

FINAL REPORT
INTERNATIONAL CIVIL SOCIETY ELECTION OBSERVATION MISSION TO UKRAINE

Warsaw, 30 November 2012

I. Executive Summary

- In its Statement of Preliminary Findings and Conclusions, the CSEOM concluded that despite serious and systemic shortcomings and the fact that the fairness of the overall election process was considerably affected by the abuse of the privileged position by those in power, the elections generally allowed the voters to express their political preferences and the freedom of campaign was ensured.¹ Yet, the development of the vote tabulation deteriorated the transparency and integrity of the process, significantly diminishing the credibility of these elections.
- The elections were conducted in unfavourable political climate with leading opposition politicians, former Prime Minister Yulia Tymoshenko, a main political opponent of the President, as well as former Minister of Internal Affairs Yuriy Lutsenko, imprisoned following controversial trials and therefore unable to stand in the elections.
- The elections were conducted according to the new electoral law which introduced mixed electoral system. The voters were choosing 450 members of the Ukrainian Parliament (*Verkhovna Rada*). 225 members were elected through a proportional system based on political party lists in a single nationwide constituency and another 225 members were elected on the basis of a simple majority system in single-mandate election districts.
- The re-introduction of single-mandate districts (SMD) 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 such negative practices as vote buying, the use of

¹ As described in the CSEOM's Preliminary Statement on Findings and Conclusions, available here: <http://www.batory.org.pl/upload/files/Programy%20operacyjne/Otwarta%20Europa/observation-mission-to-ukraine-2012-preliminary-statement.pdf>

black PR, intimidation of candidates and use of administrative resources as evidenced by reported incidents that were mainly related to single mandate constituencies.

- In principle, the legal framework provides an adequate basis for the conduct of democratic elections. Nevertheless the implementation of election law was inconsistent and revealed a number of shortcomings. The procedure of formation of district and precinct election commissions set up by the election law and specified by the Central Election Commission's (CEC) resolutions failed to ensure a balanced representation of the political parties in the election commissions. A large-scale replacement of commissioners in the last weeks and even days before the elections further undermined the principle of election commissions' impartiality. Despite the fact, that the election law does not provide for the invalidation of results in single-mandate districts the CEC adopted a resolution on the impossibility of determining the results in five single mandate constituencies due to alleged election fraud.
- In the pre-election period the election administration managed the technical aspects of the process adequately and accomplished most tasks within the timeframe provided by the election law. However, the tabulation of votes showed that the election administration was not efficient and often lacked transparency. Most of the CSEOM interlocutors expressed lack of confidence in the impartiality of the election administration.
- The rules concerning voter register were improved and tightened. While limitations to vote outside of one's own district, as well as more stringent rules on mobile voting might have deprived some voters of the possibility to vote, they also reduced the risks of manipulation.
- Overall, the registration of candidates was inclusive and transparent. Out of more than 6000 applications over 400 were rejected by the CEC due to technical errors. Some 500 candidates had withdrawn from the race.
- The election campaign has been competitive and polarized but in general peaceful; contestants were generally able to campaign freely but not on equal footing particularly in the media. Post-election period was characterized by rapid increase of tension between the government and the opposition.
- The use of administrative resources by the ruling party was reported in many instances: it included pressure exerted on public employees as well as workers in state owned enterprises and situations where state's financed projects were presented as candidates' achievements.
- Lack of effective rules and transparency concerning campaign financing further privileged those in incumbent position.
- The election process has been also characterized by use of voter bribing schemes by different political parties and some independent candidates.

- The media (except online) were clearly biased in favour of the government and have not provided all the parties and candidates with equal opportunities to present their programs.
- The civil society played an active role in the monitoring of numerous aspects of the elections, including observation of the entire election process, setting up hotlines and internet-based violation maps or conducting candidates' audit. According to some monitoring groups, the observed irregularities of the election process had a mass and systemic character.
- While the polling and counting of ballots were conducted in a calm and orderly manner overall, the tabulation of the results at the DEC level was marred by a lack of transparency, extensive and intentional delays of the work of several DECs as well as the CEC's inability to react and provide an effective remedy to some problematic DECs which undermined the credibility of the election administration and the integrity of the post-election day proceedings.
- Overall, the adjudication of election disputes resolution by administrative courts lacked transparency, consistency and sound factual-legal reasoning. The courts did not seek the objective truth and actually concentrated on technicalities and formal irregularities. This approach impaired the opportunity to obtain an effective legal redress, disregarded the true will of the voters and put into question the impartiality of the judicial system. Some candidates in single-mandate constituencies used courts as a tool to invalidate results favourable to their opponents. The CEC refused to consider the vast majority of complaints due to technical irregularities or forwarded them to relevant law enforcement agencies. Only a very small number of the complaints were at least partially satisfied.

II. Background

On 1 February 2011 the *Verkhovna Rada* set the election date for 28 October 2012. These elections were the sixth held since the independence of Ukraine. The Parliament comprises 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 were 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 election law) re-introduced mixed electoral system. On 28 October, 225 members of the Ukrainian Parliament were elected through a proportional system based on political party lists in a single nationwide constituency and another 225 members were elected on the basis of a simple majority system in single-mandate election districts.

In the outgoing Parliament, the governing majority was formed by Party of Regions (195 mandates), People's Party (20) and Communist Party of Ukraine (25). Main opposition parties hold 161 mandates: Yulia Tymoshenko's Bloc *Batkivschyna* (98) and Our Ukraine - People's Self Defense Bloc (63).

Ukraine's ex-Prime Minister Ms. Yulia Tymoshenko and ex-Minister of Internal Affairs Mr.

Yuriy Lutsenko, two important opposition politicians who were imprisoned in the effect of contested trials, were not registered as candidates by the CEC despite demands of the opposition and the international pressure on Ukrainian authorities.

