

ELECTORAL DISPUTE RESOLUTION IN UKRAINE: 2004 PRESIDENTIAL, 2006 AND 2007 PARLIAMENTARY ELECTIONS

1. Introduction

Ukraine witnessed its contemporary rebirth of independence on August 24, 1991, when the Supreme Soviet of the then Ukrainian Soviet Socialist Republic adopted, by an overwhelming majority, a Declaration of Independence. As the Soviet Union fragmented and faded away in the latter months of 1991, Ukraine's Parliament and other governance structures worked frantically to establish the full range of attributes and institutions typical of a fully sovereign contemporary nation-state. In December 1991, Ukrainian voters affirmed the parliamentary Declaration of Independence by a margin of more than 90% ballot approval. In parallel, then Supreme Soviet Chair Leonid Kravchuk was elected by a large margin as newly independent Ukraine's first President.

Over the following years, Ukraine held regular parliamentary elections in 1994, 1998, 2002 and 2006, a pre term parliamentary election in 2007; a pre term presidential election in 1994, and then regular regular presidential elections in 1999 and 2004 (though the latter was marred by initial mass vote fraud, and included a court-ordered additional round of voting following mass national demonstrations better known as the Orange Revolution). Regular local elections have been held nationwide in parallel with regular parliamentary elections.

The Constitution of the Ukrainian Soviet Socialist Republic, adopted in 1978 (following adoption of the last Soviet Union Constitution in 1977), was heavily amended throughout the 1991-1995 period; in 1995, as work in Parliament progressed on an entirely new Constitution, a Constitutional Accord – in effect a petit Constitution – was adopted, followed in 1996 by a full scale and contemporary Constitution with a presidential-parliamentary form of republican government. The administration of then-President Leonid Kuchma sought to make major amendments to that document in a national referendum conducted in 2000 whose legitimacy was not recognized by major international organizations (campaigning for and administration of the referendum was marked by blatant abuse of executive powers and broad manipulation and outright fraud).

In December 2004, in the middle of the Orange Revolution, the Verkhovna Rada (Parliament) adopted major, systemic and controversial amendments to the 1996 Constitution, transforming Ukraine's system of governance into a parliamentary-presidential republic. Unfortunately, the 2004 changes included numerous provisions that have, in practice, given rise to major conflicts both within the executive branch (the Presidency vs. the Cabinet of Ministers) as well as among the executive, legislative (Parliament) and judicial branches (including a running battle on the powers of the Constitutional Court of Ukraine). The 2004 amendments were, arguably, the prime legal enabler of the 2007 pre term parliamentary election.

Put briefly, in its nearly 17 years of modern independent statehood, Ukraine has had many elections, with generally stable transitions of office, with significant levels of fraud and manipulation, especially during the high stakes 2004 presidential election, but trending towards better organization of election administration, and serious improvements in availability of legal recourse through the courts to cure electoral law violations and review/settle electoral disputes. The single greatest current threat to the sustainability of the electoral process in Ukraine is the absence of permanent, high quality voter rolls due to the absence of a National Voter Registry.

2. Legal System and Traditions

Ukraine possesses a Continental system of law. Article 8 of the Constitution of Ukraine also explicitly recognizes the principle of rule of law. The Constitution is the supreme law of the land. All laws and other regulatory and normative acts are adopted on its basis and must comply with it. Furthermore, Art. 55 of the Constitution guarantees leave for judicial appeal of decisions, acts and failure to act by official institutions as well as their official and service personnel. Art. 124 Part 2 of the Constitution further provides that the jurisdiction of the courts extends to all legal relations that exist in Ukraine.

