

PRELIMINARY STATEMENT ON FINDINGS AND CONCLUSIONS INTERNATIONAL CIVIL SOCIETY ELECTION OBSERVATION MISSION TO UKRAINE

Kyiv, 29 October 2012

The International Civil Society Election Observation Mission (CSEOM) is organized by non-governmental organizations from Poland (Stefan Batory Foundation), Germany (European Exchange) and Lithuania (Eastern Europe Studies Centre) under the auspices of Aleksander Kwaśniewski and Markus Meckel. The mission is operating in Ukraine from 17 September until 7 November. It includes 15 long term staff (experts and observers) as well as short term observers deployed throughout the country. Two Interim Reports were published on 5 and 23 October. The Final Report will be presented at the end of November.

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In spite of considerable shortcomings, the elections provided for a competitive process allowing voters to express their political preferences. While elections were administered in an adequate manner and election day was generally calm, the fairness of the overall election process was considerably affected by abuse of privileged position by those in power.

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Executive Summary

- The controversial trials and subsequent imprisonment of the former Prime Minister, a main political opponent of the President, as well as of another leading politician from the major opposition party have produced an unfavourable climate for the elections. Irrespective of the specific improvements to the management of the election process, these events put into question the overall fairness of the democratic process including election conduct.
- The election day was generally calm and voting proceeded in a largely adequate manner. Reported procedural irregularities and incidents did not appear to have a nature and scale that could have seriously distorted the elections' results.
- In principle, the legal framework provided an adequate basis for the conduct of democratic elections. The rules concerning voter registration were improved and tightened. While limitations to vote outside of one's own district might have deprived some voters of the ability to vote, they also reduced the risks of manipulation. During the election campaign the contestants were able to conduct rallies, distribute campaign materials and use street advertising. However, the political parties did not have an opportunity to campaign on equal footing in particular in the media. In fact the media (except online) largely failed to provide balanced information on election campaign and TV stations in particular were clearly biased in favour of the government.
- The use of administrative resources by the ruling party was reported in many instances: it included pressure exerted on public employees as well workers in state owned enterprises as well as situations where state's financed project were presented as candidates' achievements. Lack of effective rules and transparency concerning campaign financing further privileged those in incumbent position.
- CEC and the lower-level commissions accomplished most tasks within deadlines provided by election legislation. Nevertheless the preparations for the elections were affected by various shortcomings. The formation of DEC and PEC on the basis of lottery resulted in an unbalanced representation of the main political parties. The lottery's results became the main source of official complaints.
- The introduction of single mandate constituencies had a rather negative impact on the conduct of the elections taking into account the political situation and specific experience of the country even though the new electoral law reflected the consensus among the main political players. It exacerbated political polarisation and magnified risks related to vote buying, use of black PR, intimidation of potential candidates and use of administrative resources as evidenced by reported incidents that were mainly related to single mandate constituencies.
- Authorities have created favourable conditions for registration and deployment of a large number of domestic and international observers, who had largely unrestricted access to monitoring of the electoral process.

The Legal Framework and Election System

In general, the legal framework provides an adequate basis for the conduct of democratic elections. The constitution guarantees the right to vote, to be elected, as well as the freedom of

association, assembly, movement and expression. The Law on the Election of People's Deputies of Ukraine (hereinafter: the election law) adopted in 2011, introduced changes to the electoral system: re-introduced the mixed electoral system applied in 1998 and 2002; increased the threshold to five percent in the proportional party-list system and excluded formation of political blocks. Among 450 members of the parliament, 225 MPs are elected through a proportional system based on political party lists in a single nationwide constituency and another 225 MPs are elected on the basis of a simple majority system in single-mandate election districts. Other applicable legislation includes: the Law on the State Voter Register, Law on the Central Election Commission, the Code of Administrative Procedures and the Criminal Code.

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Election Administration

Elections are administered by a three-level system: the Central Election Commission (CEC), 225 District Election Commissions (DECs) and 33,762 Precinct Election Commissions (PECs). The CEC is a permanent 15-member body appointed by Parliament for a seven-year term, while DECs and PECs are established during election period.

