

INTERNATIONAL ELECTION OBSERVATION MISSION (IEOM) Ukraine — Local Elections, 25 October 2015

STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

Kyiv, 26 October 2015 – This Statement of Preliminary Findings and Conclusions is the result of a common endeavour involving the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the Congress of Local and Regional Authorities of the Council of Europe (Congress) and the European Parliament (EP).

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The assessment was made to determine whether the election complied with OSCE commitments and Council of Europe standards, as well as international obligations and domestic legislation. Each of the institutions involved in this IEOM has endorsed the 2005 Declaration of Principles for International Election Observation. This Statement of Preliminary Findings and Conclusions is delivered prior to the completion of the election process. The final assessment of the election will depend, in part, on the conduct of the remaining stages of the election process, including the tabulation of results and the handling of possible post-election day complaints and appeals. The OSCE/ODIHR EOM will maintain a presence in Ukraine for observation of the foreseen second rounds of mayoral elections. The OSCE/ODIHR will issue a comprehensive final report, including recommendations for potential improvements, some eight weeks after the completion of the election process. The Congress final report will be adopted at the next plenary session in March 2016. The EP will present its report at an upcoming meeting of the Committee on Foreign Affairs.

PRELIMINARY CONCLUSIONS

The 2015 local elections were widely viewed as a barometer of the authorities' intentions to maintain the positive standards achieved during the 2014 presidential and parliamentary elections. The elections were competitive, well organized overall and the campaign generally showed respect for the democratic process. Nevertheless, the complexity of the legal framework, the dominance of powerful economic groups over the electoral process, and the fact that virtually all campaign coverage in the media was paid for, underscore the need for continued reform. Additional efforts are needed to further enhance the integrity of and public confidence in the electoral process. The voting and counting process was transparent and orderly overall, despite the lack of clarity in the procedural provisions.

The elections took place in challenging political, economic, humanitarian and security environment, and against the backdrop of a constitutional reform process aiming at decentralization. The context was characterized by the illegal annexation of the Crimean peninsula by the Russian Federation and the temporary control of parts of the territory of the Donetsk and Luhansk *oblasts* by illegal armed groups. This made it impossible for over 5 million voters in these areas to vote. The Central Election Commission (CEC) made resolute efforts to organize elections throughout the country, but they could not be held in parts of Donetsk and Luhansk *oblasts* and on the Crimean peninsula.

The election law was adopted less than four months before election day in a non-inclusive manner. Despite long-standing OSCE/ODIHR and the Council of Europe's Venice Commission recommendations, the legal framework continues to be fragmented, contains gaps and ambiguities and lacks clarity. Overall, the legal framework falls short of some OSCE and Council of Europe commitments and international standards.

The CEC operated collegially overall, meeting legal deadlines. Cases of decisions along political lines, of evasion of open discussion during sessions, of arbitrary decision-making, as well as abuse of authority by some Territorial Election Commissions (TECs), undermined confidence in these commissions. The complexity of the election law raised concerns among the commissioners and affected their performance. A number of interlocutors voiced allegations of corrupt practices related to the trading of seats in the Precinct Election Commissions (PECs).

OSCE/ODIHR EOM interlocutors expressed general trust in the voter registration system. Voters who were away from their voting addresses on election day were not able to cast their ballots, except for those voting in special election precincts established in medical institutions. The law does not provide for voting by internally displaced persons (IDPs).

The restrictive interpretation and inconsistent implementation of candidate registration rules hindered the right for candidates to stand on an equal basis in several instances, contrary to OSCE and Council of Europe commitments and other international obligations and standards. These problems persisted throughout the pre-election period, affecting the equal opportunity to campaign. In a number of instances observed by OSCE/ODIHR EOM, TEC decisions with respect to the registration of certain candidates and party lists appeared politically motivated and designed to exclude certain political forces from participating in the elections. Often the CEC and the courts intervened to restore the rights of candidates.

The campaign environment was competitive and voters had a wide array of parties and candidates to choose from. However, it was dominated by wealthy donors and their associated business interests who focused their resources on the mayoral and *oblast* council races. The absence of ceilings on campaign expenditures further prevented the level playing field during the campaign period. Campaign finance regulations remained insufficiently transparent. The OSCE/ODIHR EOM received widespread allegations of vote-buying. In some areas the campaign was marred by threats and physical attacks targeting candidates and campaign workers.

The media sector with its vividness and turmoil reflects Ukraine's overall political climate. The growing power and politicization of media groups affect both national and regional media. The political and business interests controlling the media often influence editorial policy, and the malpractice of paid-for journalism is widespread. The legal framework overregulates pre-election coverage, yet poorly defines provisions for it, at odds with OSCE commitments and international standards. The halting and incomplete transformation of the National Television and Radio Company (NTRC) from a state-owned to a public broadcaster hampered independence and editorial freedom of the NTRC called for by international obligations. OSCE/ODIHR EOM media monitoring showed that only three registered parties were granted meaningful editorial coverage across the media landscape. Most of the monitored TV channels with a nationwide reach, including the NTRC, predominantly featured two to three political parties each within their prime time programming.

National minorities' participation in these elections was affected by the crisis in the east and the temporary control of parts of the territory by illegal armed groups, and the illegal annexation of the Crimean peninsula. Representation of national minorities was further hindered by several aspects of the election legislation, especially the inability to self-nominate or run independently in local council races, as well as the increased five per cent threshold for party lists.

Most complaints filed with the CEC were considered in private by individual CEC members, which undermined the transparency and collegiality of the process. Courts handled complaints and appeals within the established timelines respecting due process. However, non-uniform interpretation of the law undermined legal certainty, as well as the principle of equality before the law.

Citizen observer groups and international organizations could register an unlimited number of observers who have broad rights, including the right to attend sessions of all election commissions and to receive documents, including results protocols. The inclusive accreditation of observers contributed to the transparency of the electoral process.