In accordance with articles 124 and 125 of the Constitution of Ukraine, legal proceedings are carried out (adjudicated) by the Constitutional Court of Ukraine and the courts of general jurisdiction. The system of general jurisdiction courts in Ukraine is built on the principles of territoriality and specialization, and the court of final appeal within the system of general jurisdiction courts is the Supreme Court of Ukraine (SCU). The higher specialized adjudicative bodies are the relevant higher courts. Thus, all the courts of Ukraine (save for the Constitutional Court), both “*general*” and “*specialized*” (economic and administrative), comprise a *single system of general jurisdiction courts*.

As per the provisions of Art. 106 Part 23 of the Constitution of Ukraine, the President of Ukraine establishes courts in the order laid out by the Law on “the Court system of Ukraine”. Art. 128 Part 1 of the Constitution provides for initial five year term appointments of judges by the President. All other judges in the general jurisdiction courts, i.e. those with 5 or more years as serving judges, are elected (appointed) by Parliament for life in accordance with the procedures provided for in the Law on “the Order of Appointment and Termination of Appointment of a Professional Judge by the Verkhovna Rada of Ukraine”. The status of judges is elaborated by the Constitution and the Law on “the Status of judges”.

While the legal framework for appointment of judges is adequate, the appointment and termination process is, nonetheless, highly susceptible to both abuse per political preference of the appointing institution (both with presidential initial appointments as well as life appointments by the Verkhovna Rada), as well as to monetary and other material corruption (especially in cases where candidates for judgeships with known histories of incompetent or corrupt past adjudication of cases “sail through” the lifetime appointment process within the Verkhovna Rada, having found relevant support either within the relevant Parliament committee or with key judges of the Supreme Court or one of the higher specialized courts).

Public perception of how the courts work in Ukraine is also negatively affected by the relative ease with which “skilled practitioners” at the bar can frequently procure favorable adjudications in all matters of civil, criminal, administrative and economic cases. Such corruption, while arguably more pervasive at the trial level, is also attainable at appeals levels reaching up to the highest courts. And though “sting operations” by law enforcement that result in prosecution of corrupt judges are rare, they do occur, and are well reported by media, reinforcing the public perception that the Ukrainian court system is rife with corruption.

3. The Electoral System

Presidential elections in Ukraine take place according to a *majoritarian* (Two Rounds) system, as provided by Art. 103 of the Constitution, and articles 1-4 and 19 of the Law on “Election of the President of Ukraine”. The President is elected on the basis of general, equal and direct suffrage via secret ballot to a five year term. Articles 84 and 85 of the Law provide for *runoff voting* in the event that none of the candidates obtains more than half of all votes cast during the “first round” of an election. The ballot papers in the runoff vote include only the two candidates with the highest number of votes from the first round. That having been stated, the 2004 Ukraine presidential election saw a Supreme Court of Ukraine-mandated *second runoff vote* (or “third round”), whose preparation and administration took place under the regular Law as well as a special Law “On Peculiarities of Conducting Repeat Voting at the Election of the President of Ukraine on December 26, 2004.”

The 2006 Ukraine parliamentary election was the first time that MPs were elected exclusively according to a 100% *proportional* election system with “closed” lists of candidates from parties and electoral blocs. The Parliament seated following that election took office for a 5 year term, per the provisions of the new edition of Art. 76 of the Constitution. Significantly, that convocation of Parliament did not serve out its full term, as Ukraine’s first pre term parliamentary election took place on September 30, 2007, regulated by the same constitutional and legal provisions.

4. The Legal Framework

As per Art. 92 Part 1 Par. 20 of the Constitution, in Ukraine the organization and conduct of elections are regulated *solely* by laws of Ukraine. These include the Law “On Election of People’s deputies of Ukraine”, the Law “On Election of the President of Ukraine” and the Law “On Peculiarities of Conducting Repeat Voting at the Election of the President of Ukraine on December 26, 2004” noted above (and now expired). Complaints stemming from election law violations and election disputes generally are addressed via two available mechanisms: judicial (to the relevant court) and administrative (to the relevant election commission). What’s more, per the noted constitutional provisions and certain Constitutional Court rulings, those who file administrative complaints with election commissions, may continue seeking justice within the judicial system, should their administrative complaints be rejected by an election commission or commissions. During election campaigns, the choice of forum is up to the complainant.

