

POST-ELECTION INTERIM REPORT
29 October–6 November 2012

9 November 2012

I. EXECUTIVE SUMMARY

- The process of tabulating results continues in a number of districts. The tabulation process lacked transparency; further observations after election day found that this element was assessed negatively in 77 of the 161 District Election Commissions (DECs) observed by OSCE/ODIHR Election Observation Mission (EOM) observers. Some 25 DECs observed by the OSCE/ODIHR EOM in the days following election day experienced serious problems with tabulating the results in single-mandate districts due to irregularities and other issues, including intimidation of DEC and PEC members, interference in the work of DECs, instances of pre-signed PEC protocols, PEC protocols missing pages, and differences in copies of the same PEC protocols.
- The OSCE/ODIHR EOM identified cases of preliminary results being changed after they were posted on the CEC website; there are strong indications that some results have been manipulated in favour of certain contestants.
- On 5 November, the CEC unanimously adopted a decision effectively cancelling the majoritarian elections in five districts and asked the parliament to provide the legal basis for repeat elections. The opposition has announced that it will appeal the decision.
- A large number of complaints have been filed with the DECs and courts. Some parties, candidates and proxies used the lacunae in the law regarding establishing results and the court system as a tool to invalidate PEC results or disrupt the tabulation process at DECs.

II. INTRODUCTION

On 29 October, the OSCE/ODIHR Election Observation Mission (EOM), together with the OSCE Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe, the European Parliament and the NATO Parliamentary Assembly, issued a Statement of Preliminary Findings and Conclusions, reflecting their observations up to election day and the beginning of the tabulation process.¹ In the post-election period, the EOM has focused on the observation of the tabulation and announcement of results and on the handling of complaints and appeals. OSCE/ODIHR EOM long-term observers (LTOs) continue to observe the process in the regions.

This interim report should be read in conjunction with pre-election interim reports, as well as the statement of preliminary findings and conclusions. The OSCE/ODIHR will issue a comprehensive final report, including recommendations for the consideration of the authorities approximately two months after the completion of the election process.

¹ The statement is available at <http://www.osce.org/odihr/96675>.

III. TABULATION AND ANNOUNCEMENT OF RESULTS

The tabulation process at District Election Commissions (DECs) and the announcement of final results were still ongoing during the reporting period. While most DECs have completed their work, a few DECs continued to process protocols submitted by Precinct Election Commissions (PECs), and others were correcting errors identified by the Central Election Commission (CEC). The CEC has begun announcing the results in some majoritarian districts.² The results of the proportional race have not been announced yet, as not all protocols have been tabulated.

Further observations after election day found that the tabulation process was assessed negatively in 77 of the 161 DECs where it was observed by the OSCE/ODIHR EOM. The main problems reported immediately after election day included DEC premises with insufficient space, overcrowding, tension, and tampering with election materials submitted by PECs. The lengthy processing of PEC results was exacerbated by long breaks announced by some DECs,³ and by the very high number of PECs that were obliged to compile corrected protocols because of minor mistakes or because the figures in their protocols could not be reconciled. The tabulation process lacked transparency, especially as the room in which the election results were entered into the computer system for transmission to the CEC was, as a rule, not accessible to most DEC members or to proxies, domestic or international observers. In a positive step, the CEC posted the election results by polling station on its website; however, some essential data, such as the number of invalid votes or the number of voters who received ballots, were not included.

As the tabulation process continued in the days following election day, some 25 DECs observed by the OSCE/ODIHR EOM experienced serious difficulties in tabulating the results in single-mandate districts due to irregularities in the process or other problems. Irregularities included intimidation of DEC and PEC members and interference in the work of DECs, often by candidates, proxies, observers or others.⁴ Instances were also observed of pre-signed blank PEC protocols, PEC protocols missing pages, and differences in copies of the same PEC protocols.⁵ Cases of DECs reconvening and changing results were observed, as well as power cuts at some DEC premises while tabulation was ongoing. OSCE/ODIHR EOM LTOs observed the presence of special security forces outside or inside seven DECs, in some cases blocking access to the premises. In Mykolaiv *oblast*, special forces entered DEC 132 and seized PEC protocols, following a court order to deliver them to the court.

Vague provisions of the electoral law⁶ led to numerous recounts, which were decided by DECs based on contestants' complaints, court decisions and following cases where packages with election materials had illegally been unsealed after they had been delivered to the DEC. In two cases, DECs found during the recount of majoritarian PEC results that a large number of ballots initially counted

² On 6 November, the CEC announced the majoritarian results for 21 election districts.

³ For example, DECs 11 (Vinnytsia *oblast*), 58 (Donetsk *oblast*), 94 (Kyiv *oblast*), 95 (Kyiv *oblast*), 194, 197 (Cherkasy *oblast*), 211, 215, 216, 222 223 (all in Kyiv city), 225 (Sevastopol city).

