

## SECOND INTERIM REPORT – CIVIL SOCIETY ELECTION OBSERVATION MISSION TO UKRAINE

5 - 21 OCTOBER 2012

Kyiv, 23 October 2012

### Executive Summary

- The election preparations for the parliamentary elections to be held on 28 October 2012 are on track and are generally being conducted according to legal deadlines. However, various shortcomings, mainly regarding formation of election commissions, were noted. The process of the establishment of the District Election Commissions (DECs) and Precinct Election Commissions (PECs) and their composition is still strongly contested by the opposition forces.
- The replacement of election commissioners in DECs and PECs is still occurring on a large scale all over the country.
- PEC trainings on pre-election and election-day procedures are underway. The PECs member replacement negatively affected the process.
- Campaign activities have visibly picked up over last two weeks. The election campaign has been relatively peaceful; contestants are generally able to campaign freely with some instances of obstruction of campaign activities.
- On 14 October the two main opposition forces, UDAR and *Batkivschyna* agreed to each withdraw some of their candidates in single mandate districts in order not to compete against each other. Nevertheless, in a large number of districts, the candidates failed to follow their HQ instructions and remained in race.
- Use of administrative resources remains the most important and widespread form of violation of the election process and sometimes affects citizens' freedom of gathering and freedom of speech. The campaign is also characterized by use of voter bribing schemes by different political parties and independent candidates.
- The pressure on independent media has increased in the recent weeks. The media (except on the Internet) largely fails to provide balanced information on election campaigns and does not provide all the parties and candidates with equal opportunities to present their programs.
- Complaints are considered by the election administration and judiciary in a timely manner. However, the principles of transparency over the entire decision-making process are not always respected. According to statistics the the majority of the CEC resolutions remained unchanged, and complaints in general were not resolved.
- The CSEOM press conference on preliminary findings and conclusions will take place on 29 October at 11:30 at the UNN agency in Kyiv.

### Election administration

The election preparations are on track and are generally conducted according to legal deadlines. Nevertheless the CSEOM observers noted various shortcomings regarding the formation of election commissions as well as some aspects of the logistic preparations.

Several PECs are still not fully composed. Many have one or two seats vacant, including managerial positions. As a result some PECs are not fully operational.<sup>1</sup> CSEOM observed that some PECs, mainly in rural areas, were not properly equipped; they lacked computers, printers and other elementary material. The PEC's members often were not aware whether or when the necessary equipment would be provided.<sup>2</sup> Video cameras were installed in all observed polling stations. In some cases, poor preparation of the management troika for the work in the commission can possibly affect the proceedings on election day.

The process of establishing election commissions (DECs, PECs) and its outcomes are still strongly contested by the opposition parties. The CSEOM interlocutors expressed various concerns regarding the representation in the election commissions of so-called "technical parties" and the non-compliance with all procedures required to hold positions by the representatives of those parties. As a result, replacement of DEC and PEC members continues on 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.<sup>3</sup>

While in general the DECs and PECs declare full collaboration and access to documents, in several cases the CSEOM observers were not provided with the necessary documents.<sup>4</sup> Mistrust in the transparency of the entire election process and the impartiality of the election administration is widespread among the CSEOM interlocutors.

The PEC trainings which were underway in all the observed regions were conducted by the heads and other members of respective DECs with participation of experts (invited from the police, UKR Telecom etc.) and/or representatives of the local administration. While in general the training premises were adequate to accommodate all participants, the absence of representatives of some PECs at the trainings as well as the poor training methods and the use of outdated materials raise concerns over the sufficient preparation of some PECs for the election day proceedings.<sup>5</sup>

The preliminary voter lists were accessible to the public for verification until 22 October. CSEOM observers noted that some potential voters likely to apply for home voting were discouraged to do so due to the complicated procedure (medical certificate). According to the CSEOM observers, in Dnepropetrovsk exactly 700 allegedly homeless people were added to the voter list. All of them were assigned to an address where a support centre for the homeless is located. The capacity of the Centre is at most 20-30 people.<sup>6</sup>

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<sup>1</sup> CSEOM observers reported that in the election district No 125 there were four PECs which did not work properly due to constant changes of PEC members (head, deputy and secretary). The DEC 125 has not met the deadline for the first meetings of PECs. At DEC 118, 64 members of the PECs' formally represented Party Green Planet, but none of them have shown up at the PECs' meetings. In many cases contacts given to the PECs members did not work. Often they live in other regions or were not informed about their assignment as a PEC member. In DEC 164 heads, deputies and secretaries of PECs refused to participate in meetings and drafted "resignation letters".

