voters is a discrimination.

Further, Paragraph 7 of Article 55 envisages that *“pre-election audio-visual campaign materials in mass media have to be subtitled and/or translated to Ukrainian sign language in order to provide its accessibility for people with visual and hearing impairments taking into account requirements by the National Council of Television and Radio Broadcasting of Ukraine”.*

People with visual impairments do not need subtitling of the videos due to the obvious reasons, but the audio description of the election video materials, especially those containing infographics, diagrams or pictures is crucial for understanding the message of the content. However, the ECU does not foresee the format of audio description for video materials within the electoral process.

Furthermore, Paragraph 4 of Article 18 of the Act of Ukraine “On ensuring the functioning of the Ukrainian language as the state” sets forth, that all election video materials, including political advertisement, TV debates, information about elections and its results has to be translated to Ukrainian sign language or

⁷ Seitosmanov A., Chernousov A., Sherban S., Ponomaryov S. “The State Policy Status Regarding Roma People in Ukraine”, 2015.

⁸ Unofficial data provided by the National Prevention Mechanism in Ukraine at the conference “Voting Rights of People with Disabilities”. The State does not collect statistical and research data over the people with intellectual and psychosocial disability.



subtitled. At the same time Paragraph 7 of Article 55 of the ECU limits the scope of accessibility by defining the type of materials (only pre-election information), which have to be translated or subtitled. Thus, these two Articles have to be harmonized without limiting human rights.

Paragraph 4 of Article 62 of the ECU contains equivocal provision on architectural accessibility of polling stations for people with limited mobility or disability. Namely, it states that *“in case it is not possible to fully*

adjust the polling station to the needs of people with limited mobility or disability, the local authority should take measures to provide the access to this category of voters”. The ECU does not mention in what way the accessibility will be provided. The most common practice used by local authorities for the past 20 years is lifting the person in the wheelchair up the stairs. In no way it should be considered as the “measure to provide the access”, since it is a violation of the CRPD and several Ukrainian Anti-Discrimination laws.

→ Abuse of Alternative Voting Procedure

People with limited mobility shall vote in polling stations like everyone else. Relying on alternative voting as general practice is discrimination.

The Ukrainian electoral legislation envisages one form of alternative voting - voting from home. But taking into account the full inaccessibility of the transport, buildings and urban space in Ukraine voting from home remains to be the only possibility to exercise the electoral rights for many people with limited mobility. The State relies on alternative voting as the basic voting procedure. However, it should not represent the

general practice. The General Assembly of the UN in the Thematic Study by the Office of the United Nations High Commissioner for Human Rights on participation in political and public life from 2011 stated, that:

[...] Alternative ways of voting should only be used in cases where it is not possible, or it is extremely difficult, for persons with disabilities to vote in polling stations, like everyone else. General reliance on voting assistance and alternative voting as a way to ensure the political participation of persons with disabilities would not be consistent with the general obligations undertaken by States parties under articles 4 and 29 of the Convention.

→ Accountability of duty-bearers

The ECU does not define the precise accountability mechanism for the inaccessible voting facilities, procedures and violation of the gender quotas in the party list.

The mechanism of responsibility for the violation of the ECU provisions can be described as poor and merely effective. The document does not enshrine the legal liability in the event of discrimination against voters on any grounds. Further, there are no sanctions for the inaccessible voting facilities, procedures and not following the gender quotas on the party list. The ECU does not envisage a liability for sexism and discrimination in the pre-election materials and advertisements as well, even though the civil society organizations insisted to insert the corresponding provision to the electoral legislation.

The ECU does not contain mandatory provisions to secure information accessibility of all information published within the election process. The range of duty-bearers is not clearly defined.

The Code envisages the duty of election commissions to inform citizens about the actions or omissions of election commissions and their members, executive bodies and local self-government bodies, enterprises and other institutions that violate or restrict voting rights. However, it does not define the responsible persons or institutions for the collection, processing and systematization of information on the facts of voting rights violations and the procedures of transferring the information to persons.

The Article 19 of the ECU contains the general provision, which defines voters' right to appeal against violations of their electoral rights to the corresponding



election commission or to the court. Even though the ECU mentions various national and local authorities, self-government bodies and institutions responsible for its implementation, the Article 19 “Honest Elec-

tions. Responsibility for the violation of voting rights” imposes liability for the violation of voting rights only on individuals.

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