We should note here that during the 2004 presidential campaign, the administrative order of review for election disputes was regulated by the Law “On Election of the President of Ukraine”, while judicial review of such disputes was regulated by the provisions of that law as well as then-current provisions of the Civil Procedure Code in its 1963 edition as amended. However many of that Code’s provisions contradicted those in the Law “On Election of the President of Ukraine”, which gave rise to situations where courts were forced to further determine which law’s provisions to applyⁱⁱⁱ.

Prior to the 2006 parliamentary election, many of the legal underpinnings bearing on election dispute resolution were significantly altered, as a result of partial judicial system reforms, the adoption of new procedural codes and the establishment of a sub-system of specialized administrative courts within the system of courts of general jurisdiction. Specifically, the new Code of Administrative Legal Proceedings of Ukraine (CALPU) took effect on September 1, 2005. Its provisions regulate, among others, election dispute resolution.ⁱⁱⁱ The High Administrative Court of Ukraine began its work at that time, as well. At the same time, in what has become a Ukrainian tradition, the procedures for filing complaints as to electoral violations and their review by election commissions were detailed within the Law “On Election of People’s deputies of Ukraine”^{iv}.

At the 2006 parliamentary election, as a matter of practice, judicial review of electoral disputes became, in practice, rather complex due to the following factors:

- Apart from the High Administrative Court of Ukraine, none of the newly envisioned administrative trial and appeals courts had been created in time for this election. Thus the vast majority of electoral disputes were adjudicated by local “general” trial and appeals courts. The High Administrative Court of Ukraine only reviewed, as an appeals court, certain cases taken to trial at “regular” courts and stemming from Central Election Commission of Ukraine (administrative) decisions; the Court also reviewed one case as a trial court – namely, a challenge of the 2006 parliamentary election results.
- The Law of Ukraine “On Election of People’s Deputies of Ukraine” also contained provisions governing procedures for judicial review of election violations and disputes. Many of these provisions contradicted CALPU provisions, which gave rise to ambiguity on such issues as: subjects (who may be a proper complainant and respondent in such cases; jurisdiction and venue; mandatory elements of a complaint; peculiarities of review and court decisions; appellate review procedures, etc).^v.

Fortunately, these difficulties of normative regulation were resolved, to a large extent, through rather dynamic “commentary” by experts and practitioners, first of all by judges of the Supreme Court and the High Administrative Court. Judges and leading researchers effectively developed recommendations and legal positions on applying relevant procedural provisions in relation to electoral disputers^{vi}. Importantly, local courts and appellate courts nationwide were duly notified and informed of these recommendations, which meant that there were few differences in how procedural provisions were applied in the EDR process from region to region. During the 2007 early parliamentary election, uniformity of application was further strengthened by the High Administrative Court Plenum recommendations adopted by a resolution of April 2, 2007 on EDR adjudication procedures.

We would be remiss if we did not note that Ukraine’s legislature has not heeded the Venice Commission’s recommendation that election laws not be amended for significant periods of time prior to, or during, national electoral processes such as parliamentary elections. Nonetheless, the amendments made in a last minute fashion prior to the 2006 vote, were favorable in that they helped clarify and better regulate campaigning practices^{vii}, the establishment of Precinct Electoral Commissions (PECs), voting and vote count procedures. However, because of the last minute nature of some changes, not all commissions received timely information about these changes, and the utility of training and instructional aides prepared before these amendments became law was at times degraded, since manuals and charts had been produced and distributed prior thereto^{viii}. Perhaps more significantly, the fact that last day amendments to the legal framework for parliamentary elections (changes to the Criminal Code of Ukraine and the Code on Administrative Offences of Ukraine) took effect on March 25, 2006, literally less than a day before voting began, was an unwelcome development, though the intent and purpose of these provisions were to strengthen electoral transparency by strengthening sanctions for certain violations^{ix}.