III. Legal Framework and Electoral System

Parliamentary elections in Ukraine were primarily regulated by the Constitution (1996) and the Law on the Election of People's Deputies of Ukraine (2011). Other applicable legislation included: the Law on the State Voter Register, Law on the Central Election Commission, the Code on Administrative Adjudication and the Criminal Code. Election legislation was supplemented by resolutions of the CEC.

In general, the legal framework could provide 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 adopted in 2011, provided for changes into the electoral system: re-introduced the mixed electoral system applied in 1998 and 2002; increased threshold to five per cent in the proportional party-list system and excluded formation of political blocks. The re-introduction of single mandate districts had a rather negative impact on the conduct of the elections, taking into account the political situation and specific experience of the country², even though the new electoral law reflected the consensus among the main political players. It exacerbated political polarisation and magnified such negative practices as 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.

Overall, the implementation of election law was inconsistent. The procedure of forming the district and precinct election commissions established by the election law and specified by the CEC's resolutions showed that this mechanism failed to ensure fair balance among the political forces. Tabulation process lacked transparency and led to numerous recounts, which were decided by the DEC's or administrative courts on unclear legal grounds. The costly web-cameras' system³ which was supposed to strengthen the integrity of the election process failed to prove its effectiveness, as the video-recording of vote count was not considered by courts as an admissible evidence.⁴

Despite the fact, that the election law does not provide for the invalidation of results in single-mandate districts by the CEC, on 5 November the CEC adopted resolution on the impossibility of determining the results⁵ in five single mandate constituencies⁶ due to

² The mixed electoral system including single mandate constituencies has also been applied in 1998 and 2002 elections. The SMD system in the Ukrainian reality tends to promote more popular parties.

³ The CEC's Resolution No. 892 provides details on establishment of video recording of voting provided by the Law on Ensuring Openness, Transparency and Democratic Nature of Election of People's Deputies of Ukraine. Each regular election precinct had to 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) would be stored on the election day.

⁴ For example, Kyiv District Administrative Court while adjudicated on complaint of single-mandate candidate of Svoboda against DEC 90.

⁵ According to the Head of the CEC Mr. Volodymyr Shapoval, under the Law on the Central Election

alleged election fraud. Following this resolution, the Parliament recommended the CEC to hold new elections in five SMDs. The *Verkhovna Rada* also established a temporary commission of inquiry to investigate the tabulation process in some districts.

IV. Election Administration

Election was 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 the Parliament for a seven-year term, while DECs and PECs are established during the election period.

The CEC and the lower-level commissions (DECs and PECs) accomplished most tasks within deadlines provided by election legislation. Overall, the CEC adopted nearly 2000 resolutions, some of them of prominent character, as regulated essential parts of the electoral process. Nevertheless the preparations for the elections were affected by various shortcomings. The formation of DECs and PECs on the basis of lottery resulted in an unbalanced representation of the main political parties. Two important political forces: UDAR and *Svoboda* were underrepresented in the election commissions. The election law stipulated that aside from the registered parliamentary fractions, the remaining seats in election commissions were to be established by the means of a draw of lots. However, the CEC adopted resolutions which introduced the considerable changes to the procedure of draw. 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 DECs⁷ and then, accordingly, a single draw for the all positions in respective PECs within each single-mandate election district.⁸ As a consequence of the draw of lots, small and unknown parties which registered only one candidate in a sole single-mandate constituency (so called “technical parties”) were represented in all DECs. The election law allowed the contesting parties to substitute the commissioners they had nominated. As a result, the replacement of DEC and PEC members continued on a large scale all over the country, affecting up to 80 percent of staff. The lottery’s results became one of the main sources of official complaints in the pre-election period.

As regards trainings of DECs’ members, they were conducted in a professional manner⁹ and with a fair participation of management staff (head, deputy and secretary), while overall training of PECs’ members was not satisfactory. The fact that training was not compulsory for all electoral officials due to the massive replacement of already trained commissioners, obviously had a negative impact on effectiveness of the election administration at the lower level.

Commission, in case if the CEC is aware of a violation of the Ukrainian legislation on elections, it has a right to consider the issue on its own initiative and take the decision in accordance with the law.

⁶ CSEOM reports from DECs 94, 132, 194, 197, 223.

⁷ The CEC’s Resolution No.69 from 29 August 2012.

⁸ The CEC’s Resolution No. 895 from 13 September 2012.

⁹ Trainings were conducted jointly by the CEC and the International Foundation for Electoral Systems (IFES).

Overall, the CEC operated in a timely manner and held regular sessions according to the agenda scheduled in a short notice. Meetings were open for representatives of parties and candidates, media and observers. However, the sessions were mainly dedicated to voting on resolutions which have been previously discussed and agreed by the members of the CEC. Most of decisions were taken unanimously and a broader discussion was quite exceptional. Although some voting on resolutions adopted at the last stage of electoral process showed a split opinion among the CEC's members.

Problems arose mainly in competitive single mandate districts.¹⁰ The CEC was not able to react promptly and provide an effective remedy for the chaotic tabulation, marred by serious irregularities. Work of many DEC's was obstructed by their members who intentionally failed to attend the commission deliberations and have refused to sign previously agreed upon protocols.¹¹ Furthermore, the DEC staff did not implement all the available legal measures to prevent the delays. The CEC failed to ensure legal assistance to the DEC's. The level of public confidence in election administration was low, particularly in DEC's and PEC's.

V. Voter Registration

The State Voter Register (SVR) in Ukraine is organized on a territorial basis in the form of a regularly updated electronic database, whose custodian is the CEC. 36.718.981 citizens were registered to vote.¹² The Law on State Voter Register (2007) provided a detailed framework for the introduction and maintenance of the new Register. It included 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. The SVR had to be reviewed and updated on regular basis by 754 Register Maintenance Bodies (RMB). The efficiency of the SVR is limited due to the lack of a digital, comprehensive and updated central citizen register and the lack of effective exchange of data between different bodies of the state and regional administration. Consequently, many voters claimed not being involved on the voter lists on election day at all, while several hundred homeless were added to lists at apparently artificial addresses shortly before the election day.

