

INFLUENCE OF LOCAL ELECTIONS ON DEMOCRATIC AND SOCIO-ECONOMIC DEVELOPMENT OF THE GOVERNMENT-CONTROLLED TERRITORY OF DONBAS

On 25 October 2020, local elections will be held in Ukraine. However, in 18 communities in government-controlled parts of Donetsk and Luhansk regions elections will not be held. This document analyzes the reasons why the decision not to hold the elections in a number of settlements may have a negative impact on the development of democratic institutions in the region, the level of people's trust in local and central government, as well as the prospects for reintegration of temporarily occupied territories. In particular, this summary speaks about a non-transparent procedure for deciding to cancel the elections, about non-systemic criteria for determining security threats, and about the lack of involvement of civil society. The recommendations resulting from this study are aimed at strengthening the civil component in local governments, applying a strategic approach to decentralization, and at reducing tensions between Donbas and Kyiv.

Summary and recommendations

1. The problem of observing democratic procedures and legal norms

The decision about the impossibility to hold the elections in 18 communities in government-controlled part of Luhansk and Donetsk regions was made on the basis of opaque procedures and may lead to the increased distrust to the democratic institutions and to Ukrainian government among the population of these communities. Thus, nearly half a million residents of eastern Ukraine have been deprived of the Constitutional right to vote.

In the Ukrainian legislation, the procedure for deciding on the impossibility of holding elections in certain territories has a number of drawbacks: in the decision on the impossibility of holding elections, the Central Electoral Commission (CEC) refers to letters from the heads of civil-military administrations (CMA), including a letter from the Main Directorate of the Security Service of Ukraine (SSU) of Luhansk region, which asserts the impossibility of law enforcement agencies to provide full security during the elections.

It should be stressed that the letters from the heads of CMA have a nature of recommendations. According to the law the final decision is made by the CEC. At the same time, the CEC has neither the legislative powers nor the resources and knowledge to verify the information received from CMA and thus to verify the real situation in these territories. At the same time, the Commission is obliged to ensure the implementation and protection of citizens' electoral rights, taking into account relevant conditions, including security issues.

The letters from CMA submitted to the CEC identify localities or polling stations, but do not state the reasons for determining the level of danger in a given location. The decision taken by the CEC does not refer to any list of criteria for justifying the impossibility of holding elections in certain territories.

Thus, a procedure has emerged that has made CMA, *de facto*, the central organ of decision-making on the conduct of elections and an institution that, based on an insufficiently substantiated decision, receives unlimited powers but does not assume any formal responsibility for this decision. The responsibility for making this decision formally lies with the CEC (the CEC becomes an object of public criticism for a decision made) or is divided among several

institutions and/or officials without a transparent and logical mechanism. This creates an additional opportunity to use this decision for political purposes. Suspicion of political motivation for not holding elections and the interest of the authorities in such a decision has been reinforced during public discussions between the authorities of Luhansk region and civil society: the Head of Luhansk CMA, for example, mentioned the dysfunctional local authorities in certain towns as an important reason for the decision to cancel the elections, along with the security argument.¹ However, it is free and fair elections that are a democratic tool for changing local authorities if they do not perform their functions well. The influence of the heads of CMA on the decision of the CEC allows to speak about a conflict of interest, as the heads of CMA may be interested in retaining their powers without transferring influence to the elected local authorities.

Recommendations:

- amend the legislation of Ukraine to ensure a transparent and democratic mechanism for making a collegial decision on the possibility or impossibility of holding elections in certain territories. It is recommended to establish a collegial independent body at the national level, with sufficient authority to verify the information received from state and law enforcement agencies, on the basis of which the decision would be made, and that would be fully responsible for it.
- to make a list of criteria on the basis of which a decision on the impossibility of holding elections in certain territories is made. Such a list, for example, should take into account the experience of previous election campaigns in a given region and define territorial guidelines regarding the distance of a settlement from the contact line. The criteria must be common to all decisions or to all territories, which are taken into consideration when it comes to the decision on the possibility or impossibility of holding elections in the given region.
- to involve the OSCE in consultations regarding the situation in the armed conflict zone related to the possibility of providing security for organizing and conducting elections.
- the CEC and the relevant Committee of Ukrainian Parliament should provide clear explanations on how and when it will be possible to exercise the right to vote in these regions based on the introduced changes in the legislation.
- to publicize all documents of CMA which served as the basis for the decision on the impossibility to hold elections, except for those documents that contain secret data not intended for the public.²
- for Donetsk and Luhansk CMA, to hold public events and carefully inform the public about the reasons why it is impossible to hold elections in certain localities, and to ensure transparent and sustainable communication with the public, political parties and elected representatives of local authorities of the current cadence on election issues.³

¹ <https://zmist.org/articles/gubernator-luganshchini-uhilivsyia-vid-klyuchovih-pitan-pro-skasuvannya-viboriv>

² See statement of the NGO OPORA as of 10 August 2020, available in English at <https://bit.ly/2HdiNqV>

³ Ibid.

2. The Dilemma 'Security vs Democracy'

A country affected by armed conflict has a tendency to stick to the "security first" approach and thus faces the dilemma of choosing between security and democracy. In addition, in recent years, the effectiveness of local authorities in government-controlled areas in the conflict region has been questioned; partly, these institutions have become an instrument of influence for local business groups.