⁴ OSCE/ODIHR EOM LTOs reported such irregularities from DECs 11 (Vinnytsia *oblast*), 71 (Zakarpattia *oblast*), 95 (Kyiv *oblast*), 132 (Mykolaiv *oblast*), 194 (Cherkasy *oblast*), 211, 214, 215, 223 (all four in Kyiv city). In some cases, individuals who were accredited as observers or journalists appeared to be participating in organized disruption of the tabulation process.

⁵ In DEC 155 (Rivne *oblast*), 20 (Volyn *oblast*) and 184 (Kherson *oblast*), respectively.

⁶ Article 94.5 of the electoral law provides for the possibility to recount PEC results only if the election materials were unsealed before being handed over to the DEC, or if complaints about irregularities during the count or the transfer of election materials were filed not later than the handover of materials to the DEC. Article 94.10 obliges DECs to conduct a recount if there is any indication that the packs with election materials have been opened, even after the materials were packed properly at the time of receipt by the DEC.

in favour of leading candidates were found to be marked for more than one candidate and were therefore invalid; they had apparently been tampered with at the DEC premises.⁷

The OSCE/ODIHR EOM noted two cases where changes in the preliminary results posted on the CEC website after 100 per cent of polling stations had been processed resulted in the candidate who had initially come in second winning the seat. This occurred in electoral districts 14 (Vinnytsia *oblast*)⁸ and 132 (Mykolaiv *oblast*).⁹ According to the CEC, this was due to DEC's changing the results after they had already been entered into the system.

In electoral district 94 (Kyiv *oblast*), the election results in 27 polling stations (about 30,000 votes) were invalidated by the DEC following court rulings. The Party of Regions candidate alleged in the claims that her observers had been denied access to 28 polling stations. As a result of the invalidations, the United Opposition–*Batkivschyna* candidate lost some 6,500 votes and the leading position in the electoral district, to the benefit of the Party of Regions candidate.

The OSCE/ODIHR EOM checked some 300 official copies of proportional and majoritarian PEC results protocols¹⁰ against data posted on the CEC website and found 45 protocols with technical mistakes and inaccuracies,¹¹ some minor change of voting results,¹² and some strong indications of manipulation of results in favor of certain contestants.¹³

The CEC has been tabulating results in continuous session since 30 October. The session was suspended several times, including for closed-door discussions on some complaints. As a result of processing DEC and PEC protocols,¹⁴ the CEC requested more than one third of DEC's to compile corrected DEC protocols and/or provide for correction of some PEC protocols.¹⁵

Addressing some media reports and statements of political parties and candidates, the CEC chairperson announced that he suspected that violations had occurred at some DEC's during tabulation. The CEC asked the General Prosecutor's Office to follow up on some complaints and media reports. DEC's 11 (Vinnytsia *oblast*), 189 (Khmelnitsky *oblast*) 197 (Cherkasy *oblast*) and 223 (Kyiv city) were deadlocked while taking decisions related to the tabulation. Although the deadlock in these cases was usually caused by a lack of a quorum as the majority of DEC members

⁷ DEC's 11, 14 (both in Vinnytsia *oblast*).

⁸ OSCE/ODIHR EOM verified the fact that the results of PEC's 050004, 051085 and 051598 were changed after they were posted on the CEC website, which resulted in a change of the winning candidate.

⁹ The OSCE/ODIHR EOM made screenshots of the webpage showing the preliminary results for electoral district 132 on the CEC website, with 100 per cent of polling stations processed. According to a screenshot with data as of 12:41 hours on 30 October, Arkadiy Kornatskyi (United Opposition–*Batkivschyna*) won with 29,678 votes. A screenshot of the same webpage, with results as of 20:37 hours on 30 October, showed Vitaliy Travyanko of the Party of Regions as the winner, with 29,910 votes. On the two screenshots, the number of votes cast for Mr. Kornatskyi and for the candidate of the Ukrainian Democratic Alliance for Reforms (UDAR) remained unchanged, while it had changed for the other five candidates in the district.

¹⁰ These protocols were obtained by OSCE/ODIHR observers at polling stations or at DEC's.

¹¹ Such inaccuracies include wrong figures about the number of voters, wrong order of contestants in the protocols, or not all fields having been filled in.

¹² PEC's 680953 (Khmelnitsky *oblast*) for the nationwide election district; 631545 (Kharkiv *oblast*), 260755 (Ivano-Frankivsk *oblast*), 650181 (Kherson *oblast*), 260155 (Sumy *oblast*), 180113 (Zhytomyr *oblast*), and 350684 (Kirovohrad *oblast*) for the single-mandate electoral districts.

¹³ PEC's 320633, 320634, 320635, 320636 (Kyiv *oblast*), 710896 (Cherkasy *oblast*) for the nationwide electoral district; 320095, 320700, 320731, 320701, 320702, 320698, 320697, 320705, 320711, 320721, 320727, 320728, 320729 (all in Kyiv *oblast*) for single-mandate electoral district 93.

¹⁴ In cases where mistakes or mathematical inconsistencies were found during the review by CEC staff, the CEC could request DEC's to correct the respective protocols, within a deadline established by the CEC.