5. Electoral Dispute Resolution Body/ies

As noted earlier, *election commissions* and *courts* are authorized to review electoral disputes. In Ukraine, a three tier system has been established to administer national elections (i.e. presidential and parliamentary). The status of election commissions at various levels is defined by the Law of Ukraine “On the Central Election Commission” and relevant election and other laws.

2004 Ukraine Presidential election:

- *Central Election Commission (CEC)* – a permanent state body with 15 commissioners, appointed by Parliament per candidacies submitted by the President, with a 7 year term in office. The CEC is the supreme electoral body with reference to all other election commissions. It is empowered to review complaints, among others, stemming from decisions, acts or failure to act of lower level election commissions and commissioners, national media outlets, and presidential candidates. The CEC is also charged with establishing 225 Territorial election commissions (TECs), one for each of the 225 election districts mandated by law.
- *Territorial Election Commission (TEC)* – a special collegial state body established for the presidential election period, with a chair, deputy chair and secretary, and other commissioners, with no fewer than 10 commissioners. Presidential candidates submit names of commissioners – no more than 2 commissioners per candidate. TEC commissioners are confirmed by CEC resolution. TECs may review complaints stemming from the decisions, acts or failure to act of Precinct Electoral Commissions (PECs), regional media outlets as well as voter list inaccuracies^x.
- *Precinct Electoral Commission (PEC)* – a collegial state body established for the presidential election period, with a chair, deputy chair, secretary and other commissioners. Candidate proxies submit names of commissioners – no more than 2 commissioners per candidate. PEC commissioners are confirmed by resolution of the relevant TEC. PECs may review complaints on voter list inaccuracies (at their precinct only).

Furthermore, in accordance with the Law “On Election of the President of Ukraine”^{xxxiii} and the now defunct “old version” of the Civil procedure Code, local, appellate and the Supreme courts reviewed complaints during the 2004 election as follows:

- *Supreme Court of Ukraine* – trial court for complaints stemming from decisions, acts or failure to act by the CEC and CEC members; appellate court for appeals taken from decisions of regional courts (oblast and Autonomous Republic of Crimea, Kyiv and Sevastopol City Appellate courts), where those courts were acting as trial courts.^{xxxiii}
- *Appellate courts* – courts of appellate review for local court decisions and as trial courts for complaints stemming from decisions, acts or failure to act by TECs and TEC commissioners. The Kyiv City Appellate Court also reviewed complaints stemming from acts committed by presidential candidates^{xxxiv}.
- *Local general courts* – trial courts for complaints stemming from decisions, acts or failure to act by PECs and PEC commissioners, mass media outlets, state and local government officials, as well as voter list inaccuracy issues.

Court decisions arrived at by any court of appeal or by the Supreme Court of Ukraine acting as a trial court, were final and not subject to further appeal. On the other hand, election commission decisions could be appealed in all instances either to a higher level election commission or to the relevant court.

2006 Ukraine parliamentary election:

In this framework the CEC acts as the supreme commission with jurisdiction over 225 *District election commissions (DECs)* and PECs.

- *District Election Commission (DEC)* – a special collegial body established for the parliamentary election period, with a chair, deputy chair, secretary and other commissioners. Total number of commissioners varies from 12 to 18. Seated parliamentary parties (parties in parliamentary factions) delegate 1 commissioner each and these commissioners are automatically appointed by the CEC. Other parties and electoral blocs may have their delegates included via drawing of lots at the CEC.
- *Precinct Election Commission (PEC)* – a special collegial body established by a DEC for the parliamentary election period, with a chair, deputy chair and secretary, and other commissioners. The number of commissioners varies with the size category of the DEC. Small PECs have 10 – 18 commissioners; medium PECs – 14 – 20 commissioners, and large PECs – 18 – 24 commissioners. Seated parliamentary parties (parties in parliamentary factions) automatically seat 1 commissioner each, while extra-parliamentary parties and blocs may seat 1 representative each per lots drawn at the relevant DEC.

