

Kyiv, 5 October 2012

FIRST INTERIM REPORT – CIVIL SOCIETY ELECTION OBSERVATION MISSION TO UKRAINE

Executive Summary

- The parliamentary elections in Ukraine are to be held on 28 October 2012.
- The constitutional composition of the Parliament (*Verkhovna Rada*) consists of 450 People's Deputies of Ukraine who are elected for a five-year term on the basis of universal, equal and direct suffrage, by secret ballot.
- 5,642 candidates are competing in these elections; 3,001 in single-mandate districts and 2,641 in the nationwide election district. 22 party lists have been submitted in the nationwide district.
- A recently adopted Law on the Election of People's Deputies of Ukraine (hereinafter electoral law) re-introduced mixed electoral system. Among the 450 members of the Parliament, 225 members are elected through a proportional system based on political party lists in a single nationwide constituency and another 225 members are elected on the basis of a simple majority system in single-mandate election districts.
- 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).
- In the observed DECs, election preparations are on track, without delays or major problems.
- The decision to organize a single draw for membership in all of the 225 DECs affected the balanced composition of these election bodies. Some prominent nationwide parties are either scarcely represented in DECs or not represented at all.
- The rules concerning the possibility of voting outside of a person's place of residence have been modified. The voters who have not changed their electoral address will not be able to vote outside their own electoral district.
- Several popular Ukrainian newspapers were issued with a blank first page to express the protest of the media against government's plans to re-introduce the libel law. The recent 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 new electoral law provides the opportunity for NGOs to register observers. The Civil Society Election Observation Mission commenced its work on 17 September, the official launching took place on 20 September and the deployment of the long-term observers on 24 September.

The mission is co-financed within Programme "Support for democracy" by Polish development cooperation programme 2012 of the Ministry of Foreign Affairs of the Republic of Poland. The mission is co-financed by Polish-German Cooperation Foundation and Ministry of Foreign Affairs of Lithuania

Background

On 1 February 2011 the *Verkhovna Rada* set the election date for 28 October 2012.

The constitutional composition of the Verkhovna Rada of Ukraine consists of 450 People's Deputies of Ukraine who are elected for a five-year term on the basis of universal, equal and direct suffrage, by secret ballot. In the outgoing parliament, the governing majority is formed by the Party of Regions (195 mandates), the People's Party (20) and the Communist party (25). The main opposition parties hold 161 mandates: Yulia Tymoshenko's Bloc „*Batkivshyna*” (98) and Our Ukraine - People's Self Defense Bloc (63).

According to the latest election polls the key players of the forthcoming election will be: the Party of Regions; United Opposition - *Batkivshyna*, Ukrainian Democratic Alliance for Reform (*UDAR*), Communist Party of Ukraine, *Svoboda* (Freedom) and Ukraine Forward¹.

Ukraine's ex-prime minister Ms. Yulia Tymoshenko and ex-minister of internal affairs Mr. Yuriy Lutsenko, two important opposition politicians who are currently serving prison sentences, were not registered as candidates by the CEC despite the international pressure on Ukrainian authorities.

Legal framework and election system

Parliamentary elections in Ukraine are primarily regulated by the Constitution (1996), the Law on the Election of People's Deputies of Ukraine (2011)². The legal framework for elections also includes the Law on the Central Election Commission (2004), the Law on the State Voter Register (2007), the Code on Administrative Adjudication (2005) and relevant provisions of the Criminal Code (2001).

The Law on the Election of People's Deputies of Ukraine adopted on November 17, 2011 re-introduced the mixed electoral system which had also been applied in 1998 and 2002 elections. Among the 450 members of the Parliament, 225 members are elected through a proportional system based on political party lists in a single nationwide constituency and another 225 members are elected on the basis of a simple majority system in single-mandate election districts. The Law provided also for two other important changes to electoral system: it increases threshold from three per cent to five per cent in the proportional party-list system and does not allow the formation of political blocs.

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 for a seven-year term, while DECs and PECs are established during election period. The CEC holds its sessions on a regular basis. They are open for observers and all CEC resolutions are published on its website. However, sessions are dedicated to voting on resolutions which have been previously discussed and agreed by the members of the CEC.

The Law on the Election of Peoples' Deputies of Ukraine stipulates that aside from the registered parliamentary fractions, the remaining seats in DECs are to be established by the means of a drawing done by the CEC³. On 24 August the CEC – according to its Resolution No. 69 – carried out one drawing for the membership of all 225 DECs instead of holding separate drawings for each DEC. In the result of this lottery some prominent nationwide parties such as *UDAR* and *Svoboda* were either scarcely represented in DECs or not represented at all.

In opinion of the CSEOM's interlocutors such as political party representatives and the NGO activists, the organization of a separate drawings for each DEC would have enhanced the possibility to reach a balanced composition in these election bodies. Immediately after the drawing, many parties started to apply to the CEC for changes in the composition of the DECs. Despite the fact that the opposition highly criticized the method used for the formation of DECs, another CEC Resolution (No. 895) from 13 September established a single drawing for the positions in all respective PECs. Consequently, again the process raised serious

¹ http://razumkov.org.ua/eng/pidtrymka_partij.php?

² The Law on Election of the People's Deputies was adopted on 17 November, 2011.

³ Article 27 Section 3.

concerns of the CSEOM interlocutors and resulted in an imbalanced representation of certain important political parties, despite the formal plurality in the PECs.