For the first time, the election law introduced the requirement of at least 30 per cent representation of each gender on a party list, but regrettably did not provide for any sanctions for failure to comply. According to the CEC, women comprised about 35 per cent of all registered candidates for the proportional races and 13 per cent in mayoral races. However, female candidates were largely absent from the media landscape, and a small number of them featured in the campaign across the country. Women are well-represented at the CEC and on the TECs, including in leadership roles.

The voting and counting process was transparent and orderly overall. Printing and distribution of ballots proved problematic in many parts of the country. Despite the lack of clarity in the procedural provisions, the PECs were generally able to organize the voting and counting well. Tabulation was ongoing at the time of publication. Party and candidate agents were present in large numbers during all stages of the process, while citizen observers were noted less frequently.

PRELIMINARY FINDINGS

Background

These local elections were held against the backdrop of armed conflict in the East of Ukraine and a constitutional reform process aiming at decentralization. The planned transfer of a number of executive functions from central state administrative bodies to the elected local councils raised the stakes for political parties and candidates.

No elections took place in the Autonomous Republic of Crimea, the city of Sevastopol and, as described in resolutions of the Central Election Commission (CEC), in certain areas of Donetsk and Luhansk regions (*oblasts*) which are declared by the parliament as temporarily occupied territories. In addition, the CEC declared the holding of elections not possible for security reasons in some territories of the two oblasts that are administered by civil-military administrations of the Ukrainian authorities.¹ This made it impossible for over 5 million voters in these areas to vote.

Local elections were contested by 132 political parties. The Bloc Petro Poroshenko party, joined by the United Democratic Alliance for Reform – UDAR, fielded most of its candidates under the new party name – the Bloc Petro Poroshenko Solidarnist (BPPS). The People's Front (PF) chaired by the prime minister decided not to take part in the elections; its members mostly ran with the BPPS. The Communist Party of Ukraine (CPU) was banned by court decision.² Members of the once dominant and now dissolved Party of Regions (PoR) competed on other political party lists or as self-nominated candidates for mayoral positions.³

¹ CEC resolutions Nos. 207 and 208 declared that it was not possible to organize elections for 91 local councils in Donetsk and 31 local councils in Luhansk *oblasts*. In addition no elections for regional councils were held in the two *oblasts*. According to the CEC, these decisions were based entirely on the information provided by military/civil administrations and affected 525,588 voters from both *oblasts*.

² On 9 April 2015, the Ukrainian parliament passed the law “On condemnation of the Communist and Nazi totalitarian regimes in Ukraine and banning of propaganda of their symbols”. See the [statement by the OSCE Representative on Freedom of the Media](#). In these elections former CPU members were running amongst others with the party New State (NS).

³ Former PoR members contested the elections amongst others with the Opposition Bloc (OB), Nash Kray (NK), Renaissance and the BPPS.

Legal Framework and Election System

Local elections are primarily regulated by the Constitution and the Law on Local Elections (hereinafter, the election law), as well as regulations of the CEC.⁴ The election law was adopted less than four months before election day in an expedited manner and did not provide for effective and inclusive public consultation, contrary to OSCE commitments and international good practice.⁵ However, it had broad support from the ruling coalition. In addition to criticizing the process of adoption of the law, most of OSCE/ODIHR EOM interlocutors voiced concerns regarding its complexity.

The election law introduced three electoral systems for the local elections, increased the threshold to five per cent, limited candidacy rights of independent candidates, provided for a possibility to recall elected mayors and council members by a petition initiated by voters, and, for the first time introduced the requirement of at least 30 per cent representation of each gender on a party list, but regrettably did not provide for any sanctions for political parties that fail to comply.⁶ The law does not provide for voting by internally displaced persons (IDPs).⁷

Despite long-standing OSCE/ODIHR and Council of Europe recommendations, the legal framework continues to be fragmented. It contains gaps and ambiguities and lacks clarity with regard to candidate registration, campaign and campaign finance rules, electoral dispute resolution, and media regulations, among other issues. The CEC issued a number of regulations clarifying various aspects of the law, however, it did not fully address the existing uncertainties in a timely manner. These shortcomings were aggravated by inconsistent implementation of the legislation by election commissions and courts. A number of previous OSCE/ODIHR and the Venice Commission recommendations remain unaddressed, including measures to ensure stability and impartiality of election administration, procedures for candidate registration, transparency of campaign finance, and effective electoral dispute resolution. Overall, the legal framework falls short of some OSCE and Council of Europe commitments and other international obligations and standards and does not ensure integrity of several key aspects of the electoral process.

Councillors in villages and settlements and mayors in cities with fewer than 90,000 voters are elected by a first-past-the-post system, while mayors in cities with at least 90,000 voters are elected by absolute majority, through a two-round system.⁸ Region, district, city, and city district councils are elected under a multi-member constituency proportional electoral system that Ukrainian law-makers refer to as an “open list” system.⁹ This newly-introduced electoral system was difficult for voters to understand and for the election commissions to implement.

⁴ Other relevant legislation includes the Law on the CEC, the Law on the State Voter Register, the Law on Political Parties, the Code of Administrative Procedure, and the Criminal Code.

⁵ Paragraph 5.8 of the 1990 OSCE Copenhagen Document states that the legislation will be adopted at the end of a public procedure. The [Code of Good Practice in Electoral Matters](#) of the Council of Europe’s European Commission for Democracy through Law (Venice Commission) states that “the fundamental elements of electoral law, in particular the electoral system, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendments less than one year before an election”, see point II.2.b.

⁶ On 23 September the CEC adopted a regulation clarifying that non-fulfillment of the 30 per cent gender quota requirement cannot be the ground for rejection of registration of candidate lists. The Kyiv Administrative Court of Appeals ruled that the clarification was illegal, which was later overruled by the High Administrative Court.

⁷ First instance courts rejected all complaints filed by the IDPs to be included in voter lists. In one instance Kyiv Administrative Court of Appeal overturned the decision of the lower level court ruling that the IDP certificate is a proof of registration, and obliged the PEC to include an IDP from the Crimean peninsula in the voter list.

