Election Dispute Resolution
2019 Ukrainian Early Parliamentary Elections
Frequently Asked Questions

What is election dispute resolution?
Election dispute resolution (EDR) is the process of resolving complaints and addressing violations relating to all stages of the electoral process.

Where are the rules governing the election dispute resolution process?
Ukraine’s Parliamentary Election Law (Chapter XII) governs the procedure for resolving electoral disputes by Ukraine’s Central, District and Precinct Election Commissions, while the Code of Administrative Adjudication outlines how the courts are expected to deal with the election-related disputes. CEC Regulation No 133 outlines the procedure for resolving election disputes by the election commissions specific to parliamentary elections. Sanctions for various election-related offences are laid down in the Criminal Code, the Code of Administrative Offences, as well as in the Parliamentary Election Law.

Who can file a complaint/lawsuit?
In parliamentary elections, a complaint to an election commission can be filed by:

- lower-level election commission;
- an MP candidate or his/her proxy;
- a political party that nominated at least one MP candidate for elections;
- an official observer from a political party that nominated the list of candidates for elections, from the single-mandate constituency MP candidate or NGO accredited to observe the election; or
- a voter, whose rights or legitimate interests have been affected by the challenged decision, action or inaction.

The ability to file a lawsuit to a court depends on the type of the case, i.e. some lawsuits can be filed by the parties and candidates, while others can be filed by voters, election commissions or even observers.

Where should a complaint be filed?
Depending on its type, a complaint/lawsuit may be filed with the Central Election Commission (CEC), a District Election Commission (DEC) or a Precinct Election Commission (PEC); or to a local court of general jurisdiction, a District Administrative Court, the respective administrative court of appeals or the Supreme Court. Specific jurisdiction is outlined below:
Jurisdiction of election commissions in parliamentary elections:

<table>
<thead>
<tr>
<th>CEC</th>
<th>DEC</th>
<th>PEC</th>
</tr>
</thead>
<tbody>
<tr>
<td>• inaction of the DEC</td>
<td>• decisions/action/inaction of the PEC or PEC member</td>
<td>• violations committed by a candidate proxy, party agent or official observer during voting, i.e. between 8:00 and 20:00 hrs. on election day.</td>
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<tr>
<td>• actions or decisions of the party that nominated the candidate list</td>
<td>• actions or decisions of political party that nominated the respective single-member constituency candidate</td>
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<td>• actions or inaction of the MP candidate</td>
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Jurisdiction of courts in parliamentary elections:

<table>
<thead>
<tr>
<th>Local court of general jurisdiction</th>
<th>District Administrative Court</th>
<th>Administrative Court of Appeals</th>
<th>Supreme Court</th>
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<tbody>
<tr>
<td>• actions/inaction of media/media owners/officials</td>
<td>• decisions, actions, inaction of DEC, DEC member</td>
<td>• appeals against the first instance court decisions;</td>
<td>• decisions, actions, inaction of the CEC related to the election results;</td>
</tr>
<tr>
<td>• decisions, actions, inaction of the PEC, PEC member</td>
<td>• actions or inaction of MP candidate or party, candidate’s proxy or party agent</td>
<td>• decisions, actions or inaction of the CEC/CEC member; the case is considered by the Sixth Administrative court of appeals in Kyiv</td>
<td>• appeals against the decisions of the Sixth administrative court of appeals delivered in the first instance</td>
</tr>
<tr>
<td>• inaccuracies in the voter lists</td>
<td>• decisions, actions, inaction of public authorities/public officials</td>
<td></td>
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<td></td>
<td>• actions/inaction of official observers</td>
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<td>• decisions/actions of NGOs</td>
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When must a complaint/lawsuit be filed?

A complaint to the election commission can be filed within 5 days of the violation (with a few exceptions depending on the type of the case). Lawsuits against violations committed before the election day can be filed within 5 days of the violation (except for lawsuits against inaccuracies on the voter lists), while lawsuits against violations committed on election day and afterwards can be filed within two days of the violation.
When should a decision on a complaint/lawsuit be expected?

In almost all cases, the CEC, DEC, PEC or courts are required to provide a decision within two days of receiving the complaint. This is a very tight deadline which may cause difficulties if the allegation is complex and/or requires investigation. When consideration of a complicated case by the court takes more than two days, the court must consider the case regardless of the deadline.