The results of this research show that experts have different priorities in deciding whether to conduct local elections or abolish them for security reasons. In particular, it depends on their geographical perspective: those in the conflict region tend to be in favor of the elections, while those in Kyiv tend to prioritize the security factor. One can assume that different priorities and interests of citizens and political elites that form them mark the nature of relations between Kyiv (and other parts of Ukraine that are remote from the conflict territory) and the conflict zone. The suppression of local initiative to take responsibility for the development of the region, combined with the desire of the 'center' to effectively address the region's problems directly through appointed leaders, may in the medium term have a negative impact on political and socio-economic processes in the country. Thus, the idea of the "special status" of Donbas in Ukraine may be frozen, obstacles to democratic development of the region may emerge, and the reintegration perspectives may fade.

For better understanding, we will highlight two levels of security analysis: physical (military) security and hybrid security (threats).

The physical safety of individuals wishing to take part in elections is directly linked to the risks of shelling near the line of contact, the risk of forest fires, as well as the risk of renewed fire from small arms and light weapons. Solving these types of problems could be more targeted and effective by establishing an authority (agency) to regulate safety issues in a timely manner. So far, no such technical preconditions have been created.

Hybrid security. The main risk seen by the opponents of the elections in the conflict region is the increasing influence of pro-Russian local ruling elites. The strengthening of pro-Russian forces in self-governing bodies will expand the scope of influence of the Russian Federation in the conditions of its hybrid war against Ukraine. The Russian Federation is very active in this process and uses a wide range of instruments.

From the point of view of the democratic party system, the threat of a victory for the unwanted opposition cannot justify the cancellation of elections. There may be an impression in the society that support for democracy at the level of Ukrainian state policy ends in the case of the threat of political revenge from anti-Ukrainian forces.

Failure to hold elections does not solve the problem of ensuring either physical or hybrid security. On the contrary, such a decision provokes discontent among part of the local population and serves as an argument of the anti-Ukrainian forces about the undemocratic political system in Ukraine. The central authorities have not been able to find a solution to this contradiction in the past few years, but the existence of CMA does not guarantee security, either. The suppression of the opportunities for local authorities damages social and economic development of the region, thus increasing citizens' dissatisfaction and their distrust to the central government in Kyiv.

Recommendations:

- in the context of physical (military) safety, the risk assessment criteria must be clear and references to them should have solid grounds.
- to make the activities of the CMA and local councils more transparent and oriented at cooperating with the community. To involve representatives of civil society, small businesses, trade unions and academia in the decision-making process. In this way, local people will feel involved in the final results; this will increase people's trust in local and national authorities.
- to establish a coordination center for operational forecasting at the CMA of Luhansk region (the idea has already been discussed among the civil society in Luhansk region) in order to promptly respond to security challenges. The civil society of the region should be engaged in the operation of such a center. This relates to the coordination of all key institutions in case of emergency, coordination of state institutions with humanitarian organizations and ensuring constant and inclusive information campaigns for citizens on combating the disasters and dealing with their consequences.
- to recommend partners in Ukraine and in the EU to support the establishment of such a center in terms of technical support and, if necessary, funding important infrastructure and logistics.
- to develop and support independent media with quality content in the region, which will become a platform for promoting topics related to the conflict resolution, shared values, and important local social initiatives. It is necessary to expand the range of Ukrainian media available also for the residents of the temporarily occupied territories. Depicting the real situation in the region in the media also contributes to increasing public confidence in Ukrainian media.

3. Dilemma 'Efficient governance vs Democratic governance and control of the region'

The idea behind the creation of CMA is their higher efficiency with regards to security guarantees and ensuring livelihood opportunities during the armed conflict, in comparison with traditional local governments. In the long term, however, the concentration of the decision-making process in the hands of the CMA heads does not contribute to the effective management system, since decisions under this approach are made individually by a CMA's head without the necessary democratic procedures involving a large number of actors, as in the case of local authorities.

Cancellation of local elections in part of the localities has a negative impact on the development of democracy in the region: it complicates the process of civil control over the activities of local authorities, limits the opportunities for the emergence of new local political leaders, demotivates active citizens and preserves paternalistic thinking of the region's residents.

Recommendations:

- The Verkhovna Rada and the Cabinet of Ministers of Ukraine, with the involvement of civil society should elaborate and apply a strategic approach to the development of the region taking into account the specifics of its infrastructure, environmental and energy components. The strategy should also address the development of culture and the potential of civil society.

- In localities where elections will not be held, to form public councils at CMA, involving representatives of civil society organizations, former members of local councils and experts in local governance, and thus giving them a right to be heard by the heads of CMA.

- with the assistance of experts at the local and national levels, as well as of the experts from European partner countries of Ukraine on decentralization reform, to consider the possibility of implementing the mechanism of selection of the head of CMA on a competitive basis in order to ensure the appointment of persons with knowledge of the region and the ability to communicate with local public structures in case the security situation does not require prompt appointment to such a position.

- consider the possibility of holding local elections in 2021 in communities of Donetsk and Luhansk regions that are under the government control of the Donetsk and Lugansk regions, which were not held in October 2020.

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Methodology:

The research is based on 12 in-depth interviews with political and social actors who work in government-controlled territory in the east and in Kyiv.

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