The CEC and the lower-level commissions accomplished most tasks within the timeframe provided by election law. Technically, elections were adequately-administered despite the fact that the preparations for the elections were affected by some serious shortcomings.

The Law on the Election of Peoples' Deputies of Ukraine stipulates that aside from the registered parliamentary fractions, the remaining seats in district election commissions are to be established by means of a lottery.¹ Nevertheless, the Central Election Commission adopted resolutions, which introduced the considerable changes to the procedure. At first, instead of holding separate drawings for each district commission, the CEC decided to carry out only one lottery for the membership of all 225 DECs² and then consequently a single draw for the all positions in respective PECs within each single-mandate election district³. Furthermore, methods of drawing used were not consistent. This approach resulted in unbalanced composition in the election commissions.

Immediately after the lotteries, many parties applied to the CEC for the replacement of commissioners. The replacements were of a large scale all over the country, affecting up to 50 percent of the regular members and up to 80 percent of the management positions inside several PECs. Consequently, some PECs were not entirely operational.

While trainings of DECs were conducted in a professional manner and with a fair participation of management staff, the training of the lower level of election administration (PECs) were not carried out in a satisfactory manner in both substance and organization.

¹ The CEC's Resolution No 895 adopted on 13 September 2012

² The CEC's Resolution No.69 adopted on 29 August 2012.

³ The CEC's Resolution No. 895 adopted on 13 September 2012

The CEC held its sessions on a regular basis open for observers and resolutions were published on its website. However, the decisions that were voted in the sessions were previously discussed in closed meetings, not open to the observers, which undermined the transparency of the decision making process.

Some serious logistic shortcomings have been also observed, mainly in PECs. The CSEOM noted that various PECs (mainly in rural areas), were not properly equipped; they lacked computers, printers and other basic supplies⁴ which in some cases affected their effectiveness to be operational in time for voter list verification.

Candidate registration

On 18 August, the registration of candidates was finished. From the initial 87 parties that nominated candidates, only 22 submitted party lists for the nationwide district. Some parties nominated less than five candidates, having no candidates on party lists. This raised concerns regarding the ability to conduct a full-fledged election campaign by those parties.

5,207 candidates were running - 2,653 in single-mandate districts and 2,554 in the nationwide election district. Over 400 candidacies have been withdrawn by the CEC. Most of them were self-nominated. In most cases the CEC decision was based on the candidate's withdrawal to run or the party's cancellation of his/her nomination. At the initial stage, the CEC refused to register 445 candidates. The mission was made aware of two instances where candidates withdrew from the ballot as a result of intimidation, but was not able to confirm them.

Voter registration

Voter Registration in Ukraine is organized on a territorial basis in the form of a regularly updated electronic database. Over 36.7 million citizens are registered to vote. The Law on State Voter Register (2007) provides a detailed framework for the introduction and maintenance of the new register. It includes strong provisions to promote the accuracy of the list and the protection of voters' data and appropriate sanctions for unlawful access and abuse of registered data. During the election process the CEC restricted the rules concerning the possibility of voting outside of a voter's place of residence.⁵ The voters who had not changed their electoral addresses were not able to vote outside their respective single-mandate electoral districts. It might have led in some cases to disenfranchisement, however these measures have also limited the risks of manipulation.

The preliminary voter lists were accessible to the public for verification until 22 October. Citizens could check their registration and request changes. PECs were not always operational during the time of public scrutiny. As of 23 October the number of registered voters in Ukraine increased by 52.961⁶. In addition, 155.549 voters were granted the opportunity to

⁴ The CEC's Resolution No 892 provides more details on the Law on Ensuring Openness, Transparency and Democratic Nature of Election of People's Deputies of Ukraine. As describes by this law each regular election precinct will be equipped with a laptop computer, two video cameras, USB extenders and a metal box, in which all the equipment for video recording (except for the video cameras) will be stored on the Election Day.

⁵ The CEC'S Resolution No.1046 adopted on 22 September.

⁶ For instance: on 23 October number of voters registered in Kyiv increased by 6283 people, in Kharkiv by 5415, in Odesa by 3389.

vote outside of their own PEC and within the single-mandate district.⁷ Providing electronic copies of voters' registers to the representatives of political parties allowed for additional scrutiny which improved the accuracy of the register.