During the election process, the rules concerning voter register were improved and tightened. While limitations to vote outside of one's own district, as well as more stringent rules on mobile voting might have deprived some voters of the possibility to vote, they also reduced the risks of manipulation.¹³ The voters who had not changed their electoral addresses were not able to vote outside their respective single-mandate electoral districts what might disenfranchised some voters. Previously issued permissions allowing for changes of the voting place outside the respective single-mandate district were cancelled.

¹⁰ For instance, in DEC 197 where protocols allegedly have been falsified.

¹¹ In DEC's 216, 223, 215.

¹² According to the State Voter Register's data from 23 October.

¹³ The CEC Resolutions: No. 893 adopted on 13 September, No.1046 adopted on 22 September,

The preliminary voter lists¹⁴ were accessible to the public for verification till 22 October. Citizens could check their registration and request changes. All political parties represented in the Parliament received earlier the electronic copies of SVR. The number of registered voters in Ukraine increased by 52.961 (0,14 % of total number of registered voters).¹⁵ As concerns the number of people allowed to vote outside of their own PEC and within the single-mandate district, 155.549 voters were granted this opportunity.¹⁶ The electoral law did not allow for changes in voter lists on last two days before election day, except by court decision and notification from the relevant RMB (on election day only by the court decision).¹⁷

VI. Candidate Registration

The registration of candidates was finalized on 18 August. Out of 87 parties that nominated candidates, only 22 submitted party lists for the nationwide district. Some parties nominated less than five candidates for single mandate districts, having no candidates on party lists.¹⁸

The registration was scarcely contested by the election subjects and had an inclusive and transparent character. However, out of the more than 6000 applications over 400 were rejected by the CEC due to technical errors in the submitted applications.¹⁹ As a result, 2,651 candidates were running in single-mandate districts and 2,554 in the nationwide election district. Almost 500 candidates, most of them self-nominated, had withdrawn from the race due to their own decision or the party's cancellation of his/her nomination.

Due to the fact that the election law does not oblige the CEC to cancel the DEC's and PEC's representation of electoral subjects who resigned to run, some members of the election commissions did not represent any of the active candidates or parties. According to the CSEOM interlocutors this, and the high number of parties with less than five candidates for SMD, may indicate the existence of the so called "technical candidates" or "technical parties", registration of whom was supported by other parties with the aim at gaining representation in the DEC's and PEC's.

¹⁴ According to Article 39 Section 2 of the election law : "A preliminary voter list for a regular election precinct shall include the citizens of Ukraine who have reached or, as of the day of voting, will have reached eighteen years of age and whose voting address is within the precinct in accordance with the data of the State Voter Register. A voter shall be included in a preliminary voter list only in one election precinct".

¹⁵ For instance, on 23 October the number of voters registered in Kyiv increased by 6283 people, in Kharkiv by 5415, in Odesa by 3389.

¹⁶ Among them: 146.947 were members of PEC's, 798 were members of the DEC's, 7804 were citizens who will not vote at their respective PECs for "other reasons".

¹⁷ This procedure was not always followed in Dnipropetrovsk, as observed by the CSEOM observers.

¹⁸ 26 parties nominated only one candidate for the single-mandate districts.

¹⁹ I.e. biographical errors, missing annotation on civil engagement etc. Furthermore, the election law does not provide the possibility to consider as not submitted documents which fail to comply with legal requirements, see: IFES Ukraine Election Bulletin No. 6 (15 August 2012), available here:

http://www.ifes.org/Content/Publications/News-in-Brief/2012/July/~//media/Files/Publications/IFES%20News%20in%20Brief/2012/IFES_2012_Ukrainian_Election_Bulletin_6_Eng.pdf.

VII. Campaign Environment

A. Election Campaign

On 27 July 2012 the Central Election Commission of Ukraine announced that the election campaign would commence on 30 July. However, all significant political forces started their campaigns much earlier than it was officially announced. Since spring 2012 so called „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 observers that they faced difficulties with gaining access to such a media.²⁰

On 14 October 2012, two mayor opposition parties *Batkivschyna* and UDAR decided to withdraw 40 and 26 candidates respectively in a number of DECs with the aim at having one single candidate running against a representative of the ruling party. That agreement followed an earlier (July 2012), similar deal between *Batkivschyna* and *Svoboda*. Nevertheless, in a large number of districts some opposition candidates failed to follow their HQ instructions and remained in race.

The election campaign has been relatively peaceful; contestants were 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 the CSEOM. The campaigning was mainly conducted via the media, through street advertising, distribution of leaflets and other propaganda materials. In practice, due to the abuse of privileged position by those in power, the political parties did not have an opportunity to campaign on equal conditions, in particular in the media. The campaign was polarized and often characterized by the use of divisive and even defamatory rhetoric.

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

The campaign was characterized by a widespread use of administrative resources taking different forms, yet in most cases in favour of the Party of Regions²¹ which used its privileged position as the ruling party. Allegations of pressure and intimidation were

²⁰ For example, according to CSEOM observers in Dnepropetrovsk, candidates from opposition did not enjoy equal access to billboards. Representatives from *UDAR* party say that advertising agencies refused to accept an assignment from their party, explaining, that all their advertising spaces are buyout or booked.