<sup>2</sup> Logistic problems were reported to CSEOM observers by the heads or members of visited DECs numbers 142, 121, 125, and 118.

<sup>3</sup> According to CSEOM'S observers : in DEC 115 : 1038 members were replaced out of 2159; in DEC 116 : 646 out of 1891, in DEC 117 : 759 out of 2190 , in DEC 118 : 866 out of from 2865. In DEC 118 - more than 50 percent of people holding managerial positions were replaced, in DEC 115 – respectively, more than 80 percent

<sup>4</sup> Article 78 section 8 of the Law on Election of the Peoples' Deputies stipulates that (...) election commissions shall facilitate election observers from foreign states or international organizations in exercising their powers.

<sup>5</sup> CSEOM observer reports from Kyiv and Odessa.

<sup>6</sup> They were holding positions from 260 to 960 on the voter list. All of them are assigned to address 56 Sverdlova Street (area within the jurisdiction of PEC 121356).

## Campaign

Campaign activities have visibly picked up over the last two weeks. The election campaign has been relatively peaceful; contestants are generally able to campaign freely with few instances of obstruction of campaign activities. Numerous rallies as well as small and mid-size meetings with voters were observed in all regions by CSEOM. The campaigning is being mainly conducted via the media, through street advertising, the distribution of leaflets and other propaganda materials.

The campaign led by the Party of Regions appears to be the most visible. The United Opposition – *Batkivschyna*, Ukrainian Democratic Alliance for Reforms (*UDAR*) and the *Ukraina Vpered* party also lead active country-wide campaigns.

On 14 October the two main opposition forces, *UDAR* and *Batkivschyna* agreed to withdraw some of their candidates in majoritarian districts in order not to compete against each other. Nevertheless, in a large number of districts, their candidates failed to follow their HQ instructions and remained in race.

The campaign is characterized by a widespread use of administrative resources taking various forms. In most cases it tends to be used in favour of Party of Regions which benefits from its privileged position as the ruling party.

Representatives of the opposition forces openly accuse the authorities of the misuse of budget resources and presenting state-financed projects as the ruling party's and its candidates' own achievements. Direct observations by the CSEOM partially confirm those accusations.<sup>7</sup>

The direct and indirect bribing of voters remains a widespread violation of the electoral code during the campaign.<sup>8</sup> Bribery takes different forms ranging from granting of money for the voters who attend party rallies to the activities carried out by various charity organizations<sup>9</sup> with close links to a particular candidate or party. This form of attracting voters is practiced by both ruling and opposition parties.<sup>10</sup>

Some state officials running for elections often use their positions to conduct indirect agitation.<sup>11</sup> CSEOM observed cases of candidates agitating during „cultural events” organised by business structures, which can be consider as indirect bribing of voters.<sup>12</sup> The CSEOM observers also

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<sup>7</sup> According to CSEOM observers in Kyiv, Dnipropetrovsk, Odessa and Kharkiv the Party of Regions announces on billboards that it has funded the constructions several hundred playgrounds. In several cases, reconstructions of school and other state owned premises and areas were accompanied by small-size rallies of the PoR which claims those reconstructions were being carried out by the PoR founded “peoples’ budget” (*Narodnyj Budget*). In fact, this funding is provided by the local/state budget.

<sup>8</sup> Domestic observers from OPORA estimates, that about 10% of Ukrainian voters are ready to sell their vote for no more than 500 UAH (circa 50 EUR).

<sup>9</sup> These charity organisations distribute goods or services to voters, often together with newspapers leaflets or fliers clearly mentioning the name and sometimes having a picture of candidate. In Kharkiv, agitation was also conducted at schools – which means students were given free materials with logos or photos of candidates of the Party of Regions. There are also indications regarding the forcing of teachers and other budget workers to participate in agitation meetings.

<sup>10</sup> On 15 October 2012 CSEOM observers in Sevastopol observed the giving of money to participants of a *Ukraina Vpered* rally. Observers noticed a list with names and telephone numbers of participants who in turn received money (50 UAH each) and signed the list.

<sup>11</sup> In Dnipropetrovsk CSEOM observers documented meetings of local communities with the Dnipropetrovsk deputy mayor Ihor Cyrkin (Party of Regions candidate in constituency no 25).