Campaign

Despite the fact that the campaign officially began on 30 July, all significant political forces started their campaigns much earlier. As of spring 2012, "social advertisements" for several political parties were placed on billboards and posters in most Ukrainian cities.

The contestants were generally able to campaign freely, and freedom of assembly was in principle ensured with few instances of obstruction of campaign activities. However in practice political parties did not have an opportunity to campaign with equal conditions, in particular regarding the media. The campaign was polarized and often characterized by the use of divisive and even defamatory rhetoric.

The campaigning was conducted mainly via the media, through street advertising, the distribution of leaflets and other propaganda materials. Numerous rallies as well as small and mid-size meetings with voters were held all around the country.

The campaign led by the Party of Regions was the most visible. However, The United Opposition – *Batkivschyna*, Ukrainian Democratic Alliance for Reforms (*UDAR*) and the *Ukraina Vpered* party also managed to lead active country-wide campaigns. Yet, leaders of main political forces remained reluctant to engage in a genuine debate with their counterparts.

The campaign was characterized by widespread use of administrative resources, which took various forms. In most cases, administrative resources tended to be used in favour of Party of Regions which benefited from its privileged position as the ruling party. Allegations of pressure and intimidation were raised throughout the pre-election period. Some state officials running for elections often have used their positions to conduct indirect agitation. In various instances, the distinction between state activities and the Party of Regions campaign was blurred. Lack of effective rules and transparency concerning campaign financing further privileged those in incumbent position.

The direct and indirect attempts to bribe voters remained a frequent violation of the electoral code during the campaign. Bribery took different forms ranging from granting of money to voters who attended party rallies to the activities and services offered by various charity organizations with close links to a particular candidate or party. This strategy for attracting voters has been practiced by candidates from all political spectra and appeared to be most frequently used in relation to the contests in majoritarian districts. In some cases CSEOM observed candidates agitating during "cultural events" organised by business structures, which can be considered as indirect bribing of voters.

The CSEOM observers also documented several examples of 'black PR' discrediting different candidates and parties.

⁷Among them: 146.947 members of PEC's, 798 are members of the DEC's, 7804 are citizens who will not vote at their respective PECs for "other reasons".

The media and freedom of speech

The media (except for online commentary) largely failed to provide balanced information on election campaigns and did not provide all the parties and candidates with equal opportunities to present their programmes. According to independent media monitoring, most of the Ukrainian TV stations were clearly biased in favour of the government.

The attacks on independent media (such as *TVi* and *Levyi Bereg* internet newspaper, both critical towards the authorities) have further affected the impartiality of the Ukrainian media.

The quality of media coverage in Ukraine has been degrading since the elections began. In July 2012, Freedom House report stressed that space for freedom of the Ukrainian media is shrinking. Growing problems were also the corruption and declining independence of media; increasing use of administrative and legislative tools to hinder, disrupt and ultimately prevent media outlets from operating as well as prevalence of “sponsored” information (called “*jeansa*” or paid advertorials) in the media. These paid advertorials are “secretly sponsored news items” which appear in the news with no clear indication to denote that they are advertisements.

Complaints and appeals

The election law requires the Central Election Commission to determine electoral complaints related to the conduct of elections, as well providing the administrative courts with jurisdiction to hear and determine election related cases. As a result of this parallel system, the channels for disputing resolutions are overlapping and in general might not be clear.

The complaints were considered by the election and judiciary bodies in a timely manner. However, the principles of transparency over the entire decision making process were not respected in some cases. The complaints were considered during the CEC closed sessions. Any broader discussion in regards to the substance of the complaints held during open meetings was sporadic.

The complaints submitted to CEC mainly challenged the formation of DEC's and PEC's (via the lottery). Other complaints included allegations of misuse of administrative resources and the violation of the rules of the election campaign (indirect bribery of voters, unlawful agitation). The CEC received a few hundred complaints⁸ and only 25 percent of them were considered.