²¹ The use of administrative resources by the ruling party has been reported in many instances: pressure exerted on public employees, workers in state owned enterprises as well as in situations where state’s financed project were presented as candidates’ achievements. Also numerous instances of using state apparatus (Ukrainian Tax Service, Prosecutor’s Office and other) against independent media such as *TVi* and „*Levyi Bereg*” internet newspaper, both critical towards the authorities have further affected the impartiality of the Ukrainian media. State apparatus was also used against opposition candidates: when it became clear, that some persons are going to stand for Parliament from opposition lists, they became targets for Prosecutor’s Offices, Tax Inspection etc. Victims of such a selective use of justice were among others: human rights activist Vitalij Kuprij (*Svoboda* candidate in Dniprodzerzhinsk) and *Batkivschyna* candidate Arkadij Kornatskij (Nikolaev region).

raised throughout the pre-election period. Some state officials running for elections often used their position to conduct indirect agitation.²²

Representatives of the opposition forces openly accused 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 confirm a number of those accusations.

The CSEOM observers also documented several examples of 'black PR' discrediting different candidates and parties.²³ The damaging of billboards of several parties and candidates was also widespread in all observed areas.²⁴ In various instances, the distinction between state activities and the Party of Regions campaign was blurred.²⁵

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 rallies²⁶ to the activities and services offered by various charity organizations²⁷ with close links to a particular candidate or party. This strategy of attracting voters has been practiced by candidates from all political spectra and appeared to be most frequently used in the SMD contests. In some cases CSEOM observers spotted candidates agitating during "cultural events" organised by corporate structures, which can be considered as indirect bribing of voters. Small food and household packages as well as cash were being distributed on behalf of candidates to potential voters in many other regions. One of most well known politicians who have used such methods was the speaker of Parliament Volodymyr Lytvyn by means of his "Lytvyn's Charitable Fund".

B. Campaign Finance

Obscure regulations regarding campaign financing and some greatly overpriced state contracts created possibility of transferring substantial amounts of money from state

²² 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*. Present as a guest of honour, Ms. Dzoz handed over ten laptop computers to children – winners of a painting contest organised by the *Skvorcovo* company.

²³ CSEOM observers in Dnipropetrovsk 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 *Batkivschyna* candidates have been widespread.

²⁴ In some instances damaged were not only billboards, but also whole constructions holding them, as it took place in case of 16 Svoboda's billboards in Dniprodzerzhinsk (Dnipropetrovsk region).

²⁵ According to the CSEOM observers in Kyiv, Dniepropetrovsk, Odesa and Kharkiv the Party of Regions announced on billboards the foundation and construction of several hundred playgrounds. In several cases, reconstructions of schools and other state owned premises and areas were accompanied by small-size rallies of the PoR which claimed 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.

²⁶ 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.

²⁷ 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 the Party of Regions candidates.

budget to ruling political parties. Lack of limitations of election campaign expenditures combined with the lack of transparency in fundraising and an insufficient control of the CEC over funds spent on election campaigns stimulated corruption among all political parties but clearly privileged those in incumbent position.

There are only two sources of legal campaign income in Ukraine: party or candidate's own funds and people's donations. There is no limitation on party funds or expenditures on election campaign. Moreover, specific donors do not have to be publicly announced and every citizen has a right to grant even up to 400 minimum monthly salaries to a political party and up to 20 minimum monthly salaries to a candidate in SMD. This system makes possible an exchange of money from businessmen for „favours” of future deputies in Parliament. Moreover direct buying seats in *Verkhovna Rada* by businessmen supporting concrete parties seems to be an established political practice. According to the unofficial data collected by the CSEOM observers a majority of the main political parties sells positions on party slates. Most sources estimate amounts for such a place as 7-12 million dollars. According to the official data from the Central Election Commission, 22 Ukrainian political parties in all-country multiple-mandate constituency spent 600 million UAH during the election campaign: 218 million – Party of Regions (157 million on advertising in the media, 33 million on billboards); *Batkivshchyna* declared to have spent 107 million: 94 million on propaganda in the media and 9,5 on billboards and posters; UDAR's financial declaration mentioned 33,7 million; and *Svoboda* declared 23,2 million. Our Ukraine and *Ukraina Vpered* – admitted to having spent 60 million each.²⁸ According to the CSEOM interlocutors the real amounts of money spent on campaign were much higher, as official data provided by political parties to the CEC covered the period between the registration of party lists until 26 October.²⁹ It seems that the real amounts spent on agitation were probably seriously underestimated. Majority of parties have their unofficial "black funds", that are used for paying for certain illegal services such as: "jeansa", means paid to the party rallies' participants as well as for work of "volunteers" during the election campaign. The CEC has also no authority to sanction political parties which fail to provide their financial statement, do it late or with errors.

VIII. The Media and Freedom of Speech

The media (except online) 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.

At the end of September / beginning of October several popular Ukrainian newspapers were issued with blank first pages to express the protest of the media against government's plans³⁰ to re-introduce a Soviet-style so called *libel law* that could allow the jailing of journalists for defamation.

International and domestic experts alert that space for freedom of the Ukrainian media

²⁸ http://cvk.gov.ua/index/metod/formy/konsolid_zvity/perelik_zvity.htm

²⁹ Such opinion was expressed, among others, by Artem Bidenko, chairman of Ukrainian Association of Outdoor Advertising.

³⁰ After a massive protest of journalists, the *Verkhovna Rada* did not adopt the draft law re-introducing the so called *libel law*, but it is important to mention that voting on the draft has only been postponed, so it can be proceeded after the elections.

was shrinking. Main threats for freedom of speech in Ukraine remain: corruption and declining independence of media; increasing use of administrative and legislative tools to hinder, disrupt and ultimately prevent media outlets from operating³¹ as well as growing prevalence of “sponsored” political information in the media called “jeansa”³² or paid advertorials. These attacks on independent media further affected the impartiality and quality of the Ukrainian media.