In comparison with the 2004 presidential election, there were very few cases where election commissioners were expelled from commissions in an arbitrary, capricious or clearly unlawful manner or circumstance. On the other hand, there were serious commissioner shortages at many PECs and some DEC, and very high commissioner turnover. This was the result, in many cases, of poor party/bloc organization and inadequate financing, while in some cases parties/blocs purposefully “rotated” their commissioners to degrade the effectiveness of various commissions.

Given that the CALPU was in effect at the time of the 2006 elections, the locus of election litigation changed significantly. Though trials of complaints taken from all voter list inaccuracy cases, as well as the vast majority of precinct level cases continued to take place in local general courts (acting as “administrative courts”), appeals from such decisions, as well trials of higher level complaint cases (DECs, for example) were undertaken with appellate courts (acting as administrative appeal courts), with the high Administrative Court assuming its new role, per the CALPU, of general final arbiter of election cases.

2007 Ukraine pre-term parliamentary election:

The situation with judicial review changed during this electoral process. First of all, more than 10 of the 27 *district administrative courts* established by the CALPU had begun operation, as well as 6 of 7 planned *appellate administrative courts*. Therefore, in regions with these new courts operational, virtually all electoral disputes taken to court were reviewed by these new courts. In other regions (those without operational administrative courts), judicial review continued as in 2006. Finally, the High Administrative Court of Ukraine reviewed cases in trial and appellate stages per the CALPU, as in 2006.

6. Electoral Dispute Resolution Procedures

The following describes the subject matter jurisdiction of election commissions and courts during the 2006 parliamentary election.

Review of disputes by election commissions

The CEC is empowered to review complaints stemming from violations of election laws with regard to:

- Decisions, acts or failure to act by state and local government bodies, legal persons, their officials and servants;
- Decisions or acts of parties (blocs), unions of citizens [including NGOs], their officials or authorized representatives;
- Acts or failure to act by national media outlets, their owners, officials or production employee;
- Acts or failure to act by a candidate for MP;
- Decisions, acts or failure to act by DEC and DEC commissioners.

A DEC is empowered to review complaints with regard to:

- Decisions, acts or failure to act by state or local government bodies, legal persons, their officials and servants;
- Decisions or acts of parties (blocs), unions of citizens, their officials or authorized representatives;
- Acts or failure to act by regional or local media outlets, their owners, officials or production employee;
- Decisions, acts or failure to act by PECs and PEC commissioners;
- Voter list inaccuracies.

A PEC may act on and review complaints stemming from alleged voter list inaccuracies.

The law "On Election of people's deputies of Ukraine" contains provisions that clearly denote potential complainants, as follows:

- *Electoral process participants* – may complain as to decisions, acts or failure to act of state or local government bodies, legal persons, their officials or servants.
- *Election commissions, parties (blocs) and voters*, whose rights have been violated – may complain as to decisions or acts of parties (blocs), other unions of citizens, their officials or authorized representatives.
- *MP Candidates, parties (blocs)* – may complain as to acts or failure to act by media outlets, their owners, officials and production employees.
- *MP Candidates or parties (blocs)* – may complain as to acts or failure to act by MP candidates.
- *Voters* – as to acts or failure to act by MP candidates, if such acts or failure to act violated their electoral rights or other legally protected interest regarding their participation in the electoral process.

- *Electoral process participants* with regard to decisions, acts or failure to act by election commissions or commissioners.