⁸ If no candidate for mayor’s office receives a majority of votes cast, a second round will be held no later than three weeks between the two leading candidates.

⁹ This electoral system cannot be considered an open list system, since voters are not given the possibility to choose among different candidates, which is the key feature of open list systems.

A total of 168,450 constituencies were established by the respective Territorial Election Commissions (TECs). The law clearly states that the boundaries of single mandate districts should be contiguous, but lacks clarity with respect to this requirement for multi-mandate districts.¹⁰ By law, the number of voters should be equally distributed among the constituencies, however, the distribution of voters and delimitation of constituencies rests solely at the discretion of TECs with no criteria for legally permissible deviations. The law caps the share of councillors representing a city in a regional council at 20 per cent which disadvantages large urban areas, such as Kharkiv, Odesa and Lviv and favours smaller municipalities in these regions. This is inconsistent with the principle of equality of the vote under paragraph 7.3 of the 1990 OSCE Copenhagen Document and international good practice.¹¹

Election Administration

These elections were administered by the CEC, 10,778 TECs, and 29,261 Precinct Election Commissions (PECs). The CEC has been holding regular open sessions and operated collegially overall, meeting legal deadlines. Most CEC resolutions were passed unanimously, however issues related to candidate registration, IDP voting, and gender quota were passed either with dissenting opinions or with a split vote, reflecting the controversy and sensitivity of these issues.

Some stakeholders have challenged the legitimacy of the CEC on the grounds that mandates of most of CEC members have expired.¹² Decisions along political lines, abuse of authority by TECs and evasion of open discussions on sensitive issues during sessions were reported to and observed by OSCE/ODIHR EOM. This undermined key principles of collegiality, transparency and impartiality, as well as confidence in some commissions.¹³ In the later stages of candidate registration process, the CEC faced consistent resistance and even obstruction of the process by several TECs that refused to implement the CEC and court decisions. Consequently, the CEC requested the General Prosecutor's office to ensure implementation of those decisions.¹⁴

Aspects of the organizational preparations for elections proved difficult. Many TECs lacked sufficient financial and other operational resources, in particular printed materials, but overcame challenges and organized the process adequately.¹⁵ Ballots were printed at local level. In some areas printing of ballots was controversial and caused turmoil contributing to lack of trust in the process.¹⁶ In several regions TEC members reported intimidation and threats against them.¹⁷ The

¹⁰ All four electoral districts in Berehovo district in Zakarpattia *oblast*, for example, lack contiguity among the administrative units that comprise each district.

¹¹ In Kharkiv, Odesa and Lviv *oblasts* between 55 and 31 per cent of the population lives in the regional centers. According to point I.2.2.2 of the Code of Good Practice of the Venice Commission, seats must be evenly distributed among the constituencies.

¹² CEC's 15 members, 5 of whom are women, are appointed for seven-year term by the parliament, on the president's proposal. On 13 March 2014, the Law on the CEC was amended enabling CEC members to continue to fulfill their functions after their term expired.

¹³ Article 11 of the law stipulates that elections process is based on the principles of legality, political pluralism, collegiality, transparency and impartiality. For instance, Mariupol, Cherkasy, Berdiansk, Sloviansk, Krasnoarmiisk city and Kharkiv region TECs were observed by the OSCE/ODIHR EOM as strongly politicized, while Dnipropetrovsk, Dniprodzerzhynsk, Melitopol, Yavoriv district TECs were reported to lack transparency.

¹⁴ The CEC had to terminate the powers of seven TECs that resisted the implementation of the CEC and court decisions. In some instances, the CEC had to replace some members in the newly formed commissions to resolve deadlocks on registration of candidates.

¹⁵ A high number of TECs expressed concern regarding the limited size of their financial allocation and the late transfers of funds. A few OSCE/ODIHR EOM observers reported that some TECs had to initially fund their operations from their members' private funds.

¹⁶ For instance, in Mariupol, decision of the city TEC regarding the selection of print house caused dissatisfaction among the stakeholders who challenged the legality of TEC decision alleging fraud. Dissatisfaction of local stakeholders grew into protests in front of the ballot printing company. In Ternopil city, the print house did not destroy extra ballots as per legal and contractual requirements, which led to police investigation.

complexity of the election law raised concerns among the commissioners and affected their performance.

TECs and PECs are formed based on nominations from eligible political parties and candidates.¹⁸ The existing formula for the composition of TECs and PECs puts parties with parliamentary factions at an advantage, since in addition to the two guaranteed seats, they could also participate in the lottery for allocation of the remaining seats.¹⁹ Analysis of the distribution of executive positions among the 640 TECs formed by the CEC demonstrates that faction parties are over-represented.²⁰

A number of OSCE/ODIHR EOM interlocutors voiced allegations of corrupt practices related to the trading of seats in the commissions by so-called ‘technical’ candidates and parties.²¹ This raised questions regarding the integrity and impartiality of election commissions and further undermined the trust in election administration.²² By law, nominating subjects are free to recall their nominees from the commissions up until election day.²³ Arbitrary replacements, for instance, of chairpersons, affected the work of several commissions.²⁴

OSCE/ODIHR EOM long-term observers (LTOs) reported that in most cases PECs were formed by the legal deadline of 9 October. However, the formation process varied from region to region, depending on the competence of election commissions and consistency of implementation of procedures. In some areas the PEC formation process mirrored local political party rivalries and resulted in partisan decision-making, causing mistrust and dissatisfaction among the stakeholders.²⁵ The rate of replacement of PEC members in some of *oblasts* reached as much as 50 per cent.

Almost all TECs had to contend with a lack of nominees for PEC members, especially in rural areas.²⁶ In order to respond to the shortfall, many TECs requested local authorities to identify qualified polling staff. This placed the independence of commissions in doubt since many acting mayors and councillors were running as candidates. In the absence of legal provisions on the matter, the TECs distributed PEC executive positions in varying ways.