IX. Domestic Observers

The civil society played an active role in the monitoring of numerous aspects of the entire election process.³³ Out of almost 40000 officially registered domestic non-partisan observers, the two largest country-wide NGOs, *Opora* and Committee of Voters of Ukraine (CVU), alone registered more than 10000 observers.³⁴ Additionally to the monitoring activities, *Opora* conducted the quick count. Other domestic NGOs used crowd sourcing to map violations on interactive internet platforms. The two most popular – *Maidan Monitoring* and *Elect.ua* – have together recorded over 3000 violations since the beginning of the electoral process.

The NGOs registered numerous violations of the election law at all stages of the electoral campaign, including irregularities during the establishing of electoral districts’ borders and the formation of the election commissions, use of administrative resources, voter bribery and *black PR* during the campaign as well as irregularities during and after the election day. According to the statements of *Opora* and *Maidan*, the irregularities had a massive and systemic character. In pre-election period, the domestic observers groups were able to conduct their work without major impediments. A series of DDOS-attacks on servers of the above mentioned NGOs made their websites partially inaccessible on the election day. *Opora* had to delay its presentation on the results of the quick count.

X. Voting and Counting

A. Polling

In most observed cases the opening of the polling stations was conducted in compliance with the procedures, having all sensitive materials present at the polling stations. However, in some cases minor delays and chaotic openings were reported.³⁵ In one observed case ballots were issued before the ballot boxes were sealed.³⁶

³¹ According to the CSEOM observers’ reports from Kharkiv, „*Zmiyvskiy Kurier*”, an independent local newspaper has been closed for the time of elections.

³² These paid advertorials are in fact sponsored news.

³³ Among the NGOs which focused on election observation there were other organisations focusing on candidates’ audit (*Chesno*) or the analysis of the formation of election commissions and the turnout (*Cifra Group*).

³⁴ Another country-wide network *Spilna Sprava* (Common Case) also intended to deploy several thousand observers across the country.

³⁵ One case of postponed opening by 30 minutes was reported in Lviv – the PEC did not provide the CSEOM observers with the reasonable justification.

³⁶ CSEOM reports from PEC 800965.

The voting process was calm and, in most cases, well organized. Nevertheless, procedural irregularities were observed in several cases, including instances of more than one person being present in the voting booth³⁷, the secrecy of voting not being protected and the ballot boxes not being properly sealed.³⁸ According to the CSEOM observers, in some cases the construction of the booth and the lighting inside could negatively affect the secrecy of the vote.³⁹ Assistance to voters and instances of voting by organized groups as well as indications of organizing transport for voters were also reported by some CSEOM observers.⁴⁰ In Kharkiv hidden agitation to the benefit of one of the candidate by his proxies were noted in most observed polling stations.⁴¹

The integrity of the vote was ensured in the majority of observed polling stations. Although, the CSEOM observers reported cases of bias among the PEC members⁴² and instances of ballots being taken outside the polling station which could indicate a “carousel”.⁴³ In Irpin one case of showing a picture of the ballot taken in the booth by the voters to unidentified persons was observed, which could be a sign of voter bribing. An attempt of ballot stuffing allegedly assisted by two members of the PEC was reported by the CSEOM observers in Vinnitsa. Furthermore, pens with disappearing ink were found in several polling stations in Odesa which appeared to be distributed by the respective DEC.⁴⁴ Instances of vote buying were reported to observers with an amount being mentioned in the range of 100 to 500 UAH.⁴⁵

In most cases the party representatives, candidate proxies and observers were not prevented to observe the voting. However, in several cases observers reported that they did not have a clear view of the process due to the improper layout of polling stations.⁴⁶ The CSEOM observed examples of inappropriate behaviour bordering on intimidation. In Odesa four observers from the Party of Regions claiming to represent President Yanukovich were visibly placed in a car in front of the polling stations. Similar situations were also observed in another location in Odesa as well as in Irpin.

While in most cases PECs had been consistently verifying the voter identification, several instances of voters being permitted to vote without proper IDs were observed in all regions of Ukraine. Various shortcomings have been reported concerning the accuracy of the voter lists. In many observed regions voters claimed not being included on the voter lists.⁴⁷ In some cases the voter lists were marked.⁴⁸ In isolated cases, invitations to vote were issued to persons not living at the indicated address or even to

³⁷ CSEOM reports from Kirovograd, Donetsk, Odesa

³⁸ CSEOM reports from Obukhiv, Odessa, Kharkiv.

³⁹ CSEOM reports from Kirovograd, Irpin, Odesa.

⁴⁰ CSEOM reports from Donetsk, Odesa, Obukhiv, Kharkiv, Brovary.

⁴¹ Official observers of one of the candidate were wearing clothes with emblems of the local football team *Metalist* which is known to be supported by this candidate. Only in one polling station they were urged by the PEC to remove those emblems.

⁴² CSEOM reports from Obukhiv, Irpin.

⁴³ CSEOM reports from Kyiv, Obukhiv.

⁴⁴ CSEOM reports from DEC 133.

⁴⁵ KVVU's report No. 7 on results of long term monitoring on preparations for 2012 parliamentary elections in Ukraine.

⁴⁶ CSEOM reports from Kirovograd, Lviv, Ternopil.

⁴⁷ CSEOM reports from Kirovograd, Kyiv, Donetsk, Vinnitsa, Obukhiv, Irpin, Kharkiv.

⁴⁸ CSEOM reports from Nizhyn, Odesa.

foreigners.⁴⁹ In one PEC observed, ballots were issued to voters regardless of errors in the spelling of their names on the voter lists.⁵⁰

In two polling stations in Kyiv, PECs had 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). Commission members informed the mission that there have been numerous cases of artificially large number of applications across the district. In one case CSEOM observers witnessed the presence of voters included on the mobile voter list despite the fact that they were dead already at the time of last elections.⁵¹

Cameras were installed in polling stations as required by the law, although the presence of the signs clearly indicating the video recording in the polling stations varied from one region to another.⁵² In general, the CSEOM observers were not in a position to determine an added value of this innovation.