The filing deadline for complaints to election commissions is generally five days from the date of decision, act or failure to act. However all complaints stemming from delicti that occurred prior to Election Day must be submitted not later than 24:00 hours of the day preceding Election Day. No filing fee is required; however the complaint must be properly drafted, in compliance with specific provisions of the Law. Complainants must ensure that their complaints are filed by a proper person, in a timely manner, with a competent commission; and are properly drafted. If any of these requirements is not met, the election commission is required to disregard the complaint.

A properly drafted and submitted complaint is reviewed at the election commission's meeting not later than on the fifth day following filing. However all complaints relating to violations committed before Election Day must be reviewed prior to voting commencing. In reviewing a complaint, an election commission may consider a fairly broad array of evidence, including: written documents and materials, including in electronic form, written explanations by electoral process participants, and government and legal person representatives, physical evidence (for example, campaign leaflets), and expert witness testimony (typically in written form). If, in reviewing a particular complaint, an election commission establishes that a person has committed an administrative violation or crime, the commission has the right to file its own complaint with law enforcement bodies so that the latter may investigate the apparent facts or allegations. The Law "On Election of people's deputies of Ukraine" requires election commissions to reach and issue only *fair*, *lawful* and *substantiated* decisions when reviewing complaints.

It should be noted also that the Law provides for shorter, tighter deadlines for filing of complaints to election commissions alleging violations committed during voting and vote counts, and for speedy review of these complaints.

More particularly, election commissioners, as well as candidates and official observers from parties (blocs) have the right to independently complete protocols of administrative violations and submit them directly to the courts. However, an in-depth review of administrative and criminal liability for such electoral "delicti" is beyond the scope of this publication.

Judicial review of disputes

Articles 172 – 175 of the CALPU establish the requirements for submitting a petition in administrative court stemming from unlawful decisions, acts or failure to act by the following eligible respondents: election commissions and commissioners, state and local government bodies and their officials and representatives, legal persons or media, candidates, parties (blocs) and official observers, as well as with regard to voter list inaccuracies. Eligible petitioners (complainants) generally are electoral process participants, although eligibility varies with the various types of violations that may be committed. Filing deadlines and review deadlines in administrative courts are nearly identical to those that govern election commission review of complaints. A petitioner filing a petition with an administrative court is generally required to pay a modest filing fee. Also Art. 172 of the CALPU requires courts to accept petitions filed against election commissions and commissioners regardless of whether the filing fee has in fact been paid by the petitioner. What's more, the CALPU's requirements for a properly drafted petition are much more liberal than the election Law's requirements for filing complaints with election commissions.

The CALPU provides administrative court judges with significant authority to remedy violations and resolve electoral disputes. It is the court's discretion to determine the type of remedy (injunction, restitution, mandamus, other), for particular disputes and violations. Courts are required to spell out, in their decisions, the specific relief granted so that rights that have been violated and interests that have been disturbed are properly restored. The losing party may

appeal the trial (lower) court decision by filing papers at the appropriate appellate court within two days of a decision's publication (declaration). Some exceptions to this term do apply.

During the 2006 parliamentary electoral process, and comparably so in other recent elections in Ukraine, courts have typically reviewed cases born out of: decisions, acts and failure to act by election commission at various levels, especially stemming from vote count and tabulation conflicts in election districts; illegal campaigning, including by government representatives, as well as media, parties (blocs) and candidates^{xv}.

At the same time, it would be fair to say that in some cases, electoral process participants during the 2006 elections blindly copied the mass litigation practices that proved vital and central to restoring the lawfulness of the 2004 presidential election, without realizing that the much more transparent and clearer legal environment in 2006 did not in fact call for the litigation equivalent of battlefield nuclear weapons in a contest (in 2006) that, for all its high temperature, did not come close to reaching the heights (and depths) of the 2004 election. Fortunately, this swiftness to litigate in 2006 did not in any way degrade the election, and if anything, may have helped Ukrainian electoral process participants and operatives to reach a "happy medium" in litigiousness during the 2007 pre-term parliamentary election.