¹⁵ For example DEC's 6 (Autonomous Republic of Crimea), 46 (Donetsk *oblast*), 75, 76, 77, 80, 81, 82 (all six in Zaporizhzhya *oblast*), 224, 225 (both in Sevastopol city).

were absent during the tabulation session, the CEC took no effective measures to resolve the situation by replacing DEC members, or it delayed the replacements.¹⁶

On 5 November, the leaders of the opposition parties United Opposition–*Batkivschyna*, Svoboda and UDAR sent a joint appeal to the CEC alleging serious violations in the tabulation process in 13 districts. That afternoon, the CEC unanimously adopted a decision which effectively cancelled the majoritarian elections in five of these districts (94, 132, 194, 197 and 223). The decision stated that it was “impossible to establish the true results” in these districts as these elections were not held in accordance with the Constitution and the electoral law.¹⁷ As the law does not specifically provide for the invalidation of results in single-mandate districts by the CEC, the decision was taken on the basis of general authorities given to the CEC in the Law on the Central Election Commission and the electoral law.¹⁸ United Opposition–*Batkivschyna* stated that it would appeal the CEC decision.

The CEC also asked the parliament to provide the legal basis for repeat elections in these five constituencies. The parliament on 6 November decided to recommend that the CEC conduct repeat elections in these districts. The parliament also established a temporary commission of inquiry to investigate the tabulation process in some districts. Some participants of the electoral process voiced the opinion that the CEC decision and the subsequent decision of the parliament are not in line with the law and exceed their competence.

IV. COMPLAINTS AND APPEALS

A large number of complaints have been filed on behalf of political parties and candidates, alleging irregularities on election day or challenging the results at precinct and district level.¹⁹ The majority of complaints filed with courts that the OSCE/ODIHR EOM analyzed requested the courts to recognize the actions of PECs that allegedly did not allow candidates or their proxies, authorized party representatives and observers to enter polling stations during voting hours and especially after the beginning of the vote count as illegal.²⁰ Other complaints requested that courts cancel DEC decisions establishing election results on the grounds of falsification of PEC results protocols, or alleged violations committed by DEC members during the tabulation, such as a failure of DEC members to recount ballots where packages with election materials from PEC had been damaged. A large number of complaints were also lodged with the DEC members, mainly challenging the high number of applications for homebound voting or alleging that many applications had been written by the same person, the large number of voters in some special polling stations, or violations of ballot boxes integrity.

The 48-hour time limit for the courts to issue a decision was not always respected, as some hearings were repeatedly postponed. The courts, however, made efforts to consider the lawsuits in a timely manner by conducting hearings on a 24-hour basis. They satisfied most complaints on denial of entry into polling stations during voting, counting or tabulation that had been filed by candidates, mainly of the Party of Regions. Similar complaints filed by observers or proxies were only upheld

¹⁶ Under Article 37.1 of the electoral law, the CEC has the authority to terminate the office of DEC members. The CEC replaced the chairperson of DEC 223 on its own initiative.

¹⁷ One of the two CEC deputy chairpersons said that results in additional single-mandate districts might be invalidated.

¹⁸ The CEC based its decision on the general authority to control the compliance and uniform implementation of the law, as provided by Article 30.2.1 of the electoral law and Articles 17.2 and 17.3 of the Law on the Central Election Commission.

¹⁹ As of 5 November, the OSCE/ODIHR EOM has received information about approximately 185 complaints filed with the DEC members and 70 complaints filed with the courts since election day; however, the actual number of complaints is probably higher since they are not registered centrally.

²⁰ Refusal to allow authorized people from entering a polling station can be grounds for a DEC to invalidate the election results in this precinct.

where the complainants claimed not to have been allowed into a polling station before the beginning of the vote count. The lack of clear provisions in the law regarding the establishment of results was used by some parties and candidates as a tool to invalidate PEC results or disrupt the process of tabulation by DEC. None of the court decisions which declared denial of entry of candidates, proxies or observers into polling stations illegal canceled the election results on this basis. One court ruled that it could not order the DEC to take certain actions, such as preparing a new tabulation protocol, as the DEC is a legal person and an independent authority, while another decision of the same court ruled that the DEC was obliged to conduct a recount. Notably, some courts ruled that denial of entry into a polling station did not have an impact on the outcome of voting, while some others ruled that this influenced the “objectivity of the electoral process”. Court decisions on denial of entry into polling stations were implemented inconsistently by DEC. It is noteworthy that there is no court decision examined by the OSCE/ODIHR EOM which is based on evidence provided by the official web cameras.

During its continuous tabulation session, the CEC also considered some complaints filed by candidates and political parties that alleged electoral offences. All these complaints were initially lodged with district prosecutors, who forwarded them to the CEC and subsequently to the Prosecutor General’s Office.

OSCE/ODIHR EOM LTOs reported that some PEC and DEC members expressed fear of being prosecuted under the Criminal Code, on charges of evading their duties or of forgery of electoral documents. Prosecutors’ offices and the police received some complaints alleging falsification of results protocols or other irregularities constituting criminal offences, one of which was submitted by the chairperson of a DEC; they were either forwarded to the DEC or the CEC or are under review.