According to CSEOM observers, political parties and candidates filed a large number of applications to change composition of PECs' members. The observers were also informed that the process of replacement may last until the election day. Thus, the DEC members in Kyiv expressed their concerns about the schedule of training for PEC members, if the composition of these bodies would not be determined soon. In the observed DEC election preparations are on track, without delays or major problems. CSEOM observed trainings of DEC staff organised in Kyiv by the CEC in cooperation with IFES. Trainings were professional and informative, but only some 50 per cent of invited members of the DEC were present.

Voter registration

The Voter Register in Ukraine is organised on a territorial basis in the form of a regularly updated electronic database. The Law on State Voter Register⁴ 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. On 13 September, the CEC decided by its Resolution No. 893 that a voter who wanted to vote at a different location should file an application and present a document proving the need to change the voting venue (medical certificate, or a confirmation from an employer or hotel). However, on 22 September, the CEC decided to modified the rules concerning the possibility of voting outside of a person's place of residence. Resolution No. 1046 stipulates that voters who have not changed their electoral address will not be able to vote outside their own electoral district. It means voters may now change only the PEC, but not the single-mandate electoral district.

Candidate registration

On 18 August the registration of candidates finished. From the initial 87 parties who 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 on the ability to conduct a full-fledged election campaign by those parties.

5,642 candidates are running - 3,001 in single-mandate districts and 2,641 in the nationwide election district. 131 candidacies have already 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 its party's cancelled his/her nomination. At the initial stage the CEC refused to register 445 candidates.

Campaign

On 27 July 2012 the Central Election Commission of Ukraine announced that the election campaign would commence on 30 July.

All significant political forces started their campaigns much earlier than it was officially announced. Since spring 2012 the „social advertisements” of several political parties have been placed on billboards and posters in most of Ukrainian cities. In some cases the opposition admitted to the CSEOM that they faced difficulties with gaining access to such a media⁵.

The television is by far the key media of communication among those used in the election campaign. The concerns regarding its pluralism and impartiality have been raised in all the specialized reports. According to the Academy of Ukrainian Press, in August every 4th report dealt with a political issue⁶. Out of these

⁴ The Law came into force on 2007.

⁵ For example, according to CSEOM observers in Dnepropetrovsk, candidates from opposition have no equal access to billboards. Representatives from UDAR party says that advertising agencies refused accept an assignment from their party, explaining, that all their advertising spaces are buyout or booked.

⁶ Academy of Ukrainian Press Monitoring TV News Programs, August 2012: http://www.aup.com.ua/uploads/19.9pres_rel_aug_eng.docx

reports only every 7th included two points of view. In September this trend has been continued with 84 per cent of reports covering only one point of view⁷. At the end of September and beginning of October several popular Ukrainian newspapers were issued with blank first pages to express the protest of the media against government's plans to re-introduce a Soviet-style so called libel law that could allow the jailing of journalists for defamation.

Freedom of speech

The press freedom index published by "Reporters without Borders" in January 2012 indicates that Ukraine is in 116th place, out of a total of 210 countries examined. The quality of media coverage in Ukraine has been degrading since the elections began. July 2012 Freedom House report stressed that space for freedom of the Ukrainian media is shrinking. The report pointed 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 growing prevalence of "sponsored" information in the media called "jeansa"⁸ or paid advertorials. These paid advertorials are "secretly sponsored news items"⁹ which appear within the news with no markings that denote that they are advertisements

The recent 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.

Domestic observers

The new electoral law provides the opportunity for NGOs to register observers. 22 nationwide and more than 40 local domestic observer networks have been registered by the CEC. The two largest groups – the Committee of Voters of Ukraine (CVU) and *Opora* – have trained several hundred long-term observers and plan to deploy several thousand short-term observers to monitor the voting and vote counting. On election day, *Opora* intends also to conduct parallel vote tabulation. Both NGOs have been closely observing all stages of the election campaign and have already published several monthly reports.

Apart from the domestic observation groups there are organizations using crowd sourcing to map violations on interactive internet platforms. The two most popular – *Maidan Monitoring-Vybory 2012* and *Electua.org* give the voters the opportunity to report irregularities and provide evidence. Both platforms have already registered several hundred voter's reports since the beginning of the electoral process.

Civil Society Election Observation Mission is organized by NGOs from Poland (Stefan Batory Foundation), Lithuania (Eastern Europe Studies Centre) and Germany (European Exchange). The mission is operating in Ukraine from 17 September till 7 November. It will include 15 long term staff (experts and observers) as well as short term observers deployed throughout the country. The second interim report is expected to be published on 22 October.

This publication expresses the views of its authors and is not to be considered as presenting the official position of the Ministry of Foreign Affairs of the Republic of Poland.

⁷ Academy of Ukrainian Press Monitoring TV News Programs, September 2012: http://www.aup.com.ua/uploads/19.presrel_sept_eng.docx

⁸ Centre for Eastern Studies (OSW) The press and freedom of speech in Ukraine ahead of parliamentary elections: <http://www.osw.waw.pl/en/publikacje/osw-commentary/2012-09-24/press-and-freedom-speech-ukraine-ahead-parliamentary-elections>

⁹ Freedom House Sounding the Alarm 2: Democratic Decline Persists in Ukraine: http://www.freedomhouse.org/article/new-report-democratic-decline-persists-ukraine?gclid=CJT2u9_wyLICFdHDzAodv3YAYA