7. Alternative Electoral Dispute Resolution (ADR)

Only courts and election commissions are authorized by law to directly review electoral disputes. Hence, there is no ADR available in Ukraine. It is also unlikely that ADR will become established in the near to mid-term, due to the relative immaturity of electoral democracy in Ukraine as well as the significant steps the country, its government and its citizenry need to take to make the "rule of law" the clear rule rather than something approaching an uneven and spotty exception.

8. How efficient is the EDR system?

The EDR system in Ukraine is rather complex. The question of efficiency should be examined from three angles:

- *Professionalism* – this is a serious problem for election commissions. On the one hand, election commissions in Ukraine have broad *quasi-judicial* powers. On the other hand, commissions are typically staffed by ordinary citizens, for whom it is often difficult to master the large body of regulations that govern the work of election commissions. As a result, some of the legal mechanisms laid down in the "Law on Election of People's deputies" and other election laws are not implemented due to insufficient knowledge, experience or skills in the commissions.
- *Availability of legal information* – following the 2004, and more particularly the 2006 elections, the USAID-supported "Strengthening Electoral Administration in Ukraine Project (SEAUP)" and SEAUP II projects co-developed, with the Central Election Commission of Ukraine, a series of compendia that contained hundreds of significant court decisions stemming from these elections. These compendia were promptly distributed within the Ukrainian court system^{xvixvixviii}. Likewise, the CEC publishes all its decisions at its official website www.cvk.gov.ua. However, these measures are not sufficient to address legal information issues fully, since lower-level election commission decisions are not published and there is no single accessible database of all election disputes brought to court.
- *Legislation and practice* – the frequency of recent elections and constant (and often rather illogical) legislative amendments have meant that the courts are only beginning to establish a reasonably stable set of EDR practices, based in significant part on the new CALPU. In April 2007 the Plenum of the High Administrative Court of Ukraine adopted Resolution #2 "On the Practice of Administrative Court Application of the CALPU provisions during Review of disputes stemming from legal relations established in the Electoral Process or in the Process of Referendum".

9. Politics and environment of the EDR system

The Ukrainian political system is heavily dominated by personalities and business clans. While the number of nominal political parties has hovered around 100 in recent years, the number of parties or political blocs with serious national power, and demonstrated electoral success, is between 5-10, with continued consolidation a likely emerging trend, and a burgeoning change in “political generations” in the cards as early as at the January 2010 presidential election. Even most of the national political heavyweight parties and blocs are not well organized and are generally unresponsive to voter needs and interests – instead they are dominated by the business and narrow political interests of a national political “elite” that may number several thousand persons, at best.

The gap, or segregation, between the elites and the electorate helps drive citizen apathy to call elected politicians to account in between elections. The closed lists proportional system of parliamentary elections reinforces such apathy while concentrating real power within political movements in the hands of a tiny number of national officials, and helping to breed a whole class of incumbent MPs who are not personally accountable to the national electorate, and do not have specific constituents.

All these factors continue to encourage attempts by political actors to manipulate the Ukrainian EDR system to their particular advantage, in often blatant disdain for the system’s permanent elements (i.e. the courts), and frequent abuse of the administrative elements (i.e. election commissions), beginning with attempts at packing and manipulation of the Central Election Commission, and continuing down in a similar vein with lower level election commissions that are specially established for each particular election.

Despite this array of negative factors, however, the Ukrainian EDR system has shown, beginning in 2002, significant and clear progress in its performance and its ability to generally uphold greater rule of law at elections, than in earlier years. In this regard, the 2004 presidential election, and the role played by the courts, was seminal in setting a new standard of adjudicative objectivity and independence in the elections area. Put briefly, the picture is one of clear and systemic improvements in EDR that, albeit, continue to be severely taxed by every new national election, something likely to continue at least through the next presidential election.