B. Counting

The counting process started on time and was conducted in an efficient manner and without major problems in most observed cases. However, several procedural shortcomings were observed which appeared to have negative consequences on the integrity of the process of establishing results. The sequence of the counting established by the election law was not followed by the most PECs. Furthermore, the validity of the ballots was not decided by the PEC during the counting.⁵³ In several PECs the counting protocols were pre-signed by the commission members before the results were established.⁵⁴ In some PECs protocols were not properly prepared for handover at the DEC level (unsealed packages of sensitive material, damaged packages of protocols, mistakes in protocols).⁵⁵

In several cases the protocols were not displayed in the polling stations.⁵⁶ In some instances stamps have been taken outside the polling station. In Dnipropetrovsk the PEC chair left the polling station for the handover of the protocols at the DEC having only one copy of the protocol prepared while other members filled out the remaining protocols.⁵⁷

C. Tabulation

The E-Day processing deteriorated during the handover of the election material from the PEC to the DECs and, most notably, during the tabulation of the results at the DEC

⁴⁹ CSEOM reports from PEC 711003, 900061.

⁵⁰ CSEOM reports from PEC 121353: The ballots were issued following the PEC and not the court decision.

⁵¹ CSEOM reports from PEC 800619.

⁵² The signs indicating video recording were absent in most polling stations in the Ternopil oblast.

⁵³ CSEOM reports from Dnipropetrovsk.

⁵⁴ CSEOM reports from Ternopil, Odesa, Kharkiv.

⁵⁵ CSEOM reports from Vinnitsa, Odesa, Kharkiv, Kyiv.

⁵⁶ CSEOM reports from Kharkiv, Odessa, Dnipropetrovsk.

⁵⁷ CSEOM reports from Dnipropetrovsk.

level.⁵⁸ The handover of protocols was marred by queuing and disputes between DEC and PEC members. The reconciliation of the PEC protocols was protracted by the high number of PECs turned back for rectification of protocols, which contained minor procedural errors. In several cases CSEOM observers reported the PEC staff correcting errors in the vicinity of the DEC without any effort to follow the procedures.⁵⁹

While in the majority of DECs the tabulation process was finalised within the reasonably time framework, in several highly competitive single mandate districts the tabulation was extensively delayed due to the disruptive action by the members of the DECs, SMD candidates and their proxies as well as the questionable operations of the ordinary and special police units. As a result, the establishment of the final results was declared impossible by the CEC in five single mandate constituencies.⁶⁰

The tabulation at the DEC level was characterized by a lack of transparency and distrust in the process among the involved actors. In some cases CSEOM observers could not freely observe the tabulation process due to insufficient space in the DEC premises or by facing obstacles made by the police or other people, i.e. official journalists.⁶¹ Several cases of intimidation of the PEC and DEC members by unauthorized people, official observers and journalists, parties and candidate proxies or by other commission members were noted by CSEOM observers.⁶² Cases of violence against PEC members as well as interference in the DEC's work by regular and special units of the police overshadowed the process.⁶³ There was no prompt and adequate reaction of law enforcement agencies to allegedly committed election offences (e.g. fraud, rigging, falsification of protocols).⁶⁴ In contrary, the law enforcement agencies were used in the political interests of individual candidates.⁶⁵

Different approaches were used for the storage of PEC materials. In many cases inadequate handling of protocols and other sensitive PEC election material at the DECs were observed by the CSEOM, including the insecure storage of unsealed packages with ballots and protocols on the freely accessible premises or in other rooms of the DECs over several days. In cases of tension at some DECs, packages which remained on the premises were partially opened and damaged.⁶⁶ Recounts were attempted to take place

⁵⁸ As stated in the Preliminary Statement on Findings and Conclusions, available here: <http://www.batory.org.pl/upload/files/Programy%20operacyjne/Otwarta%20Europa/observation-mission-to-ukraine-2012-preliminary-statement.pdf>

⁵⁹ CSEOM reports from DECs 133, 211, 216, 223.

⁶⁰ CSEOM reports from DECs 94 (Obukhiv), 132 (Pervomaisk), 194 (Cherkasy), 197 (Kaniv), 223 (Kyiv).

⁶¹ CSEOM reports from DECs 94, 95.

⁶² CSEOM reports from DECs 95, 215, 216, 223.

⁶³ Member of the PEC 800194 was beaten by unknown perpetrators; Member of PEC 800413 was intimidated by the members of DEC 216; regular and special units of police were present at DEC 211, 215, 216, 223.

⁶⁴ The Prosecutor General's Office opened a criminal investigation regarding DEC 223 several days after election offences had been allegedly committed only
<http://www.pravda.com.ua/news/2012/11/12/6977306/>

⁶⁵ In Pervomaysk, Mykolaiv region, opposition candidate Arkadiy Kornatsky won 39 percent of the vote, compared to 34 percent cast for deputy regional governor and Party of Regions candidate Vitaliy Travyanko. Berkut riot police stormed premises of DEC 132, seized PEC protocols requested by the court and spread tear gas to disperse those protesting against the fraudulent practices.

⁶⁶ CSEOM reports from DECs 211, 223.

and eventually conducted in several PECs according to the controversial decisions taken by the DEC members and the courts.⁶⁷ In one DEC, invalidation of election results from 27 PECs led to the change in overall results in the single mandate district to the benefit of the candidate of the ruling party.⁶⁸ Significant discrepancies between the data posted on the CEC website and the protocols filled out by the PECs have been noted.

The CSEOM observed cases of unreasonable delays of tabulation at some DEC members due to deliberate obstruction of the process by some DEC members. The DEC staff usually did not implement all the available legal measures to prevent the delays. In several highly competitive single mandate constituencies a number of DEC members attempted to refuse to sign already agreed upon protocols or intentionally failed to attend the reconciliation sessions causing a loss of quorum.⁶⁹ In some cases, bias among the DEC staff resulted in a last-minute dismissal of some of their members.⁷⁰ The CEC did not take enough efforts aiming at ensuring legal assistance to some problematic DEC members.