¹⁷ For instance Haysin district TEC in Vinnytsia, Kotovsk city TEC in Odesa, Dnipropetrovsk city TEC and Bilhorod-Dnistrovskyi district TEC.

¹⁸ Parties represented by a faction in the parliament have two guaranteed members in each TEC and one guaranteed member in each PEC. The remaining seats in TECs are filled by lottery, from among eligible political parties and in PECs, by eligible parties and candidates

¹⁹ The Code of Good Practice of the Venice Commission, states that political parties should be equally represented on election commissions, see point II.3.1.e.

²⁰ The CEC formed 640 TECs in oblasts, districts, cities of regional importance and Kyiv, and districts in Kyiv, which in turn formed TECs at the level of cities, city districts, villages and settlements. The biggest share of executive positions in these 640 TECs were allocated to the BPPS (18 per cent), followed by *Batkivshchyna* (16 per cent), the PF (13 per cent), the OB (12 per cent), the Radical Party (RP) (11 per cent), with the remaining 30 per cent being distributed among a large number of other contestants. The election law provides that chairperson, deputy chairperson and secretary must be nominated by different entities but is silent regarding the method of distribution of executive positions.

²¹ For instance, such allegations were conveyed to the OSCE/ODIHR EOM in Odesa and Kyiv cities

²² Paragraph 20 of the 1996 General Comment No. 25 of the International Covenant on Civil and Political Rights (ICCPR) emphasizes the need to conduct the electoral process fairly, impartially and in line with established laws compatible with the Covenant. Section II.3.1.b of the Venice Commission’s Code of Good Practice in Electoral Matters states that independent and impartial electoral commissions must be set up at all levels.

²³ The Code of Good Practice of the Venice Commission recommends “bodies that appoint members to electoral commissions should not be free to recall them, as it casts doubt on their independence. Discretionary recall is unacceptable...”, point II.3.1.77. OSCE/ODIHR EOM observers reported that replacements were the result of requests from political parties, resignations and, to lesser extent, incompliance with legal requirements.

²⁴ For instance, the head of Holosiivskyi city district TEC in Kyiv city was recalled during the PEC formation process. This also occurred in Krasnoarmiisk city TECs.

²⁵ A protracted candidate registration process in Sloviansk city TEC affected the candidates right to submit nominees for PEC membership. In another instance, the Krasnoarmiisk city TEC included in the lottery the nominees of withdrawn candidates.

²⁶ The main reasons conveyed to OSCE/ODIHR EOM observers were related to primarily lack of qualified nominees, unwillingness of people to serve as members, low remuneration and personal or health reasons.

Cascade training for TEC and PEC members was positively assessed by OSCE/ODIHR EOM LTOs overall. However, in some cases, commissioners found training of limited value and late in the process. Voter education in the monitored media with nationwide reach was virtually absent throughout the whole pre-election period leaving voters and stakeholders without comprehensive information on essential stages of the electoral process.²⁷

Voter Registration

Voter lists for every precinct are extracted from the database of the State Voter Register (SVR), which is overseen at the national level by the CEC. The SVR database is maintained by 669 Register Maintenance Bodies (RMBs).²⁸ As of 23 October 2015, the SVR contained 28,808,774 voters, of which 589,745 were registered as permanently homebound. Voters were able to check their entries through the CEC webpage. Preliminary voter lists (PVLs) were handed over to the PECs by 11 October together with personal invitations for voters. Thereafter, PVLs were posted at PECs for public scrutiny. Final voter lists were handed over to PECs by 22 October. OSCE/ODIHR EOM interlocutors expressed general trust in the voter registration system.

The law does not provide for election day registration.²⁹ Voters who were away from their voting addresses on election day were not be able to cast their ballots, except for those voting in special election precincts established in medical institutions.

Candidate Registration

Any citizen with the right to vote can stand for election irrespective of place of residence, except those with an unexpunged criminal record for a grave crime, a crime against citizens' suffrage rights or for corruption. Candidate lists and candidates are put forward by local branches of political parties, as well as by self-nomination for mayoral and village and settlement council elections.³⁰ The law does not allow for independent candidacies at all levels of local councils (it is allowed at village and settlement levels and for all mayoral races) contrary to the OSCE commitments.³¹ More than 350,000 candidates stood for 168,450 positions of mayors of cities, villages and settlements and for councillors of village, settlement, city, city district, district (*rayon*) and regional (*oblast*) councils. According to the CEC, women comprised about 35 per cent of all registered candidates for the proportional races and 13 per cent in mayoral races.

The election law provides for correction of mistakes and inaccuracies in candidate registration documents and does not allow for rejection of registration based on these grounds. However, it lacks clarity with respect to the resubmission of registration documents, the definition of mistakes and inaccuracies, and the gender quota requirement.³² TECs rejected a number of candidates based

²⁷ Some regional media outlets have informed voters on procedural issues in respective localities. The CEC has also produced a voter education spot and published it on its website however without meaningful coverage on national broadcasters.

²⁸ Excluding the territories where elections were not held. As a rule, one RMB serves one administrative district.

²⁹ Only technical corrections could be made on the day of voting.

³⁰ Out of the 142 parties that applied for registration with CEC, 132 were registered.

³¹ Paragraph 7.5 of the OSCE Copenhagen Document (1990) states that "The participating States will... respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination."

³² The Kyiv Administrative Court of Appeal in five cases upheld court decisions on non-registration and stated that mistakes and inaccuracies in the biographies and transfers of election deposits should be considered equivalent to the absence of such documents. However, in the majority of other cases the courts ruled the opposite. TECs in Olevsk, Zhytomyr, Berdychiv, Lviv, Lutsk denied registration of candidate lists based on non-compliance with the gender quota requirement; however, the courts overruled these decisions.

on those grounds.³³ In most cases, courts provided an inclusive interpretation of the law and overturned a large number of TEC denials of candidacy on appeal.