10. General Assessment

It should be noted that the Ukrainian system of electoral dispute resolution began developing in a serious fashion with the 2002 parliamentary election. Although Ukrainians are more than skeptical at times about the independence and objectiveness of the courts, this is less so the case in the electoral context, and electoral process participants use the courts and other elements available for dispute resolution with considerable vigor to restore rights that have been violated. Indeed, the contradictions between electoral and procedural legislation noted in this study, had earlier stimulated Ukrainian jurists to legal commentaries on the matter, resulting in at least some doctrinal consensus amongst the courts as to proper application of particular provisions of the CALPU.

ⁱ *Serhii Kalchenko* Legal mechanisms for challenging violations of the Law of Ukraine “On Election of the President of Ukraine” – Kyiv: Nora Druk, 2004.

ⁱⁱ *S. Kalchenko* Legal regulation of measures to fight material corruption of voters in the new edition of the Law of Ukraine “On Election of the President of Ukraine // Conference proceedings. Kyiv, April 28, 2004. – Kyiv: Nora Druk, 2004, p. 24.

ⁱⁱⁱ *S. Kalchenko* Peculiarities of applying the Code on Administrative Legal Proceedings of Ukraine in challenging violations of electoral legislation // “Yurydychnyi Zhurnal”. – 2005 - № 11 (41) – pp. 67 - 73.

^{iv} *S. Kalchenko* Legal opportunities for administrative challenges to violations of the Law of Ukraine “On Election of people’s deputies of Ukraine” // “Yurydychnyi Zhurnal”. – 2005 - № 9 (39) – pp. 102 - 113.

- ^v S. Kalchenko Code and Law: A study of potential legal “risks” in court challenges of violations of the Law “On Election of people’s deputies of Ukraine” // “Yurydychna Hazeta”. – № 18 (54) – September 29, 2005.
- ^{vi} V.V. Kryvenko, I.L. Samsin, V.L. Marynchenko, O.N. Panchenko, M.I. Smokovych, V.I. Spivak, M.V. Buromenskiy, F.V. Venislavskiy, S. Kalchenko, V.P. Kolesnyk, O.V. Serdyuk Procedural peculiarities of judicial review of administrative disputes stemming from violations of election legislation // Edited by V.V. Kryvenko – Kharkiv, 2006. – 351 pp.
- ^{vii} S. Kalchenko Significant problems of legislation on conducting electoral campaigning: was there a purpose? // “Yurydychna Hazeta” – № 5 (65) – March 20, 2006.
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- ^{ix} Serhii Kalchenko A study of novelties in legislation concerning liability for election law violations // “Elections and Democracy” – 2006. – № 1 (7) – pp. 109-121.
- ^x Yarema Bachynsky Problems in organizing the work of election commissions: application of the law and results of observation // Election of the President of Ukraine – 2004: problems of theory and practice. A compendium of proceedings from the international scholar and practitioner conference. Kyiv, June 9-10, 2005. – Kyiv: Arika, 2005. – pp. 546-554.
- ^{xi} Serhii Kalchenko Certain aspects of the legal positions taken by the Supreme Court of Ukraine in reviewing electoral cases in 2004 // “The Right to Choose” – 2005 – № 1 – pp. 57-63.
- ^{xii} S. Kalchenko Electoral legislation problems viewed through the prism of courts’ legal positions in resolving electoral disputes // Election of the President of Ukraine – 2004: problems of theory and practice. A compendium of proceedings from the international scholar and practitioner conference. Kyiv, June 9-10, 2005. – Kyiv: Arika, 2005. – pp. 217-236.
- ^{xiii} S. Kalchenko Some aspects of court practice in reviewing electoral disputes in 2004 (Part 1) // “Yurydychnyi Zhurnal” – 2005 - № 6 (36) – pp. 103-113.
- ^{xiv} S. Kalchenko Some aspects of court practice in reviewing electoral disputes in 2004 (Part 2) // “Yurydychnyi Zhurnal” – 2005 - № 7 (37) – pp. 93-99.
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