Election Day

Opening was assessed positively by CSEOM observers. In general, all materials required for voting and polling were present and voting in the majority of PEC's started on time. Only few cases of late or chaotic openings were observed (Kyiv, Irpin). CSEOM observers in Kyiv also noted one case of voting before the opening procedure was actually finished (ballot boxes were not sealed). One last moment replacement of PEC's head was noted in Odesa.

⁸ As of 27 October, CEC received 578 complaints on the activities of various subjects of the electoral process. Among them 472 applications were denied consideration on technicalities without examining the core substance of the claims while 106 complaints were considered on substance.

In general voting environment was calm in the observed PECs. Efficient processing of voters, use of controls and safeguards by polling staff and the secrecy of the vote were overall positively assessed by great majority of observers.. Nevertheless, procedural irregularities were observed in Odesa, Irpin, Dnipropetrovsk, Obukhiv and Kyiv and included instances of voters being permitted to vote without proper IDs, cases of ballot boxes not being sealed, few isolated instances of group voting.

Instances of vote buying were reported to observers with an amount being mentioned in the range of 100 to 500 UAH.

Furthermore, two PECs commissions in Kyiv visited by observers have rejected a high number of applications for mobile voting (102 and 126 respectively) during the pre-election period as they were manifestly fraudulent (many applications containing identical handwriting). Domestic observers informed the mission that there have been numerous cases of artificially large number of applications across the district.

The mission observed examples of inappropriate behaviour bordering on intimidation of voters. In Odesa four observers from the Party of Regions or otherwise persons claiming to 'represent Yanukovich were visibly placed in a car in the front of the polling stations. Similar situations were also observed in another location in Odesa as well as in Irpin.

An attempt of ballot stuffing was prevented by the PEC members in Vinnytsia. CSEOM observers witnessed arrival the militia which questioned two members of PEC suspected of assisting the attempt of ballot stuffing.

In Vinnytsia, two members of PECs detected a voter was caught by with four ballot papers. and subsequently arrested in presence of observers by militia along with two members PEC who have issued him ballots.

In several cases observers reported that they did not have a clear view of the process due to an improper layout of polling stations (Ternopil, Lviv, Kirovohrad, Kharkiv).

In the presence of CSEOM observers, the chairman of the polling station in Odesa heated up a piece of paper marked with a pen provided by DEC for use by the voters which caused the ink to disappear. The PEC recorded the incident in the protocol and replaced the pens. Observers witnessing the counting process in this PEC did not record any blank ballots.

Cameras were present in polling stations as required by the law, however observers were not in a position to determine the added value of this innovation.

The protocols were displayed in the majority of cases.

In general, the vote count could be positively assessed in the observed PECs in spite of minor procedural shortcomings.

Serious problems with the reconciliation of PEC protocols were noted by the CSEOM observers in DEC's in Kharkiv, Odesa. Some PECs documents were corrected by their members in the vicinities of the DEC's after they were returned for rectification by the DEC's. Some PECs provided packages of documents not properly sealed or even open. In Odesa

Oblast one DEC member was dismissed by the commission due to the allegedly disseminating wrong instructions to the PEC members. Furthermore, queuing and disputes among the PEC and DEC members were observed by CSEOM in those two cities as well as in Dnipropetrovsk.

Observers

As of 27 October, a variety of domestic non-partisan domestic observer groups registered almost 40000 observers. Of those groups, the two largest country-wide NGOs, *OPORA* and Committee of Voters of Ukraine (*CVU*), alone registered more than 10000 observers. *OPORA* conducted the quick count. Other domestic NGOs used crowd sourcing to map violations on interactive internet platforms. The two most popular – “*Maidan Monitoring-Vybory 2012*” and *Electua.org* – have already recorded more than one thousand violations each since the beginning of the electoral process. *Maidan* also launched the internet based project *Narodna CVK* (Peoples CEC) with the aim of collecting and publishing photocopies of the tabulation protocols provided by voters and comparing them with CEC’s official figures. *OPORA*’s website was inaccessible on the election day. *OPORA* informed that it became a target of DDOS attack and as a result the presentation of quick count was delayed. Isolated cases of observers intimidation were reported.