Neither the CEC nor the courts were consistent in their decisions regarding non-registration of candidates, in some cases requesting TECs to reconsider the registration, but obliging TECs to register the candidates in other instances.³⁴ Furthermore, some TECs repeatedly denied registration of certain candidates, despite decisions by the CEC and courts mandating approval of the candidates' application.³⁵

The restrictive interpretation and inconsistent implementation of candidate registration rules hindered the right to stand for candidates on an equal basis in several instances, contrary to OSCE and Council of Europe commitments and other international obligations and standards.³⁶ Some of these cases continued throughout the pre-election period, with candidates being reinstated only by intervention of the CEC, in some cases shortly before election day, undermining the equal opportunity to campaign. Moreover, this at times conflicted with the legal deadline for printing of ballots. In a number of instances observed by the OSCE/ODIHR LTOs, including Mariupol, Cherkasy, Kherson, Kharkiv, Berdyansk and Kamianets-Podilsky, the decisions by TECs with respect to the registration of certain candidates and party lists appeared politically motivated and designed to exclude certain political forces from participating in the elections.

The Campaign Environment and Campaign Finance

The campaign environment was competitive. However, it was dominated by wealthy donors and their associated business interests who focused their resources on the mayoral and *oblast* council races. The campaign was more visible in urban than in rural communities, and especially subdued in government-controlled territories in Luhansk and Donetsk *oblasts*. It intensified in all regions closer to election day. Problems with the registration of some political parties and candidates resulted in the delay and interruption of candidates' campaigns and shaped the campaign debate in certain regions, in particular in eastern and southern *oblasts*. Freedom of assembly was generally respected.

The campaign took place against a backdrop of growing disillusionment with the political establishment, an ongoing economic crisis and the slow implementation of anti-corruption policies. The campaign was dominated by national issues of reform, order and stability. Only a few contestants focused on local issues and on the actual powers and responsibilities of local councils.

Parties and candidates with ample resources, strong media connections and able to recruit active campaign staff used a variety of methods to campaign, including TV and radio advertisements,

³³ The OB was denied registration by Zaporizhzhia, Mariupol, Oleksandrivka, Kharkiv, Cherkasy and Berdiansk city TECs. Kherson, Zhytomyr, Stryi Sambir and Novomoskovsk TECs refused registration of NK. Kamianets-Podilskyi, Novomoskovsk, Lysychansk TECs refused registration of *Batkivshchyna*.

³⁴ The CEC obliged to register the candidates in cases of Sloviansk, Kherson, Cherkasy city TECs and Kharkiv regional TEC. Administrative courts in Zaporizhzhia, Rivne, Odesa, Volynsk and Zhytomyr obliged the TECs to register candidates, while Kherson, Lviv, Cherkasy, Dnipropetrovsk and Kirovohrad courts were amongst those who requested reconsideration of registration.

³⁵ Registration of the OB candidates was repeatedly denied by Kharkiv, Sloviansk, Berdiansk city TECs, of the NK by Kherson city TEC, and of the Free Democrats by Cherkasy city TEC. Article 99.8 of the election law prohibits election commissions to adopt decisions that in essence repeat the decisions recognized as illegal by the court.

³⁶ Paragraph 15 of the General Comment No. 25 to Article 25 of the ICCPR states that "any restrictions on the right to stand for election ... must be justifiable on objective and reasonable criteria". See also paragraph 24 of the 1990 OSCE Copenhagen Document, which provides that any restrictions on rights must be "strictly proportionate to the aim of the law". See also Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

billboards, campaign tents, print materials, free concerts and rallies.³⁷ Many parties had an active digital campaign and held meetings with small groups of voters.

In some instances, government officials took an active role in the campaign, both as supporters and candidates.³⁸ In other cases, incumbent mayors and councillors running for re-election initiated a series of amendments to council decisions in order to fulfill electoral promises of the last campaign.³⁹ Incumbent candidates are allowed to campaign while in office, but campaign activities of these officials during working hours gave rise to a number of allegations regarding the misuse of administrative resources. The use of municipal websites for campaign purposes and distribution or posting of materials on public transport, which is prohibited by law, was observed by OSCE/ODIHR EOM LTOs.⁴⁰

Voters had a wide array of parties and candidates to choose from, with the exception of districts in Luhansk and Donetsk *oblasts*.⁴¹ New faces from various backgrounds, such as servicemen of the Ukraine Armed Forces, volunteer battalion commanders, police officers, civic activists, or representatives of regional business elites, emerged on the local political scenes as candidates. A number of so-called ‘clone’ parties and candidates with names similar or identical to those of other contestants entered mayoral and council races with the goal to dilute the votes.

The OSCE/ODIHR EOM received widespread allegations of vote-buying and observed candidates distributing food packages to low-income voters directly or through charity organizations.⁴² In some areas the campaign was also marred by threats and physical attacks targeting candidates and campaign workers.⁴³ In some instances fear and intimidation were mentioned as reasons for candidates to withdraw, while some decided to contest mayoral races as non-partisan self-nominees as a consequence of pressure.⁴⁴

³⁷ The OSCE/ODIHR EOM observed 47 rallies, mainly held by mayoral candidates; of these 9 rallies by the BPPS, 7 by *Samopomich*, 5 by the NK and UKROP, 4 by *Svoboda* and the RP each, 2 by *Batkivshchyna* and 1 by the OB, Renaissance, Vinnytsia European Strategy (VES), Civil Position, Strong Ukraine, Sergey Kaplin Party of Ordinary People, People’s Control, European Party of Ukraine, For Ukraine and For Concrete Actions each and 2 rallies organized jointly by a group of parties. On average, 34 per cent young people and 45 per cent women were represented in the rallies.

³⁸ During a press conference the speaker of the parliament endorsed the VES mayoral candidate. The Odesa governor actively took part in the campaign of the BPPS mayoral candidate; this resulted in a court complaint by the Renaissance mayoral candidate. The court did not satisfy the complaint.