Is there a right to appeal?

Yes, the Code of Administrative Adjudication provides that all court decisions can be challenged to the respective next instance court (i.e. to the respective administrative court of appeals or to the Supreme Court/Grand Chamber of the Supreme Court depending on the court that considered the case in the first instance).

What information must be provided to file a complaint/lawsuit?

A complaint/lawsuit must comply with the detailed requirements set forth in the Parliamentary Election Law (if filed to an election commission) or the Code of Administrative Adjudication (if filed to court). The list of mandatory requirements includes full contact details of all the parties in a case, the substance of the violation, explanation and evidence, precisely formulated claims and description of the decision to be adopted in the case, among other things. Failure to comply with any of these requirements will result in returning the lawsuit/complaint for correction without considering it on its merits.

Complaints regarding incorrect or missing records in voter lists, however, can be filed using a simple form; they must explain the substance of inaccuracy, the claims and their substantiation/evidence.

According to the findings of OSCE/ODIHR Election Observation Missions, most complaints filed to the election commissions in the past were rejected and sent for corrections as they failed to comply with the legal requirements to a complaint. Overall, detailed requirements for filing complaints and lawsuits puts a significant burden on the complainant/plaintiff.

What types of complaints and violations exist in the law, and which body has jurisdiction over each complaint or violation?

The table below outlines the types of complaints that can be made, and who has authority to deal with such complaints according to the Ukrainian legal framework:

<table>
<thead>
<tr>
<th>Category of Allegation</th>
<th>Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Voter Registration/Voter Lists</td>
<td>Register Maintenance Body and local court of general jurisdiction (which must receive an opinion on the claim from the Register Maintenance Body)</td>
</tr>
<tr>
<td>Candidate nomination and candidate registration, including qualifications of candidates</td>
<td>District Administrative Court (candidate nomination by political party), Sixth Administrative Court of Appeals (candidate registration by the CEC)</td>
</tr>
<tr>
<td>Violation of election campaigning requirements</td>
<td>Local court of general jurisdiction (if committed by media), District Administrative Court (if committed by the party, MP candidate or public official or body of the state/local self-government)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Polling and Counting</th>
<th>District Election Commission or local court of general jurisdiction</th>
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<tbody>
<tr>
<td>Vote tabulation</td>
<td>District Administrative Court</td>
</tr>
<tr>
<td>Violations committed by the PEC or a PEC member</td>
<td>District Election Commission or local court of general jurisdiction</td>
</tr>
<tr>
<td>Violations committed by the DEC or a DEC member</td>
<td>Central Election Commission (only inaction of the DEC)/District Administrative Court</td>
</tr>
<tr>
<td>Violations committed by the CEC or a CEC member (if violations are not related to the establishment of the election results)</td>
<td>Sixth Administrative Court of Appeals</td>
</tr>
<tr>
<td>Election Results</td>
<td>Supreme Court</td>
</tr>
<tr>
<td>Election-Related Criminal Offences</td>
<td>Police (launching the case and investigation); criminal cases are considered by the local courts of general jurisdiction</td>
</tr>
<tr>
<td>Boundary Delimitation/Establishment of Election Precincts</td>
<td>District Administrative Court (the cases related to districting/establishing the election precincts are not considered election disputes as the election districts and election precincts are created before the start of the election process; such cases are considered based on the general provisions governing adjudication of administrative disputes rather than on election-specific provisions governing the adjudication of the elections disputes)</td>
</tr>
</tbody>
</table>

**Is there a filing fee for complaints/lawsuits?**

There is no fee or other charge for filing a complaint to an election commission. There are two types of fees for filing a lawsuit to courts: UAH 740 (USD 27) for the lawsuits filed by an individual (legal person) and UAH 1,853 (USD 68) for the lawsuits filed by public authorities (such as election commissions) or a private organization or entity (legal person). The fee for filing an appeal to a higher-level court is determined as one and a half times the fee paid to file the lawsuit to the first instance court. Voters who file lawsuits against inaccuracies in the voter lists are exempt from paying any fees.

**What should I expect after I file a complaint/lawsuit?**

Once the complaint/lawsuit has been registered, the election commission or court checks whether it is admissible or needs to be returned to the complainant/plaintiff for corrections. If the complaint is admissible and the body has jurisdiction, the case is then heard. Given the time constraints, the Code of Administrative Adjudication allows for a “simplified” consideration of the case if all the parties agree to this.