XI. Complaints and Appeals

The election dispute resolution was primarily regulated by the 2011 election law⁷¹ and in addition by the Code on Administrative Adjudication. As there was no judicial practice of the new election legislation, thus seminars and trainings for judges adjudicating election-related cases were organised by the Ukrainian judicial authorities in the cooperation with the international bodies.⁷²

Under the new election law, the right to challenge decisions, actions or inactions of election commissions and other actors involved in the electoral process is granted to all electoral subjects. Depending on nature of alleged violation and a respondent, a complaint may be filed with a respective election commission and/or challenged in courts according to the procedure specified by the Code on Administrative Adjudication. As a result of this parallel system, the channels for disputing resolutions were overlapping and in general might have not been clear.

Complaints regarding a decision, action, or inaction of a PEC or a member might be filed with the respective DEC and a complaint regarding a decision, action, or inaction of a DEC or its member might be filed with a court or with the Central Election Commission. Decisions, actions or inactions of the CEC can be filed with the Kyiv Administrative Court of Appeal in the first instance and appealed at the High Administrative Court.

The opposition parties expressed a lack of trust in election administration and courts to act impartially and effectively in addressing election complaints. Overall, the

⁶⁷ DEC 211 decided to recount ballots of one of the PECs after the election material of this PEC was illegally unsealed and re-packed by the DEC members.

⁶⁸ DEC 94 invalidated approximately 32,000 ballot papers.

⁶⁹ CSEOM reports from DEC members 215, 216.

⁷⁰ On election night DEC 139 dismissed one of its members who allegedly disseminated wrong information to PECs. On 1 November, the CEC replaced 8 of 18 members of the DEC 197.

⁷¹ Chapter XIII of the election law (Articles 108-111): "Filing Complaints against decisions, actions and inactions relating to process of MP election and liability for violation of legislation on election."

⁷² i.a., the High Administrative Court, the Council of Europe, IFES.

adjudication of election disputes resolution by administrative courts lacked transparency, consistency and sound factual-legal reasoning.

As regards the CEC, it has considered all the complaints in a timely manner, however the process lacked transparency.⁷³ As of 10 November, the CEC received a total of 663 complaints.⁷⁴ Among them 553 were returned to the claimant, as they did not meet the formal requirements. The CEC made decisions regarding to 116 complaints, 58 complaints left without substantive consideration, one was entirely satisfied,⁷⁵ 12 complaints were partially satisfied,⁷⁶ 45 complaints were dismissed. The statistics shows that CEC refused to consider the vast majority of complaints due to technical irregularities or forwarded them to relevant law enforcement agencies. Only a very small number of the complaints was at least partially satisfied.⁷⁷

As regards courts, they conducted hearings on a 24-hour basis. The court cases often started later than scheduled and 48-hour time limit for the courts to deliver a judgment was not always respected. As of 10 November, the Kyiv Administrative Court of Appeal received 268 complaints against the CEC. Among them, 155 were dismissed, 71 left without consideration, only three were entirely satisfied, and five were partially satisfied⁷⁸. As of 10 November, the High Administrative Court received 161 complaints in total, among them 129 complaints were reviewed⁷⁹, of which 70 the CEC's resolutions were upheld, eight were changed and 13 were annulled.⁸⁰

There were many instances of courts refusing to consider cases based on technical irregularities, improper grounds, and misapplication of jurisdiction provisions that denied claimants access to judicial redress. In cases reviewed by the CSEOM, the courts did not seek the objective truth and actually concentrated only on technicalities and formal irregularities. For example, while considering the case against DEC 94 the Kyiv District Administrative Court did not admit as evidences the original PEC's protocols and DVD records of counting.⁸¹ This approach impaired the opportunity to obtain an

⁷³ See: Section "Election administration" of this report.

⁷⁴ According to official CEC's statistics obtained by the CSEOM on 11 November.

⁷⁵ For a sole complaint which was completely satisfied concerned violation concerned financing of election campaign (Resolution No. 595), see: <http://195.230.157.53/pls/acts/ShowCard?id=30283&what=0>

⁷⁶ According to the CSEOM review, among 12 complaints which were partially satisfied complaints – 5 regarded distribution of materials without specifying data about the producer and customer (Resolutions: No. 694, No. 812, No. 916, No. 1093, No. 1279), 1 – allegations of misuse of administrative resources (Resolution No. 1367), 2 – indirect bribery of voters (Resolutions No. 707, No. 811), 2 – black PR (slander, distribution of false information- Resolutions No. 914, No. 1888), 1 – concerning activity, inactivity of the DEC (Resolution No. 1143) and 1 – use of candidate's images without his consent; violation of the Law On Advertising (Resolution No. 1392).

⁷⁷ See also the CEC official webpage: <http://195.230.157.53/pls/acts/New>

⁷⁸ According to official statistic of the Kyiv Appeal Administrative Court obtained by CSEOM on 14 November.

⁷⁹ Among them 109 complaints were related to candidates' registration and 52 complaints to other issues.

⁸⁰ According to official statistic of the High Administrative Court obtained by CSEOM on 11 November.