³⁹ The Kyiv city council published an order “On arrangement of providing funds for (...) fulfilment of pre-electoral programs and assignments of voters by the Kyiv city mayor and deputies of the Kyiv city council”. Other cases were observed in Chernihiv, Kryvyi Rih, and Ternopil.

⁴⁰ For instance in Chernihiv, Dnipropetrovsk, Kharkiv, Kyiv, and Vinnytsia.

⁴¹ Fewer parties participated in government-controlled election districts of Luhansk and Donetsk *oblasts* than in other regions with candidates mostly from the OB, the BPPS, the NK and *Batkivshchyna*. For some district council seats these four parties nominated comparably low numbers of candidates for party lists. Parties indicated that they had difficulties finding candidates.

⁴² Among many cases reported in the media, OSCE/ODIHR EOM LTOs observed the following: in Kirovohrad, an NK mayoral candidate distributed food packages through his wife’s charity fund; in Kyiv, two candidates from *Yednist* sold potato packages at a subsidized price; the incumbent Chernivtsi mayor distributed food packages; in Mykolaiv, the NK candidate for city council sponsored a football match and distributed envelopes with cash.

⁴³ The PC mayoral candidate in Kharkiv, sustained head injuries after an assault. The *Samopomich* candidate to the regional council of Lutsk, was severely beaten. An OB campaign tent was destroyed in Kyiv Dniprovskiyi district. Two OB activists were attacked by unknown people in Mykolaiv. Two NK campaigners were attacked and splashed with disinfectants. Bomb exploded close to a house of Odesa mayoral candidate of the Maritime Party. He did not sustain injuries. A car with election campaign materials of the OB mayoral candidate for Dnipropetrovsk was burned.

⁴⁴ In Rivne, the OB told the OSCE/ODIHR EOM that it decided not to engage in an active public campaign due to apprehension about possible intimidation. In Vinnytsia, *Svoboda*, the Agrarian Party and the OB claimed that several of their candidates were pressured to withdraw or change party affiliation in order not to lose their public sector jobs.

The use of lavish campaign funds by some contestants, coupled with the absence of ceilings on campaign expenditures, prevented the level playing field during the campaign period and is at odds with international good practice.⁴⁵ The expenditures for political advertisement prior to the registration of candidates were not included in any reports, thus raising concerns about the alleged widespread use of undeclared funds. The absence of crosschecking mechanisms and sanctions weakened the effectiveness of campaign finance oversight. A number of previous OSCE/ODIHR and Venice Commission recommendations for strengthening the transparency of campaign finance are still to be addressed.

The Media

The media sector with its vividness and turmoil reflects Ukraine's overall political climate. The growing power and politicization of media groups affect both national and regional media. The political and business interests controlling the media often influence editorial policy and the malpractice of paid-for journalism is widespread.⁴⁶ The media often blur the line between political propaganda and news, thus compromising voters' ability to make an informed choice.

The legal framework for the media comprises the Constitution and a plethora of laws that are generally conducive to freedom of expression. The election law governs the media's conduct throughout the electoral period.⁴⁷ It overregulates pre-election coverage, yet poorly defines provisions for it, at odds with OSCE and Council of Europe commitments and international standards.⁴⁸

The halting and incomplete transformation of the National Television and Radio Company (NTRC) from a state-owned to a public broadcaster hampered independence and editorial freedom of the NTRC called for by international obligations.⁴⁹ A decision to discontinue the contracts of the staff at the NTRC regional branches led to self-censorship and an arbitrary application of the election law.⁵⁰ Sixteen of 25 regional branches broadcasted only those election-related programmes that were paid for by parties and candidates, and just 8 produced issue-oriented programmes at their expense.

The level playing field in the media was further compromised by the absence of comprehensive oversight or review of the media's compliance with legal provisions, such as their obligation to clearly label paid-for political content. The National Television and Radio Broadcasting Council (NTRBC) conducted media monitoring at the national and *oblast* levels. However, the NTRBC

⁴⁵ See the General Comment No. 25 to Article 25 of ICCPR and 2003 Council of Europe Recommendation Rec(2003)4 of the Committee of Ministers on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns (III.9).

⁴⁶ OSCE/ODIHR EOM LTOs in Berdiansk, Chernivtsi, Chernihiv, Dniporpetrovsk, Hotyn, Ivano-Frankivsk, Izium, Kyiv, Kharkiv, Khmelnytskyi, Kremenchuk, Kramatorsk, Kirovohrad, Kryvyi Rih, Lviv, Lozova, Melitopol, Mykolaiv, Mukachevo, Odesa, Poltava, Rivne, Romny, Sumy, Sloviansk, Ternopil, Uzhgorod, Vinnytsia, Zaporizhzhia, Zhytomyr, and Yahotyn, report on biased coverage for or against particular candidates and/or local media's direct affiliation with specific political parties or their sponsors.

⁴⁷ The election law forbids reporting on the campaign in the news, does not foresee any free air-time, envisages the possibility to pay for debates and at the same time stipulates equal allocation of time to all contestants.

⁴⁸ Paragraph 13 of the ICCPR General Comment 34 provides that "A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and enjoyment of other Covenant rights"; See also Paragraph 9.1. of the 1990 OSCE Copenhagen Document.

⁴⁹ Paragraph 16 of the ICCPR General Comment 34 provides that "State parties should ensure that public broadcasting services operate in the independent manner. In this regard, State parties should guarantee independence and editorial freedom. They should provide funding in the manner that does not undermine their independence."