<sup>12</sup> CSEOM observers in Simferopol documented the presence of Vitalina Dzoz - Minister of Education of the Autonomous Republic of Crimea (Party of Regions candidate in constituency no. 1) on a concert sponsored by company *Skvorcovo*. Presented as a guest of honour, Ms. Dzoz handed over ten laptop computers to children – winners of a painting contest organised by the *Skvorcovo* company. CSEOM.

documented several examples of 'black PR' discrediting different candidates and parties.<sup>13</sup> The damaging of billboards of several parties and candidates is also widespread in all observed areas. In Odessa and Kharkiv religious leaders are widely brought into play by the candidates.<sup>14</sup>

The pressure on independent media has increased in recent weeks. In one reported case a newspaper was closed for the election period.<sup>15</sup> The media (except on the Internet) largely fails to provide balanced information on election campaigns and does not provide all the parties and candidates with equal opportunities to present their programmes. Most of the TV channels are considered to be mainly a source of pro-government propaganda.<sup>16</sup> After a massive protest of journalists, the *Verkhovna Rada* did not adopt the draft law reintroducing the so called libel law.

### **Complaints and appeals**

As of 13 October, the CEC received a total of 465 complaints.<sup>17</sup> 90 were considered, 375 were returned to the claimant, as they did not meet the formal requirements. Among the 90 considered cases, the CEC resolved one and partially resolved 10 other complaints, 40 complaints were left without consideration and 39 were dismissed. The complaints submitted to CEC mainly challenged the formation of DEC and PEC (via the lottery). Other complaints have included e.g. allegations of misuse of administrative resources and the violation of the rules of the election campaign (indirect bribery of voters, unlawful agitation). All complaints have been considered by the CEC in a timely manner. The CEC continues its sessions according to the agenda which is set up shortly before the meeting. The complaints are deliberated during closed meetings of the CEC and a broader discussion held during open meetings in regards to the substance of the complaints is quite exceptional. It poses a challenge on the transparency of entire decision-making process.

The High Administrative Court has heard 118 election related cases. As of 9 October, the total number of complaints that have been filled with the Court is 139.<sup>18</sup> Among them 104 complaints were related to candidates' registration and 35 complaints were related to other issues. Among the 118 complaints considered by the Court, 67 CEC resolutions were upheld, 5 were changed and 10 were annulled by the High Administrative Court. The statistics show that the majority of the CEC's resolutions remained unchanged, and complaints in general were not resolved. The judgments of the administrative court will be a matter of further consideration of CSEOM.

### **Domestic observers**

As of 19 October, almost 2000 international observers have been granted accreditation. The CEC also registered a large number of domestic partisan and non-partisan observers. Political parties and candidates nominated more than 57000 observers so far. Non-partisan domestic observer groups registered more than 2000 observers. Apart of the nation-wide structures of *Opora* and *Committee of Voters of Ukraine (CVU)*, who accredited almost two-thirds of all non-partisan observers to date,

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<sup>13</sup> CSEOM observers in Dnepropetrovsk documented fake materials of the Communist Party of Ukraine (CPU) and the popular Russian newspaper *Sovershenno sekretno* with defamatory information about CPU candidates. In Lviv, posters slandering *Batkivshchyna* candidates have been widespread. In Odessa, cars on the streets using megaphones to disseminate "information" about the opponents were observed.

<sup>14</sup> Dmytro Shentsev from Party of Regions, candidate in the DEC 176, was opening a new orthodox church in Chuguyev

<sup>15</sup> According to CSEOM observers reports from Kharkiv, one of such instances is „Zmiyivskiy Kurier”, an independent which has been closed for the time of elections.

<sup>16</sup> See also: <http://www.prostir-monitor.org/index2.php?PGID=133>

<sup>17</sup> According to official CEC statistics obtained by CSEOM on 15 October.

<sup>18</sup> According to official statistic of the High Administrative Courts.

another country-wide network called *Spilna Sprava (Common Case)* also intends to deploy several thousand observers for the E-Day in most regions of Ukraine. A considerable increase in the number of domestic observers is to be expected until 22 October<sup>19</sup> as the mentioned organizations announced a large-scale recruitment campaign.

The use of administrative resources, voter bribing and black PR are the most frequent violations reported by the domestic observers to the CSEOM. According to the interlocutors from *Opora* and *Spilna Sprava*, the control over the voter turnout will be of particular importance during the monitoring of election day proceedings. At least two domestic observer groups will attempt to challenge the official results published by the authorities on election night. While *Opora* intends to conduct a parallel vote tabulation, *Maidan* launched the internet based project *Narodnyi CVK* (Peoples CEC) with the aim to collect and publish photocopies of the tabulation protocols provided by voters which can be later compared with the official figures of the CEC.

*Civil Society Election Observation Mission is organized by NGOs from Poland (the 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 to be deployed throughout the country. The press conference on preliminary findings and conclusions will take place on 29 October at 11:30 at the UNN agency.*

*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.*

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<sup>19</sup>

22 October is the legal deadline to obtain accreditation for domestic observers.