⁸¹ While considering this case, the Kyiv Administrative Court of Appeal also did not admit as evidence the original protocol received by the representatives of the candidate in the constituency 90, although all of the protocols have the same legal force. In another case the candidate in the constituency 94 challenged the resolution of the CEC declaring impossible to determine election results also in this constituency. The Kyiv Administrative Court of Appeal did not admit as evidence the original protocols of PEC's without any factual reasoning.

effective legal redress, disregarded the true will of the voters and put into question the impartiality of the courts.⁸²

Some candidates in SMDs used the court as a tool to invalidate results favourable to their opponents. They requested that courts cancel DEC decisions establishing election results on the grounds of falsification of PEC results protocols. Of note, the European Court of Human Rights in its judgment delivered in case of *Kovach vs. Ukraine*⁸³ concluded that the decision to annul the vote in the four electoral divisions had to be considered as arbitrary, and not proportionate to any legitimate aim pleaded by the government. It followed that in this case there had been a violation of Article 3 of Protocol No. 1 of the European Convention on Human Rights. However, on 31 October the Kyiv District Administrative Court ruled on recount on 43 PECs within DEC 216.⁸⁴ Also on 31 October, the District Courts in Obukhiv and in Vasilkiv ruled on many recounts in DEC 94.⁸⁵ The judgments satisfied almost all complaints on refusal of entry into PECs during voting, counting or tabulation that had been filed by candidates and their representatives and invalidate the results. However, in some analogous cases the court's judgments were different, which indicates the inconsistency of adjudication of election-related cases by courts.

XII. Announcement of Election Results and Post Election Environment

The intentional obstruction of work of several DECs became the main concern and source of political instability right after elections. Tension affected mainly single mandate constituencies, where (according to independent exit-polls and copies of protocols provided by the representatives of the opposition candidates), opposition candidates managed to gain the majority of votes. Facts of manipulations of election documentation, interference of police in election process and use of force in some DECs were revealed in more than ten constituencies and have been partially documented also by the CSEOM observers.

On 5 November the leaders of the opposition parties United Opposition–*Batkivschyna*, *Svoboda* and UDAR published a joint appeal to the CEC indicating serious violations in the tabulation process in 13 districts. On the same day the CEC *de facto* cancelled the

⁸² On 11 November 2012 the Head of the Central Election Commission announced his intention to initiate the prosecution of judges who declared invalid the voting at 27 PECs in constituency No. 94 for the violation of their oaths. The Higher Council of Justice ordered to carry out seven checks on 27 judges who allegedly committed violations while considering cases related to the electoral process. <http://www.kyivpost.com/content/ukraine/higher-council-of-justice-to-check-a-number-of-court-decisions-related-to-elections-316064.html>

⁸³ Judgment on 7 February 2008 (application no 39424/02).

⁸⁴ This judgment was based on acts filed with PECs on the election day. The candidate in constituency 94 and his representative complained that they were excluded of the PECs meetings what violated their rights. However, time of filing in of those acts indicated that claimants would have been physically present at the same time in different PECs. Moreover, most of these PECs have already handed in all protocols to the District Electoral Commission and the relevant complaints were not made over there.

⁸⁵ <http://khpg.org/index.php?id=1351776706>

results of elections in 5 SMDs (94, 132, 194, 197 and 223) stating on the impossibility of determining the results in these districts due to alleged election fraud. The CEC also asked the Parliament to provide the legal basis to repeat the elections in these five constituencies. On 6 November *Verkhovna Rada* recommended the CEC to conduct new elections in these five districts despite the fact, that the election law does not provide for the invalidation of results in single-mandate districts. A temporary commission of *Verkhovna Rada* to investigate the tabulation process in some districts has been established.

The opposition leaders also warned that they might boycott the new Parliament „in case if the real winners in controversial constituencies will not be recognized by the CEC”. To extend pressure on the CEC, on 5 November United Opposition–*Batkivschyna*, *Svoboda* and UDAR called their supporters to take part in an illegal⁸⁶ demonstration in front of the CEC in Kyiv. Despite warnings from the police and the ban on demonstration announced in Kyiv, about 2500 protesters picketed the CEC for two days. After some attempts of removing them from the square police blocked protesters on square in front of the CEC. By means of that, the authority kept control on situation but also avoided risk of being accused of using excessive force, as further confrontation did not follow. Despite Yulia Tymoshenko’s calls for keeping rally near the CEC, other opposition leaders decided to dissolve it.

Facing domestic protests and growing criticism from international community,⁸⁷ on 12 November the Ukrainian General Prosecutor’s office opened ten criminal cases regarding possible falsifications in various DECs.

On 11 November the Central Election Commission announced the official results of count of party list ballots. A day later, 220 winners out of 225 single-seat constituencies were declared. The results showed that President Viktor Yanukovich's party and allied parties will control a majority of seats. It remains unclear when exactly the *de facto* repeated elections will be organised. The opposition insisted it won those five seats (as well as several others⁸⁸) but *Verkhovna Rada's* recommendation was to rerun the elections in five SMD in Kyiv, Mykolaiv and Cherkasy regions, as well as in Kyiv city. While opposition leaders claim they do not recognize the results and will challenge them in local and international courts it is likely that all the opposition deputies will begin their work in the new Parliament.

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

The International Civil Society Election Observation Mission (CSEOM) was organized by non-governmental organizations from Poland (Stefan Batory Foundation), Germany (European Exchange)

⁸⁶ According to Kyiv District Administrative Court decision from 27 October, all mass rallies (except state organized) in centre of Kyiv were prohibited since 28 October until 12. November. Opposition representatives stated, that there were no substantial rationale for such decision, thus it is an infringement of freedom of gathering of Ukrainian citizens.

⁸⁷ “The lack of appropriate responses by the authorities to the various electoral violations has led to a climate of impunity,” said Audrey Glover, the Head of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) long-term election observation mission. “This has cast a shadow over the election and the democratic progress that, until recently, Ukraine had been making.” <http://www.osce.org/odihr/elections/96673>

⁸⁸ On 13. November Kyiv Administrative Court has forbidden the CEC to announce the official winners in DEC 11 and DEC 14.

and Lithuania (Eastern Europe Studies Centre) under the auspices of Aleksander Kwaśniewski and Markus Meckel. The mission was operating in Ukraine from 17 September until 16 November. It included 15 long term staff (experts and observers) as well as short term observers deployed throughout the country.

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