⁵⁰ The OSCE/ODIHR visited 25 out of 26 local branches of the NTRC to assess the effect of the transformation. In 18 cases, the management admitted the persisting uncertainty, expected staff reductions and insufficient funding, 6 admitted self-censorship.

lacked capacity and effective sanctioning powers and proved unable to take timely and resolute measures when necessary.⁵¹

The OSCE/ODIHR conducted quantitative and qualitative media monitoring.⁵² Of the 132 political parties registered for elections, only 3 were granted meaningful editorial coverage across the media landscape and provided with the ability to address the voters directly within the news and editorial programmes.⁵³ Key personalities in the mayoral races in Kyiv, Kharkiv and Dnipropetrovsk were the most visible political figures in broadcast media's election-related programming. Each of the TV channels with a nationwide reach, monitored by the OSCE/ODIHR EOM, predominantly featured two to three political parties within their prime time programming.⁵⁴ ICTV was the exception to this, equitably covering seven parties and a number of self-nominated candidates during election related prime time broadcasts.

The parties with representatives in administrative positions, most notably the BPPS, as well as the incumbents, enjoyed additional coverage due to their institutional activities. The president alone received an average of 13 per cent of the total time allotted to political actors in the monitored broadcasters. Reports on his activities were largely positive in tone, especially on public television.

The pre-election coverage of print media did not provide for an alternative discourse in the form of independent or analytical editorial content. Newspapers devoted most of their space to five parties.⁵⁵ The legally permitted, virtually unlimited purchase of paid for airtime transformed the national broadcasters' prime-time election coverage to the propaganda platform with the amount of time devoted to the advertisement exceeding the time allotted to the election-related news. Moreover, the BPPS used the president's appointed governors to promote the party logo. The bulk of paid-for advertisement was purchased by the BPPS, the NK, the UKROP, the MR and the OB. Female candidates were largely absent from the media landscape.

Participation of National Minorities

National minorities' participation in these elections was affected by the crisis in the east and the temporary control of parts of the territory by illegal armed groups, and the illegal annexation of the Crimean peninsula, which made it impossible to organize elections in those parts of the country.⁵⁶

Several aspects of the electoral legislation hinder the representation of national minorities, especially in local councils. National minority candidates with a strong base of support in an area of compact minority settlement may be disadvantaged by the fact that they cannot run independently for councillors' seats. In addition, some minority communities may not be able to meet the requirements to register a political party, in which case they may not compete in proportional races

⁵¹ The NTRBC reviewed 52 news items and no fines were imposed; the OSCE/ODIHR visited all 26 regional branches of NTRBC where on average two employees are monitoring 56 media outlets.

⁵² UA:First, 1+1, Channel 5, Inter TV, ICTV, TRK Ukraina, 7th Channel (Kharkiv), 34 TV Channel (Dnipropetrovsk), Glas TV (Odesa), Khmelnytskyi ODTRK (Khmelnytskyi), Zik TV (Lviv). Newspapers – *Fakty i Kommentarii*, *Komsomolskaia Pravda v Ukraine*, and *Segodnia*.

⁵³ The OB (19 per cent), the BPPS (18 per cent), and Renaissance (5 per cent).

⁵⁴ 1+1 – Renaissance and UKROP, as well as the BPPS predominantly in negative tone; 5 Channel – the president and the governor of Odesa, BPPS, and Movement for Reform (MR); Inter TV – the OB, the BPPS and Party of Resolute Citizens; TRK Ukraina – the OB and the BPPS; UA:First – the BPPS, the OB and the government.

⁵⁵ The BPPS (22 per cent), the NK (10 per cent), the MR (10 per cent), Renaissance (8 per cent) and the OB (7 per cent).

⁵⁶ According to the 2001 census, ethnic Russians comprise 17.3 per cent of the population, while another 12.3 per cent identify as native Russian speakers. Of this total 14 million people, approximately 5.4 million live in Donetsk and Luhansk *oblasts* and 1.9 million live on the Crimean peninsula. UNHCR reports that there are 1.46 million IDPs in Ukraine as of 7 September, three-quarters of whom live in the eastern regions of Donetsk, Luhansk, Zaporizhzhia, Dnipropetrovsk and Kharkiv. About half of the 21,000 IDPs the State Emergency Service has recorded as Crimean are estimated to be Crimean Tatar.

for local councils at all.⁵⁷ Those that do manage to register political parties, still may not meet the increased five per cent threshold for party lists; thus, candidates on the lists of these parties could win a decisive majority in areas of compact minority settlement, yet not be elected.⁵⁸ Concerns about the boundaries of electoral districts in some communities also indicate that national minority candidates running on the lists of major parties also may be disadvantaged, as they need a large percentage of the vote in their districts to move ahead of others on the party's list and obtain a council seat.⁵⁹ The election law does not provide for any special measures promoting national minority representation.

Intolerant or xenophobic speech toward minorities was not observed during the campaign. Many national minority representatives, including those from the Roma community, informed OSCE/ODIHR EOM LTOs that members of their communities were included in the lists of major parties running in their districts.⁶⁰ However, the platforms of small and national minority political parties were more focused on issues affecting local communities.

Complaints and Appeals

The election law and Code of Administrative Proceedings do not clearly define a single hierarchical structure of responsibility for the complaints and appeals process.⁶¹ Election commissions, first instance courts of general jurisdiction, as well as administrative courts all have jurisdiction to consider election-related complaints.

As of 24 October, the CEC received 155 complaints, which were mostly rejected on technical grounds. Only 12 of these were considered in a full session. All other complaints were considered in private and responded to by individual CEC members, thereby undermining the transparency and collegiality of the process. Decisions were communicated by letters that often lacked factual and legal reasoning and were not subject to appeal. This undermined the right of judicial appeal provided for by OSCE commitments.⁶²

Some 750 election-related complaints were filed with the courts before election day. The majority of these concerned candidate registration and were upheld by the courts. Other complaints referred to issues of formation of election commissions, district delimitation, violation of campaign regulations, vote buying, voter list inaccuracies, and registration of observers, and were mostly dismissed on procedural grounds or rejected on substance. Courts handled complaints and appeals within the established timelines respecting due process. However, non-uniform interpretation of the law undermined legal certainty, as well as the principle of equality before the law.

⁵⁷ Article 10 of the Law on Political Parties (2001) requires that parties demonstrate a base of support in two-thirds of the country's oblasts in order to register as a political party. The Party of Poles of Ukraine informed the OSCE/ODIHR EOM that the onerous process of collecting signatures was one reason it took the party three years to register.