Although courts and commissions have the right to request additional information, decisions are generally based on the available documents/evidence due to time constraints. In the past, some courts failed to consider a few complicated cases before the legally established deadline and decisions were delivered after the deadline (which is consistent with the clarifications approved by the Constitutional Court and the High Administrative Court). The verdict should be shared with the complainant immediately after it is delivered. An appeal is then possible. Remedies are delivered immediately in cases related to inaccuracies in the voter lists, while in other cases they are delivered once the final court decision enters into legal force or once the deadline for filing an appeal against the first instance court decision has expired.
Who has the responsibility to prove an allegation?

The complainant/plaintiff has the duty to prove his or her allegation in all cases. If certain evidence is missing to properly substantiate the claims, the election commission or court may request additional evidence while considering the case, for example by interviewing officials or witnesses; or requesting documents, expert opinions or opinions of the voter registration bodies.

National Police Officers on duty at a polling station are responsible for documenting administrative and criminal offences, while further investigation is conducted by police investigators. The election commissions are not allowed to investigate complaints against crimes and administrative offences and must forward them to the police.

What type of evidence should be presented?

The types of evidence required depend on the allegation. In the case of inaccuracies in the voter list, the plaintiff/complainant can present a copy of their passport/biometric ID card with full name and place of residence. When the vote-counting process is being challenged, a plaintiff/complainant may present a copy of the results protocol, meeting minutes from the commission that counted the votes, or observer reports. In such cases, the claims can also be substantiated by witness statements from those present.

What is the standard of evidence?

While considering a case, the election commission or court will seek to substantiate facts and evidence, without relying on hearsay, assumptions or suppositions. An issue before a commission or court shall be proved on the balance of probabilities.

What if an election commissioner commits a violation?

Any violations committed by an election commissioner are handled by the courts and could result in dismissal (termination of authority).

What constitutes an administrative offense and a crime?

The Parliamentary Election Law sets several restrictions and prohibitions, but the sanctions for committing an administrative offence or crime are determined by the Code of Administrative Offences and the Criminal Code. Minor offences (such as failure to submit a campaign finance report in time, violation of campaigning restrictions, failure to execute a decision of the election commission) will result in administrative penalties (fines) to be imposed by the courts. Serious offences, such as vote buying, voter intimidation, abuse of office, violation of the secrecy of vote, receiving illegal contributions for election campaigning, fraudulent voting or forgery of ballot papers and other sensitive documents, are addressed in the Criminal Code. Penalties include imprisonment for three to ten years depending on type of crime, prohibition to hold public office for a certain period, or fines.

Will the decision be published?

A copy of the court or commission decisions are given only to the participants of the hearing (the plaintiff/complainant, respondent and other participants). Court decisions must be listed in the State Register of Court Decisions which can be reviewed by any citizen. Decisions on complaints considered by election commissions must be published on the CEC website.
What types of remedies are available?

An election commission or court have a range of remedies at their disposal. If they have proven that a violation is ongoing, they may adopt a decision to stop the violation from continuing. They can also overturn an illegal decision.

The legal framework governing the parliamentary elections in many cases does not stipulate any penalty for a certain violation. For instance, taking photos of the ballot paper in the polling booth is formally prohibited but is not punishable (carries no sanctions). The same applies to the distribution of goods and services to the voters as part of election campaigning; while prohibited, there are no sanctions unless the cost of any goods exceeds three percent of the minimum monthly salary (i.e. UAH 125, approximately USD 4.50).

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Resources

- The Constitution of Ukraine (Link)
- Parliamentary Election Law, November 17th, 2011 (with amendments); (Link) (in Ukrainian)
- Code of Administrative Adjudication, July 6th, 2005 (Link) (in Ukrainian)
- Criminal Code of Ukraine, April 4th, 2001 (Link) (in Ukrainian)
- Code of Administrative Offences, December 12th, 1984 (Link) (in Ukrainian)
- CEC Regulation No 133 on the Procedure for resolving election disputes by the election commissions specific to parliamentary elections, July 31st, 2012 (Link) (in Ukrainian)
- CEC Website (Link)
- CEC Website on Early Parliamentary Elections (Link).