⁵⁸ Two parties representing the Hungarian minority in Zakarpattia expressed concern to OSCE/ODIHR EOM LTOs that they may not meet the threshold for party lists at the regional level even though they have combined their party lists and anticipate winning the majority of the vote in one entire district and other electoral districts.

⁵⁹ Representatives of the Hungarian and Roma communities in Zakarpattia informed OSCE/ODIHR EOM LTOs that the boundaries of electoral districts disadvantaged candidates from their communities. Representatives of the Hungarian community submitted proposals for delimitation of districts in Berehovo to the TEC, yet received no reply to their proposal or opportunity to consult before the district boundaries were drawn.

⁶⁰ NK and Unity Centre parties included Roma candidates on their party lists for the Uzhgorod city council; Roma candidates also ran in other council races in Zakarpattia and Odesa oblasts.

⁶¹ Article 172.4 of the Code of Administrative Proceedings stipulates that the decisions, actions or inaction of certain election commissions and their members with respect to the preparation and conduct of certain types of elections, shall be challenged in district administrative courts, while Article 172.5 provides that cases not specified in part 4 are to be appealed to first-instance courts of general jurisdiction acting as administrative courts.

⁶² Paragraph 18.4 of the 1991 OSCE Moscow Document states that "participating States will endeavor to provide for judicial review of [administrative] regulations and decisions."

Citizen and International Observers

The inclusive accreditation of observers contributed to the transparency of the electoral process. Citizen observer groups and international organizations could register an unlimited number of observers who have broad rights, including the right to attend sessions of all election commissions and to receive documents, including results protocols. The CEC registered 83 non-governmental organizations, including *OPORA* and the Committee of Voters of Ukraine, and a total 1,555 international observers.

Election Day

In most of the country election day proceeded calmly. Elections were not held in Krasnoarmiisk, Svatove and Mariupol.⁶³ Party and candidate agents were present in large numbers during all stages of the process, while citizen observers were noted less frequently. The CEC reported turnout at 46.6 per cent.

Printing and distribution of ballots proved problematic. In some areas, candidate names were either misspelled or printed in bold. In other instances, ballots were delivered to wrong districts.⁶⁴

Polling stations opened late in 30 per cent of cases observed, largely due to protracted preparation procedures or missing election materials. In 5 per cent of polling stations visited, International Election Observation Mission (IEOM) observers were restricted in their observation. Overall, opening procedures were negatively assessed in 7 per cent of precincts.

IEOM observers assessed voting positively in 98 per cent of polling stations throughout the country. Transparency of the process was ensured and observers could follow procedures without restrictions in almost all polling stations observed. More than half of polling stations observed were not accessible to people with disabilities. Only isolated instances of tension, obstruction or intimidation were observed. Unauthorized people were present in 9 per cent of polling stations observed, and were seen interfering in 2 per cent. In 5 per cent of observations, not all voters marked their ballots in secrecy or folded them properly before depositing them in the ballot box.

Despite overall positive assessment, some procedural problems were noted by observers. Voter identification procedures were poorly conducted in 6 per cent of instances, mostly in small and rural communities. In 6 per cent of polling stations observed, the ballot boxes were not properly sealed. Few cases indicative of more serious procedural violations, such as proxy voting (9 per cent), instances of group voting (4 per cent), and instances of seemingly identical signatures on voter lists (1 per cent), were reported by the IEOM observers. Procedural violations were reported from some special polling stations where voters were provided with only one ballot contrary to the election legislation.⁶⁵

IEOM observers positively assessed 88 per cent of the 238 vote counts observed. The problems reported during the closing and counting were mostly due to failure of commissions to adhere to established procedures. In 18 per cent of cases, PECs experienced difficulties in filling in the protocols. In 12 per cent of counts figures did not reconcile in the protocols and the PECs had to revise figures established earlier, prolonging the counting. Unauthorized persons were present

⁶³ In Krasnoarmiisk city, ballots were not delivered to polling stations up until election day. On election day the CEC adopted resolution obliging the city TEC to comply with the legislation and distribute the ballots, however TEC failed to convene the session and elections were not held. In Svatove, elections were cancelled during the day. The ballots were printed omitting the parties that did not assign candidates to respective districts. Therefore, city TEC considered such ballots as invalid and cancelled elections. In Mariupol, voting did not take place in all but 8 out of 213 polling stations.

⁶⁴ In Khust, Zakarpattia, and Sumy.

⁶⁵ In Khmelnytskyi, Kharkiv and Chernivtsi.

in 12 per cent of the counts observed, and often interfered in the process. Tabulation was ongoing at the time of publication.

*The English version is the only official document.
However, this statement is also available in Ukrainian and Russian.*

MISSION INFORMATION & ACKNOWLEDGEMENTS

The OSCE/ODIHR Election Observation Mission opened in Kyiv on 9 September, with 17 experts in the capital, and with 80 long-term observers deployed throughout Ukraine.

On election day, some, 750 observers from 44 countries were deployed, including 675 long-term and short-term observers deployed by the OSCE/ODIHR, as well as a 57-member delegation from the Congress, including 28 observers from the Congress itself, 12 from the Parliamentary Assembly of the Council of Europe, and 4 from the EU Committee of Regions, and a 12-member delegation from the EP. Voting was observed in over 2,600 polling stations out of a total of 29,261. Counting was observed in 283 polling station across the country. The tabulation process was observed in over 100 out of 10,778 TECs, so far.

The observers wish to thank the authorities of Ukraine for the invitations to observe the election, the Central Election Commission for its co-operation and for providing accreditation documents, and the Ministry of Foreign Affairs and other authorities for their assistance and co-operation. The observers also wish to express appreciation to the OSCE Project Co-ordinator in Ukraine, the OSCE Special Monitoring Mission to Ukraine and embassies and international organizations accredited in Ukraine for their co-operation and support.

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